



**CHARGING ARRANGEMENTS FOR
RESIDENTIAL SOCIAL CARE:**

**CONSULTATION ON ISSUES CONCERNING
THE CURRENT CHARGING ARRANGEMENTS
FOR RESIDENTIAL SOCIAL CARE**



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Description Analyse responses from the consultation and from that make a decision on what the next steps will be.

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Superseded Docs N/A

Action Required Participation in the consultation.

Timing Responses required by 23 April 2010

Contact Details CRAGConsultation@dh.gsi.gov.uk

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CHARGING ARRANGEMENTS FOR RESIDENTIAL SOCIAL CARE

Introduction

1. This consultation paper seeks views on potential amendments to the following:
 - National Assistance (Assessment of Resources) Regulations 1992 (the “charging regulations”)
 - The National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001
 - The National Assistance (Residential Accommodation) (Relevant Contributions) (England) Regulations 2001
 - The Charges for Residential Accommodation Guidance (CRAG)
2. Under section 22 of the National Assistance Act 1948, where a local authority arranges residential care for a person under section 21 of that Act, it is required to charge the person such sums as he or she is assessed as being able to pay. Section 22 also requires local authorities to use the charging regulations to make the financial assessment. CRAG provides guidance on interpreting the regulations.
3. The National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001 make provision for additional payments to be made by certain persons so that a person who has been assessed as needing residential accommodation can choose to live in accommodation which is more expensive than the local authority would usually pay for someone with that person’s assessed needs.
4. The National Assistance (Residential Accommodation) (Relevant Contributions) (England) Regulations 2001 set out how a resident’s relevant contributions under a deferred payment agreement are determined.
5. In 2006-07, the Department convened a stakeholder group to consider the residential charging arrangements. The Group raised a number of issues about the charging regulations and guidance and the Department agreed, subject to Ministerial agreement to consult on some of these. This consultation document seeks views on these issues.
6. This consultation is aimed at anyone likely to be involved with the charging regulations, the other regulations mentioned above or CRAG whether in a professional capacity, or as a friend, relative or carer of someone whose residential care charges are determined using the charging regulations or CRAG or who live in accommodation which is more expensive than the local authority would usually pay.

Consultation scope

7. This consultation is limited in scope to the issues raised below. It is not seeking general comments on the residential charging regulations, or particular topical issues such as the availability of deferred payments or the Personal Expenses Allowance (PEA). The changes to the care and support system resulting from the Green Paper may address most charging issues in the longer term.
8. There were a number of issues raised by the stakeholder group where Ministers have decided not to consult. These are:
 - The level of the PEA. The reasons for not consulting on this are set out in the Written Ministerial Statement of 27 January 2009, which can be found at:
<http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90127-wms0001.htm..>
 - The level of the capital limits. It was considered that this issue was likely to be dealt with as part of the White Paper on the longer term arrangements for the care and support system.
 - Extending disregard of the 50% transfer of occupational pension to a partner so it applies to any state additional pension too. The estimated cost of this would have been around £20m to £25m in 2008, rising to around £30m to £35m in 2012. The need to use limited resources to maximum benefit means that there is no possibility of making this change until circumstances change. It was, therefore, decided not to consult on this issue.
9. There is no commitment to amend the charging regulations or CRAG or the other regulations concerned. However, if, following the analysis of the responses, Ministers do agree to any changes to the legislation or guidance, it is intended that these changes will be made as soon as possible in early 2010.

. The Proposals and Consultation Questions

10. There are four issues put forward by the stakeholder group that Ministers have now decided to consult on, concerning the legislation and guidance. They are further changes to the charging regulations regarding:
 - the treatment of personal injury compensation
 - the treatment of single premium investment bonds
 - the introduction of a new disregard for pre-paid funeral plans
 - deferred self top-ups during the 12-week property disregard.
11. We do not expect these proposals to result in overall costs to local authorities. The first two of the proposals will increase the amount of money local authorities get from charging. The second two will reduce local authorities charge income. However, none of the amounts involved is thought to be significant. The Department will consider the position again in the light of responses to the consultation, to ensure these assumptions are correct.

12. Responses are sought on the questions set out below regarding the four issues raised. Other comments within the scope of this consultation are also welcome.

Further changes to the charging regulations regarding the treatment of personal injury compensation

Do you think local authorities should be allowed to take into account, in all circumstances, the ‘care’ element of a personal injury compensation award in the financial assessment of what a care home resident can afford to pay for residential care?

Explanation

Government policy is that in general personal injury compensation awards should be disregarded in the financial assessment of people for residential charging and other purposes. An amendment was made to the Income Support (General) Regulations in 2008 to ensure that money from such awards is not taken into account in the gap between it being paid and it being placed in a disregarded location, eg, a personal injury trust. The amendment introduced a 52 week disregard (the “grace period”) for personal injury compensation awards to give people time to place the money in a disregarded location. A consequential amendment was made to the charging regulations to reflect the change to the Income Support (General) Regulations.

However, in some cases a personal injury compensation award will include an amount specifically identified as being to cover the cost of care. Disregarding the care element of a personal injury award has the effect, in principle, that the local authority may have to pay for care when the resident has already been awarded money specifically intended for the purpose. If this happens it would reduce the resources local authorities have to spend on other people in need of social care.

We have already modified the amendment creating a grace period in the charging regulations. However, that modification is limited in scope. This is because the current regulations only allow local authorities to take account of the care element of a personal injury award until it is placed in a disregarded source such as a personal injury trust or annuity; once in a trust or annuity all the money must be disregarded. Also, they do not allow local authorities to take into account such an award including the care element of the award if that money consists of capital which is administered on behalf of a person by the courts or which can only be disposed of by court order or direction.

Ministers have agreed to consult to seek views on a wider amendment to enable authorities to take account of the care element of any personal injury compensation award in all circumstances.

Treatment of single premium investment bonds

Do you think these bonds should be taken into account in the financial assessment?

If an investment bond is written as one or more life insurance policies that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights has to be disregarded as a capital asset in the financial assessment for residential accommodation. In

contrast, the surrender value of an investment bond without life assurance is taken into account.

The Group suggested the charging regulations should be changed to enable the surrender value of bonds with a life insurance element taken out as savings or investment vehicles to be taken into account if they are entered into after the date any change to regulations come into force. However, regular premium policies should continue to be disregarded if they have been purchased, for example to provide life insurance or as an endowment mortgage.

Introducing a new disregard for pre-paid funeral plans

Do you support the idea of introducing a disregard for pre-paid funeral plans?

Explanation

We understand that currently, there is mixed practice around the country in the way local authorities treat pre-paid funeral plans. Some local authorities choose to disregard them, while others add them to the total value of a resident's capital. They are ignored for pension credit purposes but not for income support purposes. Given that many older people wish to have the reassurance that they will be able to meet the cost of their funeral the Group's view is that they should be added to the list of disregarded capital in the charging regulations.

We believe this would have relatively little impact on local authority budgets as the typical value of a funeral plan would mean that they would pick up costs approximately 6/7 weeks earlier. The percentage of residents with a funeral plan is not known.

Deferred self top-up during the 12-week property disregard.

Do you agree that residents should be able to top-up their own fees during the 12-week disregard period from the value of the disregarded property?

Explanation

Where a resident exercises their rights, under the National Assistance Act 1948 (Choice of Accommodation) Directions 1992, to go into local authority supported accommodation that costs more than the local authority would normally expect to pay, a top-up payment must be made to cover the difference between the fee paid by the local authority and the charge made by the care home.

Top-up payments are usually made by a third party. In certain circumstances, the National Assistance (Residential Accommodation) (Additional Payments and Assessment of Resources) (Amendment) (England) Regulations 2001 allow the resident to top-up their own fees out of specified resources but where the 12-week property disregard applies (i.e. for the first 12 weeks in local authority supported care), those resources cannot include the value of the resident's home. However, where, following the 12-week disregard period, there is a deferred payment agreement, top-up payments can be made from resources which include the value of the resident's home, provided these payments form part of the payment that must be repaid under the deferred payments agreement.

The result of this is that where a resident's only resource is their home and they do not have a third party willing to pay a top-up fee they may be prevented from entering the care home of

their choice for the first 12 weeks. The Group propose that the regulations be changed to allow a resident to make a top-up payment using resources including their home during the 12-week disregard period so that they can go into the care home of their choice.

It may be possible to amend the regulations to do this but this may be complex. However, it is unclear how big a problem this is. It seems unlikely that there are many people whose only capital resource is their home and who do not have a third party willing to top-up their care home fees for 12 weeks.

We understand that some local authorities already have arrangements that effectively allow residents eligible to self top-up their fees during the 12-week disregard period. However, it would be a cost to local authorities, which do not already make such arrangements. . However, we believe this cost would not be significant.

13. Responses are also sought regarding questions regarding the impact and equality impact of the proposals. Please note that at this stage, there is no impact assessment but one will be prepared for any of the proposals taken forward based on the responses of this consultation.

What might be the barriers (negative impact) on charging, for residential care services provided by a local authority under Section 21 of the National Assistance Act 1948. for everyone from the perspective of ethnicity, gender, disability, age, sexual orientation, religion/ belief, socio-economic or rural/geographical considerations?

What proportionate measures could address those issues?

What are the positive impacts that might result from implementing these proposals from the perspective of ethnicity, gender, disability, age, sexual orientation and religion/belief, socio-economic or rural/geographical considerations?

What proportionate measures might we implement that could enhance this positive affect?

Please identify how the implementation of these proposals might affect the Human Rights of patients, carers or service providers?

Costs

14. **We believe these changes, on balance, will not have a significant impact on local authority budgets. If you do not agree, please provide the evidence of cost and/or benefits for each area:**
- **The treatment of personal injury compensation**
 - **The treatment of single premium investment bonds**
 - **The introduction of a new disregard for pre-paid funeral plans**
 - **Deferred self top-ups during the 12-week property disregard period**

How to respond

15. We have identified a number of questions on which we would be grateful to receive views: please refer to the consultation questions contained in this document.

16. Please send consultation responses to

CRAGConsultation@dh.gsi.gov.uk

Alternatively, write to:

The Dignity and Standards Team

Department of Health

Room 123

Wellington House

133-155 Waterloo Road

London SE1 8UG

When responding, please state:

1. Your name
2. Your email and/or postal address
3. Your job title (if applicable)
4. Whether you are responding as an individual or representing the views of an organisation.

17. If responding on behalf of a larger organisation, please provide the organisation's name, make it clear who the organisation represents and, where applicable, how the views of members were assembled.

18. Please let us know if you would like us to acknowledge receipt of your response (acknowledgements will be by email)

19. The consultation period will run until 23 April 2010. Following the consultation, we will evaluate the responses. A summary of the consultation responses will be published on the Department of Health website. For further information regarding this consultation, please contact michelle.mcdaid@dh.gsi.gov.uk or alan.probett@dh.gsi.gov.uk.

Equality Impact Assessment

20. Equality Impact Assessments have been undertaken.

The Consultation Process

Criteria for consultation

21. This consultation follows the 'Government Code of Practice', in particular, we aim to:

- formally consult at a stage where there is scope to influence the policy outcome;
- consult for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
- be clear about the consultations process in the consultation documents, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- ensure the consultation exercise is designed to be accessible to, and clearly targeted at, those people it is intended to reach;
- keep the burden of consultation to a minimum to ensure consultations are effective and to obtain consultees' 'buy-in' to the process;
- analyse responses carefully and give clear feedback to participants following the consultation;
- ensure officials running consultations are guided in how to run an effective consultation exercise and share what they learn from the experience.

22. The full text of the code of practice is on the Better Regulation website at:

<http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

Comments on the consultation process itself

23. If you have concerns or comments which you would like to make relating specifically to the consultation process itself please

contact Consultations Coordinator
Department of Health
3E48, Quarry House
Leeds
LS2 7UE

e-mail consultations.co-ordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

Confidentiality of information

24. We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter.
25. Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
26. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
27. The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.
28. Summary of the consultation
29. A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the Consultations website at

<http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>