Introducing More Consistency in Local Authorities’ Charging for Non-Residential Social Services

Guidance for Local Authorities

April 2011
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This guidance is issued under section 7 of the Local Authority Social Services Act 1970

1. Introduction

1. From 11 April 2011 the Welsh Assembly Government is introducing new charging arrangements where local authorities choose to use their discretion to charge for the non-residential social services they provide or for which they arrange the provision; such as home care or day care. This is to introduce more consistency in this charging to reduce the wide variation in charging arrangements, and in the level of charges, that presently exist between local authorities in Wales.

2. These new charging arrangements are being introduced by new legislation applicable to charging for non-residential social services in Wales that will come into force on that day; that is the following regulations made being under the Social Care Charges (Wales) Measure 2010:

- The Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011.
- The Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011.

3. Copies of the Measure and the regulations are at annexes A – D of this guidance. The Measure replaces in relation to Wales section 17 of the Health and Social Services and Social Security Adjudications Act 1983, which contains the power which authorities presently use to charge for these services. Once the Measure comes into force section 17 will no longer be applicable in Wales in relation to charging for non-residential social services which are provided under the powers to provide services listed at section 13 of the Measure.

4. This guidance is being issued to local authorities as statutory guidance under section 7 of the Local Authority Social Services Act 1970. It replaces the earlier guidance issued in 2002 entitled “Fairer Charging Policies for Homecare and Other Non-Residential Social Services” and the subsequent circular letter of 7March 2007 issued as NAFWC 11/07, both of which now cease to have effect. Section 7 of the 1970 Act allows Welsh Ministers to issue statutory guidance to local authorities on the exercise of their social services functions. In exercising those functions, local authorities must have regard to guidance issued under section 7.
5. This guidance is being issued to assist authorities in the design and operation of their charging policies where they choose to charge. It should be stressed that the Measure, the regulations made under it and this guidance place no duty on an authority to charge. It is entirely a matter for authorities as to whether they wish to charge and to the design and operation of their policies for so doing. However, where authorities choose to do so their charging policies, and the operation of these, must comply with the requirements of the Measure and the regulations, and must have regard to this statutory guidance.

6. This guidance provides advice which supplements the requirements placed on authorities by the Social Care Charges (Wales) Measure 2010 and the regulations listed above. It should be read, therefore, in conjunction with the Measure and those regulations.

2. References to Service User, Services and Charging – Direct Payments Arrangements

7. It is the policy intention that the changes being introduced will apply to both service users receiving services direct from their local authority, or arranged by their authority, and those who have entered into a direct payments arrangement with their local authority to purchase themselves the services they require. Therefore, unless otherwise stated references to service user, services and charges in this guidance should also be interpreted to mean direct payments recipient, services provided through a direct payments arrangement and contribution or reimbursement that a person who receives a direct payments arrangement may be asked to make in respect of the services they receive within that arrangement.

8. That said, the Measure, the regulations and this guidance only apply to any contribution or reimbursement that a local authority imposes as part of entering into a direct payments arrangement. The calculation of the direct payments themselves, and the operation of direct payments arrangements, are a matter for the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011 and their accompanying statutory guidance.

9. More detailed information on the operation of the new charging arrangements as they relate to direct payments arrangements is contained in the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011 attached at annex C.

3. Main Requirements of the Social Care Charges (Wales) Measure 2010

10. This is a general description of the provisions of the Social Care Charges (Wales) Measure 2010. More detailed information on the aspects of charging it refers to follow in the appropriate chapters. It should be noted that Ministers wish to introduce more consistency in charging for non-residential social services in a phased approach, with immediate changes followed up over time. As a result not all of the provisions of the Measure are being used by Ministers at this time to implement the changes being introduced from 11 April 2011.
11. Section 1 of the Social Care Charges (Wales) Measure 2010 gives local authorities a discretionary power to impose a reasonable charge for the non-residential social services for adults it provides, or arranges the provision of, under the powers to provide these services listed in section 13 of the Measure. While it provides authorities with this power to impose a charge, it does not place a duty on authorities to charge but leaves this to their discretion. Where authorities decide to impose a charge, what is a reasonable charge is a matter for the authority but any charge set would need to relate to the cost of providing the service concerned and the financial ability of the recipient of the service to pay a charge set.

12. The power to impose a reasonable charge is applicable to the powers to provide, or arrange the provision of, non-residential social services under the legislation listed in section 13 of the Measure (a copy of the Measure is at annex A); this includes the powers that authorities would normally use to meet the non-residential social care needs of adults. As a result the Measure, the regulations made under it and this guidance, do not apply to services for children provided under children’s legislation or related services for adults provided under other legislation, for example Supporting People Services provided under housing legislation.

13. The power to impose a reasonable charge is subject to regulations that Welsh Ministers have the powers to make under the following sections of the Measure:

- section 2 - maximum charges (where Ministers could set a maximum charge for all services, some services or for some categories of service users);
- section 3 - persons and services in respect of which charges must not be levied (where Ministers could exclude certain services or categories of service users from charging);
- section 8 – effect of determination as to ability to pay (where a reasonable charge would need to take account of a means assessment undertaken and any requirements for these that Ministers have set in regulations).

14. Section 4 of the Measure places a duty upon authorities to invite a person to whom it is to provide or to arrange a service for, to request a means assessment to establish their financial ability to pay a charge where authorities intend to set a reasonable charge for this service. It also prohibits an authority from imposing that charge until an invitation has been given, and where an invitation has been responded to with appropriate information or documentation, from imposing that charge until the authority has taken account of the outcome of the resultant means assessment in the setting of the eventual charge made. Under section 5 of the Measure an authority would not be under a duty to undertake a means assessment if one had already been done and there had been no relevant change in the circumstances contained in this since then. Under section 6 authorities are under a duty to carry out a means assessment if the person to receive, or who is receiving, a service requests a means assessment and provides the information or documents which the authority reasonably requires to do this.
15. Section 7 of the Measure places a duty on authorities, following the undertaking of a means assessment, to take into account the outcome of that assessment in determining whether it is reasonably practicable for the person to pay the standard charge set for the service they are to receive or are receiving (the Measure defines the standard charge as “the amount which a person would be required to pay for a service if no determination under the Measure as to the person’s ability to pay had effect”). If it is not reasonably practicable for the person to pay a standard charge, it places a duty on the authority to determine the amount, if any, which it does consider is reasonably practicable for them to pay. It also allows Welsh Ministers to make regulations specifying particular categories of persons with specified means, or with means in a specified range, where it would not be reasonable for them to pay for a particular service and to set amounts which must be disregarded when assessing a person’s means. It also allows Welsh Ministers to specify in regulations the amount below which a person’s income or assets must not be reduced after any charging has occurred.

16. Section 8 of the Measure places a duty on an authority to take account of the outcome of a means assessment undertaken in setting any reasonable charge, while section 9 provides the ability for an authority to make a further determination of a person’s ability to pay a charge and to replace an existing determination where there have been changes in the person’s financial position, in the service provided, in the authority’s charging policy or when a mistake was made in the original determination.

17. Under section 10, authorities have a duty to provide general information about the services for which they charge, the standard charges for these and the operation of their means assessment processes to those who receive or may receive a service. It also places a duty to provide to those who are to be charged for their service a statement of that charge containing information about how that charge was calculated and how a person can challenge this should they wish. Consequently, section 11 provides Ministers with powers to set out in regulations provision for a process to review charging decisions to put in place a consistent, initial process to reconsider charging decisions outside of an authority’s formal complaints procedure.

18. Section 12 allows Ministers to extend the provisions of the Measure to those in receipt of a direct payments arrangement so that the requirements described above also extend to the contributions or reimbursements that direct payments recipients may be asked to make in those direct payments arrangements.

19. The remainder of the Measure details the powers to provide services to which the Measure relates, consequential amendments to other legislations and the legislative procedure under which regulations made under the Measure are made.

20. It should be noted that the Measure, and hence the regulations made under this, presume that any charging for non-residential social services that authorities undertake will consist of particular stages in that process. Hence they set out that having decided that a person requires a service for which an authority makes a reasonable charge, that the authority will issue that person with an invitation for a means assessment. They then set out that the authority will undertake an assessment where requested to do so by that person and based on the outcome of that assessment, or in the absence of a request for a means assessment, determine
the ability of the person to meet a reasonable charge for the service required on the basis of available information or documentation. They then set out that the authority will set any resultant charge and inform the person of the details of this before levying the charge set. Lastly, they set out that a person may seek to have a charging decision reviewed if they wish.

21. The circumstances in which each of these stages operates as required by the Measure and the regulations being made under this are described in this guidance. Authorities will, however, wish to be aware of this framework for any charging undertaken given it is the way in which the legislation is structured.

4. Main Requirements of the Regulations Made under the Measure

22. Three sets of regulations have been made under the Social Care Charges (Wales) Measure 2010, all of which come into force from 11 April 2011. Copies of these are at annexes B – D but in general each of the regulations does the following:

The Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011

- defines the categories of persons who may not be charged and the services for which a charge may not be made;
- that an authority’s power to set a reasonable charge is subject to a maximum charge of £50 per week;
- sets out the content and format of an invitation to request a means assessment, and the format of a response, required to be issued to those receiving or to receive a service for which the authority makes a charge;
- where a means assessment is requested, sets out the process to be used including the financial safeguards that should be afforded to service users when making those assessments;
- the procedure an authority should use in determining a charge and the effect of such a determination;

The Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011

- for those in receipt of a direct payments arrangement to obtain the non-residential services they require, corresponding provision to that for direct service users outlined in the above regulations;

The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011

- a right to request a review of any decision to impose a charge for the services received. In relation to those in receipt of a direct payments arrangement, a corresponding right to request a review of any decision to impose a contribution or reimbursement for the direct payments they receive;
• the situations in which a request for a review may be made, the content and format of that request and the acknowledgement that an local authority must issue;

• the process an authority must use in considering such requests, the timescales for this and the factors an authority must take into account in determining them;

• the actions an authority must take once a decision has been made and the arrangements for the payment of any charge, contribution or reimbursement in dispute during the period of the review and subsequently.

5. Principles of Charging Where Authorities Choose to Charge

23. Under section 1 of the Social Care Charges (Wales) Measure 2010 local authorities have a discretionary power to impose a reasonable charge for the non-residential social services for adults provided under the service provision powers listed in section 13 of the Measure. What is a reasonable charge is a matter for the authority but this would need to relate to the cost of providing the service concerned and the financial ability of the recipient of the service to pay a charge set.

24. While it provides authorities with this power to impose a reasonable charge should they wish, the Measure does not place a duty on authorities to charge but leaves this to their discretion. Authorities therefore retain the discretion not to impose a charge should they wish, or not to do so with particular services or with particular service users should they wish to do so.

25. Where they do decide to charge for services, authorities also retain substantial discretion in the design and operation of the charging policies they use for this. While the Measure and the regulations made under it prescribe the operation of certain parts of an authority’s charging should it decide to charge, beyond the requirements of these provisions the design and operation of an authority’s charging policy is a matter for that authority.

26. This guidance sets out advice for authorities in terms of the requirements of the Measure and the regulations. It also provides a broad framework to help authorities ensure that their overall charging policies are designed and operated to be fair and reasonable, and to operate consistently with the overall objective of social care of promoting the independence and social inclusion of service users. Authorities need to ensure that their charging policies, where they operate these, are both demonstrably fair and reasonable as to and between different service users, and have regard to the overall objective of social care, and that this objective is not undermined by poorly designed charging policies.

27. The guidance therefore provides key advice which all authorities operating charging policies should apply. The Welsh Assembly Government’s view is that these are the minimum requirements to ensure that any charges imposed are reasonable, both in the terms of the legislation referred to and local authorities’ general provision of social services responsibilities.
28. In considering what are reasonable charges in particular circumstances, or in implementing requirements placed on authorities by the Measure and regulations, authorities retain the discretion to go beyond the minimum requirements set out in these and in this guidance. Authorities may wish to consider doing this to promote the independence and well being of services users or prospective service users in their area, or to develop particular services, or to develop particular services for particular categories of service user, or to promote certain policies in their area. Nothing in this guidance requires authorities to make existing charging policies which go beyond the requirements set out in the Measure, the regulations or this guidance, less generous to service users than they currently are.

6. Services for Which a Charge May and May Not be Imposed

29. The discretion under section 1 of the Measure to impose a reasonable charge is applicable to the powers to provide, or arrange the provision of, non-residential social services under the legislation listed in section 13 of the Measure; this includes the powers that authorities would normally use to meet the non-residential social care needs of adults. Examples of such services normally provided under such powers would be home care, day care or meals.

30. Therefore, subject to the following which details the services which may not be charged for, authorities have the discretion to impose a reasonable charge, if they wish, for any non-residential social service that they provide, or arrange the provision of, to an adult using any of the service provision powers listed in section 13 of the Measure. As a consequence where this occurs, such charging would need to meet the requirements of the Measure and the regulations, and take into account this guidance.

31. As the Measure only relates to the legislation listed in section 13, the Measure, the regulations made under it and this guidance do not apply to services for children provided under children’s legislation or related services for adults provided under other legislation, for example Supporting People Services provided under housing legislation. Hence this particular discretion to impose a charge does not apply in relation to the provision of those services. Whether authorities are able to charge for that service provision is a matter for the relevant legislation applicable to their provision and is not a matter for this guidance.

32. In addition, the following non-residential social services for adults may not be charged for as required by the regulations listed; the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 and the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011:

- a service being provided as part of an after-care package of care in accordance with section 117 of the Mental Health Act 1983;
- a service being provided to a service user suffering from any form of Creuzfeldt Jacob Disease where that disease has been diagnosed by a registered medical practitioner;
the provision of transport to attend a day service where the transport is provided by, or arranged by, a local authority and where attendance at the day service and transportation to it are included in the service user’s assessment of need;

• the provision of advice to service users, or prospective service users, about the range of and availability of services an authority provides, the standard charges (if any) it imposes for these, the operation of its charging policy and means assessments it undertakes, and the operation of its review of charging decisions process;

• for assessments authorities undertake of community care needs;

• for means assessments undertaken to determine the financial means of service users;

• the provision of a statement of information to a service user about any charge for a service imposed as required by section 10 of the Measure;

• for undertaking a review as a charging decision where required to do so.

33. Authorities must ensure that neither direct service users nor those persons in receipt of direct payments arrangements are charged for the services listed above. In respect of those in receipt of direct payments and transport to day services, authorities must not seek any reimbursement or contribution for that part of a person’s direct payment that is intended to meet the reasonable cost of transport to attend a day service, where attendance at the day service and transport to enable such attendance has been identified in that person’s care assessment and care plan. That said, authorities are still permitted to charge for transport they provide or commission to and from day services where those using this do not have a need transport to that day service identified within their care assessment and care plan.

34. Local authorities can choose not to charge for any other non-residential social service provided to adults under the powers listed in section 13 of the Measure. Nothing in the Measure, the regulations or this guidance prevents any authority from providing those other services at no charge should they wish to do so.

7. Principles in the Design of a Charging Policy

35. Subject to the provisions of the Measure, the regulations and this guidance, where a local authority decides to make a charge for the non-residential social services it provides, or arranges the provision of, the design and content of that authority’s policy for that charging is a matter for that authority. In line with the requirements of the legislation and this guidance authorities need to decide which services, if any, they will make a charge for, the nature and level of any charges to be made and how these charges will be applied to particular service users. Within this framework authorities will also need to determine how their processes for undertaking the various stages of their charging procedure would operate and ensure that these are compliant with the requirements of the legislation and this guidance. In particular, authorities will need to decide what allowances, disregards or other aspects they wish to incorporate within the means assessments they undertake and whether these should go beyond the minimum requirements for these set out for such assessments in the regulations and this guidance.
36. Welsh Assembly Government policies for social care aim to promote the independence and social inclusion of individuals. Authorities may wish to take a similar approach when considering whether to charge for non-residential social services and if so, the make up of any charging policy and its impact upon the independence and social inclusion of older and disabled people. In undertaking this assessment authorities will wish to take account of the principles of the Social Model of Disability and the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

37. The Social Model of Disability recognises that institutional, environmental and attitudinal barriers play a significant part in restricting the lives of individuals with impairments. These barriers can have the effect of simultaneously denying an individual educational and employment opportunities that result in low income or dependency on welfare benefits, while increasing living costs including paying for care, higher transport costs, expensive equipment (such as wheelchairs and hoists) and home adaptations. The UK Government ratified the UNCRPD in 2009. Article 19 of the UNCRPD concerns the right to “live independently and be included in the community”. It recognises “the equal right of all disabled persons to live in the community, with choices equal to others” and states that disabled people must “have access to personal assistance necessary to support living and inclusion in the community”. Independent Living enables disabled people to achieve their own goals and live their own lives in the way that they choose. It does not mean disabled people having to live in isolation, doing everything for themselves or to be completely independent of services. It means:

- removing the barriers that prevent full social and economic participation in mainstream society;
- having the same freedom, choice, dignity, control and opportunities as any other citizen – at home, at work and in the community;
- being fully included and heard in all assessment, planning and decision making processes;
- having control of the resources that disabled people need to achieve their full potential;
- being valued and respected as unique individuals.

38. Authorities will need to decide in considering whether to charge for non-residential social services, and if so the nature of their policy to do this, the extend to which and the way in which they should take account of the Social Model, the UNCRPD and any other related principles on the independent of, and social inclusion of, older and disabled people.

39. Where authorities decide to charge, charging policies should be seen within this context and should equally seek to promote the independence and social inclusion of service users. Charging policies therefore need to be fair and reasonable, taking due account of the costs to authorities of providing or arranging services, the impact of this on the provision of services overall, the financial means of service users and the financial and other impacts on service users of having to pay charges. Where authorities design new policies, or significantly amend existing
polices, they should consult those affected locally and take their views into account before deciding upon what policy, or what amendments to their policy, they should operate. The previous “Fairer Charging” Guidance contained an extract from the Audit Commission “Charging with Care” report of 2000. This sought to assist authorities in the design of their charging policies by listing a series of relevant questions. While a little superseded by the requirements of the Measure and the regulations being made under this, that extract is again produced at annex F to this guidance to assist authorities.

8. Setting of Charge Levels and Flat Rate Charges

General

40. In considering the nature and level of charges set in any charging policy, charges for services should not be more than the cost to the authority of providing or arranging that service, including on-costs associated with these. In addition, while it is a matter for authorities to determine the charge, if any, that will be made for individual services, authorities need also to consider the relationship between these individual services and their impact on service users, as service users will often receive more than one service from an authority. In view of this it is open to authorities to not seek the full cost of providing services and to set their reasonable charge for services as a proportion of the cost of providing those services.

41. In setting charges, if any, for particular services previous guidance has advised authorities to set individual charges for services based on the cost of providing that service, the level of that service provided, or arranged for, and the financial means of the service user involved to meet a charge. There has been a presumption that authorities would not set an across the board flat rate charge for services which did not fully take account of the cost and level of each service being received and the means of the service user in each case receiving these. Independent research recently undertaken for the Assembly Government confirmed that all authorities in Wales took this approach to the setting of charges in the charging policies they operated. Hence they had set a range of charges within their particular charging policies for the differing services they provided, with individual charges being based on the service, service level and financial means of the service user involved. This guidance reinforces this approach in the design of authorities’ charging polices, where they choose to charge.

42. The financial ability of those receiving services to pay for these should not be assessed and charges should not be levied for any particular service in isolation. Means assessments and the consideration of levying a charge should be taken on the basis of all of the services an individual receives for which the authority makes a charge and the impact of this. A single means assessment should, therefore, normally be applied in assessing charges for all of these services.

Flat Rate Charges

43. While this guidance reinforces the approach of setting a range of charges within an authority’s charging policy appropriate to the differing services they provide, there is one exception to this. This is in relation to services which authorities
provide, or arrange the provision of, which are low level, low cost services such as those which substitute for ordinary living costs. Such services, while potentially being provided regularly, could in some cases be the only service an individual receives. With such services previous guidance has been that it is permissible to set flat rate charges in such circumstances so that services which substitute for ordinary living costs are often charged at a flat rate charge without the need for a means assessment being undertaken. This is to prevent the situation where a service user is required to provide information on their means, and an authority required to do a means assessment, for what would likely to be a low charge. Examples of such services would be meals received at home or in day care, or laundry services.

44. Given this situation it will continue to be permissible to set a flat rate charge for low level, low cost services, such as those which substitute for ordinary living costs. In these circumstances the regulations (the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 and the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011) remove the duty upon authorities to undertake a means assessment in relation to flat rate charges where one is requested. The regulations also remove the flat rate charge made from the calculation of the maximum weekly charge that can be imposed on a service user for the services they receive (see the paragraphs on maximum weekly charge below).

45. That said it is not acceptable for authorities to set flat rate charges for other services as a way of potentially avoiding the duties placed upon them by the Measure and the regulations. This is on the basis that a flat rate charge for such other services would not adequately take account of the cost of the service being provided, the financial means of a service user to meet such a charge and the principle that a service user would not ordinarily pay more than the maximum weekly charge prescribed by the regulations for all of the services they received provided under the powers listed in section 13 of the Measure. These are all requirements under the regulations being introduced.

46. Particular care needs to be taken to avoid an adverse impact on a service user’s income where they are receiving a number of low level, low cost services where a flat rate charge is applied to each. Authorities need to ensure that in such circumstances, the accumulative effect of such flat rate charges is considered affordable for the service user. While the regulations remove the obligation to carry out a means assessment for such a service user, where any such concerns arise authorities should offer the service user the opportunity to have a means assessment undertaken should they have any reason to believe that the accumulative effect of flat rate charges is or may be unaffordable.

**Maximum Weekly Charge**

47. While authorities have the discretion to set the reasonable charge they will make for the services a service user requires, the previous “Fairer Charging” Guidance encouraged authorities to operate maximum charges in their charging policies. This was intended to lessen the effect of charging on service user’s incomes but also, to give service users some assurance as to the maximum amount they would be asked to pay at any given time for the services they receive so that
they could plan their finances accordingly. As a result a number of authorities operate maximum charges, albeit that these are at differing levels.

48. As one of the main actions to introduce more consistency in authorities’ charging for non-residential social services Ministers have decided to introduce a maximum weekly charge across Wales for all of the services a person receives which are covered by the Measure. Hence the regulations specify that the maximum amount that a local authority can charge in respect of a service or combination of services a person receives, provided under the service provision powers listed in section 13 of the Measure, is £50 per week (but see paragraph 49 below). Authorities are not at liberty to charge a service user more than this amount in a week for the services they receive which are provided under the powers listed in section 13 of the Measure. This applies where a services user receives dual services; direct service provision and arranges services by means of a direct payments arrangement. The total of any charge made for the direct services provided and any reimbursement or contribution for the direct payments must not be more than the maximum charge of £50 per week.

49. The only exception to this is where authorities make a flat rate charge for a service as outlined above. Only in those circumstances can authorities make a charge in addition to the maximum weekly charge set by the regulations. Given the low level, low cost nature of services for which a flat rate may be charged outlined above, it is expected that where authorities are charging service users for these in addition to where they are also charging the maximum weekly charge, this will be for only a limited number of services at relatively low charge levels. In setting a maximum weekly charge authorities need to be clear that this is not the same as the standard, or reasonable, charge that they can make for services. The standard, or reasonable, charge is the amount that an authority could impose for a service it provides or which it commissions, based on the cost to the authority of providing that service. It will, therefore, vary from service to service based on service provision costs. This is not the same as the maximum charge, which is the maximum amount that an authority can impose for any of the services authorities provide. It would be unacceptable for authorities to impose the maximum charge for all of the services a service user receives even where the cost to the authority of the provision of a service was less than the present £50 per week.

50. It is open to authorities to operate a lower maximum weekly charge than set in the regulations if they wish. The maximum weekly charge set in the regulations will be kept under review and may, from time to time, be revised.

9. Invitations to a Means Assessment

51. A new requirement placed on local authorities by the Measure and regulations is the duty to invite a service user, or a prospective service, to have a means assessment undertaken by the authority before the authority determines the reasonable charge (where it is to make one) for the chargeable service or services it is to provide or commission for that individual. A chargeable service is defined as any service any authority provides under the powers to provide services listed in section 13 of the Measure for which it makes a charge. Subject to the circumstances set out in paragraph 106 of this guidance, an authority cannot impose or alter an
existing charge until an invitation has been issued and where an assessment is requested, undertaken this and determined the ability of the service user to meet a charge based on the outcome of that assessment.

52. The arrangements covering the duty to issue a means assessment to direct service users are contained in the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011, while those for direct payments recipients are contained in the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011. These regulations, together with sections 4 and 5 of the Measure, set out the detail of the means assessment process in terms of the circumstances where a means assessment must be issued, the circumstances where an invitation is not required to be issued, the nature and content of an invitation where one is required and the arrangements governing a service user’s or prospective user’s response to it. Authorities should refer to these for the detail of these arrangements but in summary they are:

- authorities must issue an invitation for a means assessment to a new service user or new direct payments recipient where it plans to impose a charge, reimbursement or contribution for the service it proposes to provide or commission or provide a direct payments arrangement for;
- authorities must also issue an invitation to a means assessment to existing service users and existing direct payments recipients where it plans to alter a charge, reimbursement or contribution set as a result of a change in the circumstances upon which this charge was assessed. For example, if there had been a change in the income or capital of the service user, if there had been a change in the cost of providing the services (including a change in the level or degree of the service they receive), or if there had been a change in the authority’s charging policy with regard to the services they received;
- where authorities are required to issue an invitation it must have the content as specified in the regulations. This includes such information as:
  
  i. the services for which a charge is being considered;
  ii. the authority’s charging policy with regard to these;
  iii. its means assessment process;
  iv. the information and/or document the authority reasonably requires to undertake a means assessment;
  v. the timescale for providing these;
  vi. the fact that information and/or documentation can be provided by means of a home visit or in other formats (as defined in the regulations);
  vii. the fact that the service user or direct payments recipient can appoint a third party to assist them if they wish (as outlined in the regulations);
  viii. the contact details of organisations in its area that could provide support or assistance to an individual;
• invitations must also be in the format specified in the regulations, that is in writing and in any other format to meet the communication needs of the individual. For example in Braille, large print, audio, electronic formats, British Sign Language or tactile communication (e.g. hands-on-sign or deaf blind manual).

53. The duty under the Measure to issue an invitation for a means assessment as described above applies in all cases a charge is proposed, even where a flat rate charge is proposed in relation to a low level, low cost service, such as those services which substitute for ordinary living costs. That said, as described later in the chapter on means assessments, authorities are not under a duty to undertake a means assessment where a flat rate charge is made for a service due to the low level of the charge involved and the service user only receives services for which a flat rate charge is made. In these instances the purpose of the invitation becomes to inform the service user of this situation and that a flat rate charge is proposed. Authorities should make it clear in these particular invitations, therefore, that this is the case and set out the information required by the regulations to be provided in the invitation to match this circumstance. This is so as to avoid misleading service users over the purpose of the invitation.

54. While not formally a requirement within the regulations, authorities are encouraged to invite those who are invited to have a means assessment to also provide information and/or documents relating to any disability related expenditure which they may have. Seeking this information at an early stage may save time later on in the means assessment process. It would be useful for authorities to provide examples of the types of disability related expenditure service users may have and the circumstances, and level, of allowances that authorities make for this in their charging policy. This is to ensure that any disability related expenditure a service user may have, which goes beyond the basic contribution towards this allowed for by the Disability Related Expenditure Disregard (see the chapter on means assessments), is properly taken account of in any means assessment undertaken. Examples of disability related expenditure could include additional heating costs, additional clothing costs, laptop or other IT solutions to aid communication, therapies and any equipment required. Service users with impairments or disabilities often have additional costs beyond that which would be normally expected and can spend a disproportionate amount of their disposable income on these types of costs, not through choice but as a direct result of their impairment or disability. This additional information may also be useful if a service user subsequently seeks a review of any charge levied on the grounds that to pay it would cause the service user “undue financial hardship” and assist in any consideration of that position.

10. Responses to an Invitation to a Means Assessment

55. When an authority issues an invitation to a means assessment it should allow 15 working days from the date of issue for the service user to respond. A response constitutes a service user confirming whether they wish to have a means assessment, and if so, providing the information and/or document an authority reasonably requested to undertake a means assessment. Once a response has been received an authority can proceed to undertake a means assessment on the basis of the information supplied.
56. It would be good practice for authorities to remind service users shortly before the 15 working days has elapsed that this is to occur where a service user had not yet replied. This would also be a good opportunity to identify whether a service user was having any difficulty in gathering the necessary information and/or documentation or to assist them generally in responding if they were having any other difficulty in replying to the invitation issued.

57. The regulations specify the information that a service user should provide as part of their response to an invitation, including where a service user wishes a third party to assist them in the process, details of that individual and the extend of their involvement.

58. Local authorities must agree to any reasonable request made by a service user or their representative to an extension of time in which to respond to an invitation to have a means assessment. Examples of this may be difficulty in obtaining certain documents required or in contacting certain individuals or organisations that hold such documents or information required. Where a request for an extension is made orally an authority can respond orally but should confirm the outcome in writing and in any other format appropriate to meet the service user’s or their representative’s communication needs.

59. Where authorities agree to an extension they should confirm to the service user or their representative the revised date to respond to the invitation. Where authorities decline such requests they should provide the reasons for so doing. In both instances they should confirm the outcome in writing and in any other format appropriate to meet the service user’s or their representative’s communication needs.

60. Where a service user or their representative does not within the 15 working days respond to an invitation for a means assessment, or does not seek an extension of the time to respond to an invitation, a local authority may at the end of this period undertake a means assessment on the basis of any information and/or documentation previously held and seek to impose a reasonable charge, reimbursement or contribution if it wishes for the service received or to be provided. Where only partial information is provided an authority may impose a reasonable charge, reimbursement or contribution on the basis of the partial information available. However, in both instances the regulations require authorities to take into account any weekly maximum charge for services the regulations set or any other requirements relating to means assessments that the regulations contain (see chapter on means assessments). The charge, reimbursement or contribution set in these instances is payable from the date a statement of the charge is issued to the services user as required by section 10 of the Measure (see chapter on information about charges).

61. Where a charge, reimbursement or contribution is set in the absence of a response to an invitation, or on the basis of a partial response to an invitation, and the service user or their representative subsequently responds with all required information, then the authority can proceed to undertake a means assessment on the basis of the belated provision of this information. However, any change to the charge, reimbursement or contribution should occur from the date when the service
user or their representative is issued with a statement of the revised charge as required by section 10 of the Measure.

62. A request for a means assessment made can be subsequently withdrawn by a service user or their representative orally or in writing at any time before the assessment is made. Where a request to withdraw a means assessment is made an authority may move to undertake a means assessment on the basis of any information and/or documentation held and seek to impose a reasonable charge if it wishes on the basis of this information. In doing this it must take into account any weekly maximum charge for services the regulations set or any other requirements relating to means assessments that the regulations contain (see chapter on means assessments). The charge, reimbursement or contribution set in these instances is payable from the date a statement of the charge is issued to the services user as required by section 10 of the Measure (see chapter on information about charges). The authority must confirm in writing and in any other format appropriate to meet the service user’s or their representative’s communication needs that a request for a means assessment has been withdrawn and what this means in terms of any resultant charge, reimbursement or contribution that is imposed for the services they receive or which are to be provided.

11. Duty to Undertake a Means Assessment

63. Section 5 of the Social Care Charges (Wales) Measure 2010 places a duty upon local authorities to carry out a financial assessment of a person’s means where certain conditions listed in section 6 of the Measure are met. Those conditions are that:

- the person is offered or is being provided with a service by the local authority, or commissioned by the authority, for which it makes a charge;
- the person concerned, or their representative, has requested a means assessment be undertaken to inform the determination of the charge that the authority will levy for the service;
- that the person or their representative has provided the authority with any information and/or documentation under their control, or in their possession, which the authority has reasonably requested in order to undertake the assessment.

64. Where these circumstances arise an authority must undertake an assessment of the financial means of the service user and any determination of a charge to be levied for the service they receive must be based on the outcome of that assessment.

65. Authorities are not obliged to undertake a means assessment in the following circumstances:

- where a previous assessment and determination of a charge for the service received already exists and the authority reasonably considers that there has been no relevant change in the service or financial means of the service user to warrant a new assessment;
where the service user fails to respond to an invitation for a means assessment issued to them;

where a service user withdraws their request for a means assessment before this has been completed;

where the only service or combination of services a service user receives are those for which it makes a flat rate charge (see chapter 8 earlier on setting charges and flat rate charges).

66. In the circumstances listed above authorities can proceed to determine what charge, if any, they are to levy for the service received on the basis of available information and/or documentation.

12. Undertaking a Means Assessment

General

67. Where an authority is under a duty to undertake a means assessment of a service user’s financial means, the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 and the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011 specify how certain forms of capital and income that a service user may hold, must be treated in that assessment. Some of these requirements are those which appeared in the “Fairer Charging” Guidance which authorities will already be taking account of in the means assessments they currently undertake, while others are being introduced for the first time. The requirements of the regulations are outlined below.

68. Beyond these requirements it is then for each authority to consider which other forms of capital or income it considers contribute to promoting the welfare and independence of service users and, on that basis, to decide whether and in what way they should be treated in that authority’s means assessments. Guidance on such other forms of capital and income follow later in this chapter.

Requirements in Undertaking a Means Assessment

69. When a means assessment is undertaken from the coming into force of the regulations (ie 11 April 2011) it must:

where an authority takes into account a service user’s savings or capital

i. subject to II. and III. calculate the capital of a service user in accordance with Part 3 of the National Assistance (Assessment of Resources) Regulations 1992 (these are the regulations used in relation to charging for residential social services);

ii. disregard the value of a service user’s main residence from its calculation of that person’s capital;

iii. consider using its discretion when calculating a service user’s capital to apply a criteria more generous to the service user than those applied in
where an authority takes into account a service user’s income

iv. assess what part of a service user’s income properly constitutes earnings (in accordance with the definition of earnings in regulations 35 and 37 of the Housing Benefit Regulations 2006, or as the case may be, regulations 35 and 37 of the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006);

v. disregard in full those earnings from the means assessment;

vi. disregard in full any amount a service user receives in respect of savings credits;

vii. disregard in full any payment received by a service user which is referred to in paragraph 24 of schedule 3 to the National Assistance (Assessment of Resources) Regulations 1992;

viii. consider using its discretion when calculating a services user’s income to apply a criteria more generous to the service user than those specified above.

70. It is a matter for authorities as to how savings or other capital a service user may hold should be taken into account in their charging policies. However, where authorities take them into account the arrangements for this in the means assessments they undertake must comply with at least the requirements for these contained in the regulations and which are listed above. This is so that these arrangements are at least as generous as those for capital and savings set out in the Charging for Residential Accommodation Guide (CRAG) and its accompanying regulations, issued by the Assembly Government in relation to charging for residential care. The capital limit used, where authorities take this into account in their policies, will be updated automatically in line with the periodic uplifts to this in related to charging for residential care.

71. The requirements in relation to savings and other capital set out above are considered the minimum that an authority must operate where it takes these into account in an assessment of a service user’s means. Nothing in the Measure, the regulations or this guidance prevents an authority providing additional allowances for a service user in relation to savings and other capital beyond those highlighted, where they take these into account in their means assessments. In addition, authorities will need to consider the situations in which individual service users may have particular needs for savings given their particular circumstances and to cater for these in their charging policies.

72. In relation to a service user’s income, it is the Assembly Government’s policy to encourage and enable those who wish to take up employment, including disabled people and their carers. Charging policies should, therefore, avoid creating disincentives to work. Disincentives may be either disincentives to take work at all, or disincentives to work longer or earn more – neither are acceptable. Disincentives
may arise because many social security benefits are income-related and so are withdrawn as earnings rise.

73. Taking account of the whole picture, including loss of benefits, payment of income tax and National Insurance, and the costs of getting to work, any scope for charging is limited, if barriers to work for disabled people are to be removed. The Welsh Assembly Government believes it is right, therefore, that authorities must disregard all earnings in charge assessments for non-residential social services, including charge assessments for carers. Earnings should be defined as outlined in the regulations and as highlighted above. To ensure incentives for work, Working Tax Credit should also be disregarded as income in charge assessments.

74. Authorities are also required by the regulations to disregard in means assessments any ex-gratia payments made to a service user as a consequence of contracting hepatitis C and/or HIV from blood or blood products. This is in view of the substantial harm these individuals have already suffered. Those payments are listed in paragraph 24 of the of schedule 3 to the National Assistance (Assessment of Resources) Regulations 1992 and are already disregard for the purposes of charging for residential care. Examples of these payments would be those made under the Skipton Fund or the MacFarlane Trust.

75. Consistent with the arrangements for residential care charging in CRAG, ex-gratia payments made to former Far Eastern prisoners of war and payments made under the Vaccine Damage Payment Scheme should also continue to be disregarded in their entirety.

76. While not a requirement under the regulations the disregards that are applied to “War Disability Pension or Armed Forces Compensation Scheme: Guaranteed Income Payment”, “War Widows Pension or Armed Forces Compensation Scheme: Survivors Guaranteed Income Payment”, “War Disability Pension”, “War Widows Pension” or “War Widows Supplementary Pension” respectively in assessing entitlement to Income Support should, as the “Fairer Charging” Guidance required, equally be disregarded by authorities in assessing income in means assessments at least at an equivalent amount. Authorities should also take account in undertaking means assessments of any higher disregards applied for these benefits in local arrangements for Housing Benefit and Council Tax purposes.

77. In addition, the mobility component of Disability Living Allowance (DLA) is excluded by law from being taken into account for charges. Authorities should also disregard the War Pensioner’s Mobility Supplement in assessing income, as this should be treated as analogous to the DLA mobility component.

78. The requirements set out above in relation to a service user’s income are considered the minimum that an authority must operate in its means assessments when assessing a service user’s available income for charging purposes. Nothing in the Measure, the regulations or this guidance prevents an authority providing additional allowances in its means assessments on top of those contained in the regulations and this guidance outlined above.
Treatment of Welfare Benefits and Other Forms of Income

79. The “Fairer Charging” Guidance established that after charging had occurred a service user should be left with at least a minimum amount of their income, described as a “basic entitlement”, plus a “buffer” of at least 35% of that amount. This was in addition to retaining a contribution towards any disability related expenditure that a service user had of at least 10% of the basic amount. These financial safeguards are retained and included in the regulations being made. More information on their operation is in the chapter on determination of a service user’s financial ability to pay a charge.

80. It is inconsistent with promoting independent living to assume that all of a service user’s income above their basic entitlement plus the “buffer” and disability related expenditure contribution is available to be taken in charges. Authorities should therefore consider what other welfare benefits or forms of income they should disregard in their means assessments under their charging policy, whether this is a full disregard or a part disregard. Nothing in the Measure, regulations or this guidance prevents an authority from disregarding other welfare benefits or other forms of income beyond those identified in them.

81. This will include, for example, Attendance Allowance (AA) or the care component of Disability Living Allowance (DLA) but also the Severe Disability Premium (SDP) of Income Support. It will also include Employment and Support Allowance and the additional amount for severe disability in Pension Credit Guaranteed Credit. Authorities may choose to exempt services users in receipt of such benefits from charges regardless of the additional income they hold above the financial allowances required by the regulations and this guidance, or to include this additional income, or a proportion of it, in the means assessment they undertake for the service user concerned.

82. Where authorities decide to exempt from charging service users receiving Income Support, Employment and Support Allowance or Pension Credit Guarantee Credit regardless of this additional income, an equivalent approach should be taken with those service users not in receipt of these three benefits. Welfare benefits and other income that an authority decides to disregard in its charging policy should be disregarded in a similar way for service users at equivalent income levels.

Treatment of Day and Night Care

83. In a legal case (R v. Coventry City Council, November 2000) the High Court found that it was unlawful and unfair for an authority to treat as income available for day care, sums of DLA paid for night care. Accordingly, authorities need to be aware of the rate at which AA or DLA care component are paid and whether this is in respect of day or night care. It would normally be reasonable to treat the difference between AA higher rate and lower rate and the difference between DLA care component highest rate and middle rate as the element paid for night care, unless, for example, it is clear that the additional element is paid in respect of day time care.

84. With Constant Attendance Allowance (CAA) the difference between the intermediate or exceptional rate and the full day rate should normally be treated as
the element paid for night care. In some cases, authorities will need to assess what part of a full day rate award is needed for night care. Exceptionally Severe Disablement Allowance (ESDA) will always include an element for night care, as it is only awarded with the intermediate or exceptional rates of CAA.

85. Case law has held that night means “that period of inactivity or that principal period of inactivity through which each household goes in the dark hours and to measure the beginning of the night from the time at which the household, as it were, closed down for the night”. It was also held that dressing in the morning and undressing before going to bed were activities carried on during the day (R. v National Insurance Commissioner, ex parte Secretary of State for Social Services [1974]). While no detailed reasoning was given in the judgement, it seems to be unlawful for authorities to take into account an element of AA, DLA, CAA, or ESDA paid for night care as income where the authority provides no element of night care. Any element of care or support related to night care, for example an on-call service available at night, funded by the authority may in certain circumstances be regarded as night care. If the authority provides no element of night care, the night care element of AA, DLA, CAA, or ESDA should not be taken into account as income in the assessment. If, however, a user’s expenditure related to night care exceeds the level of the night care element of AA, DLA, CAA, or ESDA, any such excess amount should be taken into account when assessing the user’s disability-related expenditure.

Partner’s Capital and Income

86. The Social Care Charges (Wales) Measure 2010 and the regulations made under this envisage that authorities will have regard only to an individual service user’s means in assessing their ability to pay a charge. This will mean that partners and other members of an adult user’s family cannot be required to pay the charges, except in certain legal circumstances, for example where a family member may be managing the user’s own resources.

87. Authorities may wish to consider in individual cases whether a service user’s means may include resources not held in that person’s name, but to which the user has a legal entitlement. The most likely instances of this kind will arise in relation to married or unmarried couples, or civil partners. In some circumstances, the service user may have a legal right to a share in the value of an asset, for example a bank account, even if it is not in his or her name. In some circumstances, statutory provisions provide such a right. Other circumstances, which are known as “equitable principles”, may apply to give such a right, for example where there is an unwritten agreement between partners that they both own a property or an asset, even though the title is in only one of their names. If the authority has some reason to believe that the service user does have means other than those initially disclosed, a request may reasonably be made for the service user to arrange for the partner to disclose his or relevant resources. If there is no such disclosure, the authority may consider that it is not satisfied that the service user has insufficient means to pay the charge for the service. It will be for the authority to consider each case in the light of its own legal advice.
88. Issues of practicality and fairness arise in respect of the treatment of some benefits, which are calculated for the needs of a couple, and for jointly held savings. In cases where only the service user’s means are assessed, no assumption should be made that the whole of that person’s disposable income is necessarily available for charging. For example, Income Support paid at the rate for a couple should not be taken into account without also taking account of the expenditure needs of both partners. Allocation of half of housing costs or other expenditure to an individual user may, in some cases, result in an unreasonable charge. Where an assessed charge for the individual service user would reduce a couple or a household below “basic entitlement” plus at least a 35% “buffer” of this, plus the disability related expenditure allowance of at least a further 10% of that “basic entitlement”, then taking account of the resources and expenditure of the couple or the household, as appropriate, an assessment should be applied on the basis of the household.

89. Jointly held savings should be treated as divided equally between the owners, unless the contrary is demonstrated by, or on behalf of, the user. The minimum savings levels to be applied should be those set out in the Charging for Residential Accommodation Guide (CRAG).

90. Partners’ earnings, savings credit and any ex-gratia payments they received, as described earlier, should always be disregarded in any means assessment, in the same way as service user’s earnings, savings credit and ex-gratia payments are disregarded.

13. Determination of the Ability of a Service User to Pay a Charge

“Buffer” and Disability Related Expenditure Allowance

91. The “Fairer Charging” Guidance previously established the principle that service users should be left with at least a set amount of income after any charging has been applied to help meet their daily living costs and to help support their independence. This was linked to particular welfare benefits that individuals received plus an amount above that level referred to as a “buffer”. Given the key financial safeguard this provides to service users, especially those on low incomes, the regulations enforce the continuation of this buffer in any charging an authority chooses to undertake.

92. In addition, the “Fairer Charging” Guidance also previously introduced a disability related expenditure allowance in means assessments undertaken in order to provide all service users who are charged for the provision of non-residential social services with a contribution towards the additional living costs they will have as a result of a medical condition or impairment they may have. Again this was linked to particular welfare benefits individuals received, being a set percentage of the relevant benefit the individual received. Given the key contribution this makes to service users’ living costs the regulations also enforce the continuation of this as the minimum allowance authorities should provide for a service users’ disability related expenditure.

93. Section 7 of the Social Care Charges (Wales) Measure 2010 places a duty on an authority, once it has carried out a means assessment of a service user’s
financial ability to pay a charge for the service they receive or are to receive, to
determine the charge if any it is to make. The authority must decide in the light of the
means assessment whether it is reasonably practicable for the service user to pay
the standard charge for the service received/ to be received and if not, what charge,
if any, it would be reasonably practicable for the service user to pay. Section 9 of the
Measure provides authorities with the power to replace an earlier determination of a
charge for a service with a revised determination where there have been changes in
the person’s financial position, in the service provided, in the authority’s charging
policy or when a mistake was made in the original decision.

94. As a consequence under the regulations when determining the charge, if any,
that a service user will pay the authority must ensure that the service user’s net
income after paying this charge is not reduced below the total of:

- the service user’s basic entitlement to Income Support, Employment and
  Support Allowance or Pension Credit Guarantee Credit;
- an amount of not less than 35% of that entitlement (a “buffer”);
- an amount towards the service user’s disability related expenditure of not
  less than 10% of that entitlement.

95. Net income is defined in the regulations as at a minimum, the income a
service user has left after:

- the disregards for capital, earnings, savings credit and ex-gratia payments
  in the regulations have been made to their total income;
- any additional disregards an authority operates in its charging policy have
  been made to the resultant amount;
- the authority’s charge for the service received or to be received is taken
  from the remainder.

96. Basic entitlement is defined as:

- Income Support - the personal allowance and any premiums to which a
  service user is entitled, but need not include the severe disability premium
  (SDP) where it is paid, and where a service user is a carer, includes any
  carer premium that person receives.
- Employment and Support Allowance - the personal allowance and any
  premiums and components to which a service user is entitled, but need
  not include the SDP where it is paid, and where a service user is a carer
  includes any carer premium that person receives.
- Pension Credit Guarantee Credit - the personal allowance (which should
  be taken to mean the standard minimum guarantee) and any additional
  amount to which a service user is entitled, but need not include the
  additional amount added for severe disability where it is paid, and where a
  service user is a carer, includes any additional amount applicable for
  carers that person receives.
97. Authorities are also required by the regulations, where they are undertaking a means assessment on a service user who is not in receipt of any of the welfare benefits mentioned above, to make comparable allowances in those assessments to ensure that those in that position also have such financial safeguards. Where a service user is not in receipt of a relevant benefit a local authority must, having regard to that person’s age, level of disability and personal circumstances:

a. determine an amount that the authority reasonably considers would be equal to the service user’s basic entitlement to a relevant benefit;

b. provide a buffer of not less than 35% of the amount estimated in a. above;

c. provide in addition an allowance of an amount of not less than 10% of the amount estimated in (a) above as a contribution towards that service user’s disability related expenditure.

98. Income for the purposes of applying the buffer should be assessed net of any Income Tax and National Insurance contributions payable, and net of housing costs and Council Tax. Housing costs and Council Tax should be assessed net of any Housing Benefit or Council Tax Benefit payable. Authorities will wish to consider taking account of other household costs, such as water rates or charges, or home insurance premiums.

99. Consequently authorities should exempt from charging service users whose net income is at or below their basic entitlement plus 45% of that amount, ie the buffer of 35% and the 10% disability related expenditure allowance. In the case of those not receiving the relevant benefits authorities should exempt from charging those whose income is at or below the amount the authority considers is equal to their basic entitlement plus 45% of that amount.

100. Nothing in the regulations affects the discretion of any authority to increase the percentage of the buffer, or the amount to compensate for disability related expenditure, in their particular charging policy. For example, examples of forms of disability related expenditure that individuals may have were given earlier in paragraph 54. Many of these will cost more than the contribution towards these costs made by the disability related expenditure allowance. Authorities should therefore consider the effects of such expenditure on service user’s ability to live independently and to take this into account in the setting of these allowances in their charging policy.

14. Procedure for Determining a Charge

101. When calculating the charge that a service user may be asked to pay for the service or combination of services they receive or which they are to receive, the regulations set out the following procedure to be followed in order to calculate that charge:

- calculate the total reasonable charge for the services received or to be received by the service user based on the standard charge for these services in an authority’s charging policy (where a person receives a direct payments arrangement, or dual services provision via direct services and
a direct payments arrangement, this should include any reimbursement or contribution that is to be sought for that direct payment);

- disregard from this any flat rate charge for a service that an authority may be making;
- compare the maximum charge of £50 per week to the resulting charge and;

  i. where that resulting charge is more than the maximum charge then, subject to the outcome of a determination of the service user’s ability to pay a charge, the £50 maximum will be the weekly charge that the service user may be asked to pay;

  ii. where that resultant charge is less than the maximum charge then, subject to the outcome of a determination of the service user’s ability to pay a charge, the resultant charge will be the weekly charge that the service user may be asked to pay.

102. The means assessment and determination of a service user’s ability to pay a charge process were described earlier in this guidance.

15. Effect of a Determination of a Charge / Information about Charges Made

103. Where in accordance with the Measure and regulations a local authority makes a determination of a service user’s ability to pay a charge for:

- a service which the person is to receive for the first time; or
- which the person has previously received but where a charge is being considered for the first time;

it may not impose a charge for that service until the date that a statement of that charge is provided to the service user in accordance with section 10(4) of the Measure. Where such services are being provided by means of a direct payments arrangements, it may not impose a requirement for a reimbursement or contribution for the direct payment until the date that a statement of that reimbursement or contribution is provided to the service user in accordance with regulation 19 of the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011. This is to ensure that service users know in advance the charges that they will be expected to pay for the services they receive. This is a practice that a number of authorities already operate.

104. Where a charge, reimbursement or contribution has previously been set and a local authority makes a further determination as to the service user’s ability to pay this which results in a revision, it may not impose that revised charge, reimbursement or contribution until the date that a statement is provided to the service user in accordance with section 10(4) of the Measure or regulation 19 of the Direct Payments Regulations referred to above. Until that time the charge, reimbursement or contribution and the statement relating to these continues to have effect. Again this is to ensure that service users know in advance of any change which occurs to the charges they are to pay. That said, should the further
determination result in a reduction of the charge, reimbursement of contribution, authorities should consider reimbursing service users for any overpayment made between the date upon which this reduction occurred and the date upon which the authority was able to issue the statement of this reduction to the service user.

105. Section 10(4) of the Measure, and regulation 19(2) of the Direct Payments Regulations, set out the content of the statement to be issued so as to give the service user full information on the charge, reimbursement or contribution they are being asked to pay; for example information about which services are being charged for and the calculation of the charge being made. Statements of charges authorities issue must contain the information listed in Section 10(4), or the information listed in regulation 19(2), as appropriate. These also confirm that statements must be issued in writing to the service user and in any other accessible format to meet the service user’s communication needs (such as Braille, large print, audio, electronic formats). Section 10(5) of the Measure and regulation 19 (3) of the Direct Payments Regulations also confirm that statements must be provided free of charge and within 21 working days of the date upon which the decision to impose or alter a charge, reimbursement or contribution was made.

106. It is recognised that the level of the service a service user requires can vary from week to week as a result of normal day to day issues such as illness, hospital/doctor visits, short breaks, family activities, etc. Where these normal life events occur, but where there is no change in their need for the service, neither authorities nor service users would want to be in a position of having to issue and receive a statement of revised charges on the same frequency basis. In these circumstances it would be acceptable for the information on the service being provided and the charge for this that must be contained in the statement to include information which enables the service user to understand the impact on their charge of changes in the level of the service they receive. In this way authorities do not need to issue revised statements on a weekly basis and services users know what charges to expect based on the service they receive in any given week. Where services themselves change, however, authorities are under a duty to meet the requirements of the Measure and the regulations with regard to issuing an invitation to a means assessment, undertaking one where requested to do so and to determining the service user’s ability to pay a revised charge for this as a result.

107. In addition to the duty to provide a statement of a charge to the service user outlined above, section 10(1), 10(2) and 10(3) of the Measure place a duty on authorities to bring to the attention of service users and prospective service users information about the services they provide for which charges are and are not imposed, the standard charges which are made where a charge is levied and the operation of their means assessment and the determination of a charge processes. In essence this will be publicising authorities’ charging policies so that those who receive services, or are likely to receive services in the future, are fully aware of an authority’s charging policy with regard to particular services and that where charging occurs, are aware of the basis upon which this is undertaken. The Measure also specifies that this information should be provided in writing and in a range of accessible formats, and be provided free of charge.
16. Related Issues to Charges

Welfare Benefits Advice

108. Authorities should provide appropriate welfare benefits advice to service users to aid them in their understanding as to the benefits to which they may be entitled. This should normally be provided by means of a personal discussion with the user in their own home by appropriately skilled staff with, if the service user requests one, their representative. This assistance should include advice about entitlement to benefits, help with completion of benefit claims and follow-up action, if the service user wishes.

109. It is for authorities to decide exactly how this assistance is organised to ensure that advice and help on benefits is provided to services users. In many cases it may be both convenient for users and cost-effective to provide combined means assessments and benefits advice discussions where service users request these, training staff to fulfil both roles. However, some service users may prefer to obtain assistance from an independent source and services users should be offered this choice, where possible.

Services for Children, Supporting People Services and Independent Living Funds

110. As referred to earlier, the Measure and the regulations made under this only apply to the powers authorities have to provide services listed in section 13 of the Measure. As a result the Measure, the regulations and this guidance do not relate to either services for children or Supporting People Services, which are both provided under legislation not referred to in the Measure, or the Independent Living Fund (ILF), which is a non-devolved matter. If authorities have queries over these they should direct these to the Children’s Social Services Directorate or the Housing Directorate of the Assembly Government as appropriate, or the ILF.

Carers

111. Service users may be charged only for the services provided to them and not for the services provided to their carers. In the same way, carers can only be charged for services provided to them as carers under the Carers and Disabled Children Act 2000 and not for the services provided to those for whom they care. Authorities may not decide that a carer is the service recipient, and therefore subject to a charge, purely on the grounds that a service user is exempt from charges or has an assessable income less than that of the carer.

112. Where service users and carers are spouses, civil partners, or partners, and both are receiving services, the guidance on partners’ income ought to be followed. All other parts of this guidance apply to charges for services provided to carers.

113. Particular issues arise with expenditure incurred by informal carers. For services provided to carers under the Carers and Disabled Children Act 2000, in carrying out their assessment authorities should take account of costs such as:
• private purchase of care, for example, to allow short breaks from caring or where this is needed to enable the carer to maintain employment or to fulfil obligations as a parent;
• adaptations to the carer’s home, for example, where the disabled person moves to the carer’s home;
• additional transport or other costs, e.g. taxis, which may arise unavoidably because the carer cannot be absent from home for long;
• the range of additional costs for cleaning, clothing, where these are met by the carer.

114. For services provided to a service user, account may also need to be taken of expenditure incurred by informal carers. Authorities should take account of household resources and expenditure in cases where not doing so could result in an unreasonable level of charge.

115. Authorities may decide to include Carers Allowance (CA) within a carer’s income as part of a means assessment where a carer is receiving this, but are not obliged to do so. The requirements that a charge should not reduce net income below “basic entitlement” plus a buffer of at least 35% of this, and a disability related expenditure allowance of at least 10% of basic entitlement, and to disregard earnings, means that most recipients of CA will not be liable to pay a charge.

Access to Care and Assessment of Ability to Pay Charges

116. Assessment of a person’s care needs and provision of services to meet those needs should not be confused with the financial ability of a person to pay a charge for that care. Once someone has had their care needs assessed, and an authority has taken a decision to provide or commission services to meet those needs, those services cannot be withdrawn because the service user refuses to pay a charge imposed for them or maintains that they do not have the financial means to meet that charge. The authority must continue to provide the service assessed as being required while any disputes over charging are resolved, including where an authority may be pursuing a debt through the civil courts for the recovery of charges.

Intermediate Care

117. Under previous guidance and funding issued in 2002 under NAFW Circular 05/02 entitled “Community Care: Six Weeks Support at Home for Vulnerable People”, authorities were to operate initiatives to support intermediate care (both pre and post hospital discharge) to ensure vulnerable people got up to a maximum of 6 weeks targeted free homecare. This was to help maximise their independence and was to involve active therapy, treatment or opportunity for recovery at a critical time to aid their return home from hospital without worrying about the cost of their care. It was also to prevent inappropriate admission to hospital and to target people who without support would otherwise be at risk. Specific arrangements were to be tailored by authorities to meet local circumstances but with the overall aim of providing up to 6 weeks free homecare depending upon individual’s needs. Following this period, local authorities were to revert to their normal charging practices for homecare.
118. Authorities will need to ensure that their charging policies support their own local arrangements to achieve the general aims and principles outlined above and that their implementation of the Measure, regulations under this and this guidance are also consistent with this policy aim.

17. **Reviewing a Charging Decision**

**General**

119. Authorities currently use a range of methods for reviewing decisions made in relation to charging, ranging from a process where a senior officer in an authority will make a judgement on a request to review charges set or how these have been calculated, to processes where a panel of senior officers and/or councillors from an authority will make that judgement. Even where authorities have similar processes for deciding reviews their operational practices will vary, so that no two methods authorities use for considering a request for a review of a charging decision are the same. In view of this Ministers wished to introduce a consistent, relatively simple process whereby service users could have authorities review charging decisions made at an early stage, before they became complaints to an authority which may eventually end up being considered under an authority’s formal complaints procedure.

120. The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011 create a right for a service user or direct payments recipient to request, via a consistent process, a review of a decision to impose a charge, contribution or reimbursement, in respect of the services they receive. The principle is that where service users feel an inappropriate decision has been made in relation to this, either in the level of the charge, reimbursement or contribution set or in relation to the basis upon which the decision to impose this was made, then they should be able to request an authority to review this in a consistent, clear manner. In line with the principles of dealing with a complaint, the regulations specify that this initial review process should involve the authority itself reflecting upon the decision it has made and taking a view as to whether its original decision was correct in the light of further information and/or documentation that a service user, or a representative acting for them, provides. Hence the review process does not involve a third party considering this but could, of course, involve a different person from the authority considering it than was involved in the original decision.

121. Consequently, the review process introduced by the regulations does not seek to replicate the wider formal complaints procedure which authorities are required to operate. That formal complaints procedure is to deal with any aspect of how an authority discharges its social services functions and while it can deal with complaints about charging, it obviously has a wider remit than just this. As a result the intention is that the review process will replace the wide range of ad hoc review procedures and processes that authorities currently operate so that where service users wish a charging decision to be reviewed, they will be able to ask an authority to do this through the review process put in place and, in doing so, may potentially obviate the need for the service user to make a formal complaint to the authority.
122. It is hoped that the vast majority of these requests for a review would be satisfactorily resolved through the review process. Where, however, a service user is still unhappy with an authority’s charging decision they will, as now, be able to make a formal complaint about this to an authority to be considered through its formal complaints procedure. In view of this it is not considered necessary for the review process to contain an appeals mechanism given subsequent access to the formal complaints procedure already provides that opportunity. Should a review reach a formal complaints stage then it would be governed by the regulations relating to that complaints procedure and, where appropriate, independent involvement in the consideration of this.

**Making a Request for a Review**

123. Regulation 3 of the regulations gives a service user a right to request a review of a charging decision made in accordance with the Measure or the regulations made under it. Regulation 3 sets out the circumstances where request may be made but does not limit requests to the circumstances listed in the regulation. Examples of these are where an authority has not followed the legislation or its own charging policy, the charge set is incorrect, the financial position of the service user has changed, or that to meet the charge set would cause the service user financial hardship.

124. A request must state on what grounds a review is being sought, can be made either orally or in writing and can be made any time after a statement of a charge has been issued to the service user. Issuing of a statement of a charge was described earlier.

125. Authorities must designate suitably trained staff to deal with review requests. It is good practice to include contact details for such staff in the section of a statement of a charge issued to a service user which is required to provide information on how a person can go about challenging a charge if they are unhappy with it, together with information on how to access this review process.

126. Where a previous request for a review has been dealt with and a subsequent request is made by the same service user in connection with the same service, an authority is under no duty to consider this if it reasonably believes that the subsequent request provides no relevant information or documentation which makes any relevant change to any of the circumstances listed in regulation 3 that gave rise to the original request. In these circumstances an authority must send a statement to the service user that the subsequent request will not be considered and provide the reasons for this.

127. A service user can withdraw a request at any time while the review is being considered, either orally or in writing. Should the service user do this orally, an authority should confirm this to the service user in writing and in other any format appropriate to meet the communication needs of the service user, such as Braille or audio.
Representatives

128. A review can be requested by a person acting on behalf of the service user. This can be, for example, a friend or relative appointed by the service user, or a formal advocate whom the service user wishes to act for them. In either case the service user must provide confirmation of this appointment to the local authority, orally or in writing, and the extent of this representation, ie does the service user wish the representative to act for them for the whole of the review or only for a certain part. If a service user provides this confirmation orally an authority must confirm that appointment in writing to the service user and in any other format to meet their communication needs, such as Braille or audio.

Acknowledgement of a Request for Review

129. An authority must within 5 working days of receiving a request for a review, which complies with the grounds for submitting a request set out in regulation 3, send the service user, or their representative, a statement of acknowledgement confirming receipt of the request and which provides key information with regard to the review. That information is set out in regulation 6 and covers such information as confirmation of the basis of request, what further information or documentation the authority requires to process the review, that this can be provided by means of a visit to their home or other place if they wish, how the authority will process the review and that the service user can appoint a representative if they wish.

Payment of the Charge, Reimbursement or Contribution during the Review

130. The acknowledgement must also inform the service user that they do not have to, if they wish, continue to have to pay the charge, reimbursement or contribution for the service which is the subject of the request during the period of the review. If they do not wish to pay they must confirm this to the authority orally or in writing within 5 working days of receiving the acknowledgement of their request. If this occurs the charge, reimbursement or contribution is not payable for the period of the review but the liability for these payments remains. Consequently, the acknowledgement must also inform the service user whether it is the authority’s policy to recover or not, once the review has been completed, such unpaid amounts should the review result in them continuing to be due.

131. In the case of those who pay a contribution for a direct payments arrangement so that they would normally receive a direct payment net of this deduction, for the review period an authority must pay the direct payment gross without this deduction should its recipient elect not to pay the contribution during the period of the review. This is so that these individuals are treated equally to those who receive their services direct from a local authority and those receiving a direct payment gross to purchase their services, who may have also elected not to pay their charges for the period of any review they have submitted.

Time Limit for Providing Further Information or Documentation

132. If an authority reasonably requires further information and/or documentation to process a review, a service user or their representative must provide this within
15 working days of the date that the request for this was made in the acknowledgment outlined above. It would be good practice before the end of this period to remind a service user of the timescale for submitting the information and/or documentation requested, where this was yet to be provided.

133. Within this timescale the service user or their representative can ask, either orally or in writing, for an extension of time in which to provide the required information and/or documentation. For example, a service user may have difficulty in obtaining certain documents required or in contacting certain individuals or organisations that hold such documents or information required. The request for the extension should, therefore, explain the reason for this request.

134. Authorities must grant any reasonable request for such an extension and confirm to the service user, or their representative, that this has been done and the revised time to submit the information and/or documentation. This confirmation must be in writing and in other any format appropriate to the communication needs of the service users or their representative.

135. Should an authority not receive the requested information and/or documentation to process the review, or any request to extend the time for submitting this, an authority can treat the request for a review as if it had been withdrawn. If this occurs an authority should confirm to the service user, or their representative, that this has done, that the charge reimbursement or contribution it related to is now payable, the amount (if any) of this that has accrued during the review period, and whether the authority is now seeking to recover this and the date by which the amount must be paid. This confirmation must be in writing and in other any format appropriate to the communication needs of the service users or their representative.

136. A service user or their representative must be able to provide any information and/or documentation required to process a review during a “home visit” should they reasonably make such a request. In this way service users, or their representatives, have the opportunity of explaining face to face to an appropriate officer of an authority the reasons for their request and supporting this with documentation where relevant. Authorities should provide such visits to a service user’s home or other venue (such as the representative’s home or an advocate’s office) as they reasonably request.

Deciding a Review

137. As soon as possible, and in any event within 10 working days of receiving sufficient information and/or documents to carry out a review, the local authority must make a decision upon it and the action necessary to implement that decision, and send a statement to the service user and any representative of the outcome. The required content of this statement is set out in regulation 9 of the Review Regulations but in essence it should explain the outcome for the review, the reasons for the decision, the consequences of that in terms of the service user’s charge, reimbursement or contribution and the ability of the service user, if they are still unhappy, to pursue matters further should they wish through an authority’s formal complaints procedure. If the decision results in an amendment of the charge,
reimbursement or contribution, the authority must also send the service user a revised statement of that charge as required by section 10 of the Measure and regulation 19 of the Direct Payments Regulations.

138. Where an authority is in a position to decide a review within 5 working days of receiving it, it should provide that decision to the service user or their representative within that timescale. In this instance it would provide the information as required in regulation 9 of the Review Regulations outlined above with the 5 day period rather than providing an acknowledgement to it as would normally be required under regulation 6 as outlined earlier. This situation might occur where there is a simple mathematical error in a charge set or a simple error in the services for which a charge was made which an authority could correct quickly and easily without the need for any further information and/or documentation.

139. Where an authority is unable to make a review decision within the 10 working days it must within this period notify the service user or their representative of this, the reasons for it and the date by which a decision would be made. It must also inform them that if the service user wishes, they can elect not to pay the charge, reimbursement or contribution which is the subject of the review while the review is being completed. The service user can then if they wish elect to do this by them, or their representative, notifying an authority, orally or in writing, with 5 working days of receiving this notification. An authority should make it clear in this notification that charges that would have accrued during this extension period are not recoverable by an authority irrespective of the outcome of the review should the service user elect not to pay them.

**Basis for a Review Decision**

140. Authorities should designate appropriately trained staff to deal with requests for a review of a charging decision. Decisions on reviews should be taken by officers(s) of an authority appropriately authorised to take that decision. This could be an appropriate officer of a similar standing to the one who took the original decision which is the subject of the review, but who was not involved in the making of the original decision; or a section head(s); or a head of service(s); or a Director of Social Services. However authorities arrange their decision making processes on reviews they must be fair, open and impartial, supporting the principles of natural justice.

141. Regulation 9(3) of the Review Regulations sets out the factors which those taking a decision on a review must take into account. This lists the relevant legislation to consider as well as the financial circumstances of the service user concerned and the circumstances that impact upon their ability to pay a charge.

142. In undertaking a decision on a review, as well as considering whether the service user concerned has the financial means to pay a charge levied and the impact upon the independence of so doing, authorities need to take account of any wider “financial hardship” a service user may have as a result of their impairment, condition or personal circumstances. Examples of financial hardship may be:
• the urgent need for extensive and necessary household repairs that are not covered by council grant schemes and which may result in a service user going into debt and being unable to meet his/her social care charges;

• a service user being made redundant and experiencing a significant drop in income which as earnings, previously was excluded from a means assessment. As a result their income reduces but their social care charges do not resulting in them struggling financially;

• a disabled person’s house is flooded but it is not covered by their household insurance. They must stay in temporary accommodation and as a result incur additional livings costs during this emergency;

• a disabled woman experiences domestic violence and must be moved to a place of safety, such as a Women’s Refuge. She keeps her direct payment but has additional expenses due to having to buy clothing and household items, including travel and assistance to attend court hearings, thereby making it difficult to pay her charge for her direct payment.

**Payment of Charges After Review Period**

143. An authority may, where the service user has elected not to pay a charge, reimbursement, or contribution during the review period, seek to recover any unpaid amounts following the completion of the review but it is not obliged to do so. The amount that can be recovered would be the amount of the charge, reimbursement or contribution the authority has decided is now correct as a result of the outcome of the review. An authority cannot recover any amount that accrued from the time it extended the period on the review to the time the review was completed. Where an authority seeks to recover unpaid amounts it must have regard to the service user’s financial circumstances and be satisfied that the recovery of this would not cause them undue financial hardship. If it considers this to be the case, then it must offer the service user the option of repaying the amount in periodic instalments.

144. Regulation 10 of the Review Regulations sets out the detail of the payment of the charge, reimbursement or contribution during and after the review period.

18. **Contact Details/Further Information**

145. Further information on this guidance can be obtained from the following contacts:

Steve Gulliford – Cardiff (029) 2082 3478   steve.gulliford@wales.gsi.gov.uk
Alison Sharp – Cardiff (029) 2082 6950   alison.sharp@wales.gsi.gov.uk
Gareth Griffiths – Cardiff (029) 2082 5256   gareth.griffiths@wales.gsi.gov.uk

Adult Social Services Policy Division.
Welsh Assembly Government.
Cathays Park,
Cardiff
CF14 4SJ
Annex A: Social Care Charges (Wales) Measure 2010
2010 CHAPTER 2

A MEASURE of the National Assembly for Wales to make provision for and in connection with the imposition and recovery of charges for the provision of non-residential social care services. [17 March 2010]

1 General power to charge for care services

(1) A local authority in Wales which provides, or makes arrangements for the provision of, a chargeable service may (but does not have to) impose a reasonable charge for the service.

(2) A reasonable charge is such amount as the authority concerned determines reasonable.

(3) But subsections (1) and (2) are subject to—
   (a) section 2 (maximum charges);
   (b) section 3 (persons and services in respect of which charges must not be imposed);
   (c) section 8(1) (effect of determinations as to ability to pay); and
   (d) any regulations made by the Welsh Ministers under section 16 of the Community Care (Delayed Discharges etc) Act 2003 (c. 5) (free provision of services in Wales).

(4) A local authority has the power to recover a charge imposed under this section.

(5) Without prejudice to the generality of subsection (4), a charge imposed under this section may be recovered summarily as a civil debt.

2 Maximum charges

(1) In determining for the purposes of section 1(2) a reasonable charge for a chargeable service, a local authority must act in accordance with regulations made by the Welsh Ministers under subsection (2).
(2) The Welsh Ministers may make provision in regulations for and in connection with controlling and limiting the determinations that a local authority may make under section 1(2).

(3) The provision that may be made in the regulations includes (but is not limited to) provision—
   (a) specifying an amount which must be considered the maximum reasonable charge for a chargeable service, or combination of chargeable services;
   (b) setting out a formula for determining the amount which must be considered the maximum reasonable charge for a chargeable service, or combination of chargeable services;
   (c) requiring, in the case of a specified chargeable service, or combination of chargeable services, a local authority to fix a charge by reference to a specified period of time;
   (d) in relation to a charge referred to in paragraph (c), specifying the amount which must be considered the maximum reasonable charge;
   (e) in relation to a charge referred to in paragraph (c), setting out a formula for determining the amount which must be considered the maximum reasonable charge.

3 Persons and services in respect of which charges must not be imposed

(1) The Welsh Ministers may by regulations make provision specifying categories of person, chargeable service or combinations of chargeable services (or categories of person in respect of a particular service or combination of chargeable services) in respect of which a charge must not be imposed under section 1.

(2) The provision that may be made in the regulations includes (but is not limited to) provision—
   (a) specifying categories of person by reference to that or another person’s entitlement to or receipt of specified payments, facilities, services or benefits in kind;
   (b) specifying categories of person by reference to their age or their needs;
   (c) specifying categories of service or combinations of services by reference to the period of time for which they are provided.

(3) Accordingly, sections 4 to 12 do not apply to—
   (a) services or combinations of services specified in regulations under subsection (1), or
   (b) services received by persons so specified.

4 Invitation to request means assessment

(1) A local authority must invite a person to request a means assessment under section 5(1) if it is reasonably practicable to do so, when the authority offers the person a chargeable service;

(2) if it has not been reasonably practicable to give an invitation as mentioned in paragraph (a), as soon as reasonably practicable after the offer was made;

(3) if an invitation has not been given under paragraph (a) or (b) prior to provision of a service commencing, as soon as reasonably practicable thereafter; or
(d) in relation to a person who is being provided with a chargeable service, in such cases as may be specified in regulations made by the Welsh Ministers.

(2) Where an invitation is required to be given to a person under subsection (1), the local authority must not—
   (a) impose, or
   (b) in a case where regulations under subsection (1)(d) impose a duty in a case where a charge has already been imposed, alter,
   a charge for the service in question under section 1(1) unless the requirements set out in subsection (3) have been satisfied.

(3) The requirements are that—
   (a) the invitation has been given; and
   (b) where the person responds to the invitation in accordance with, and by the time specified in, regulations made by the Welsh Ministers, the authority has complied with its obligations under sections 5 and 7.

(4) The Welsh Ministers may by regulations make provision—
   (a) as to the form and content of invitations under subsection (1); and
   (b) as to the manner in which such invitations are to be given.

5 Duty to carry out a means assessment

(1) Where each of the conditions in section 6 is met, a local authority must carry out an assessment of the financial means of a person who requests such an assessment.

(2) But a local authority is under no duty to carry out a means assessment under subsection (1)—
   (a) in such cases as may be specified in regulations made by the Welsh Ministers; or
   (b) if the authority is relieved of that duty under subsection (5).

(3) A means assessment under subsection (1) must be carried out in accordance with regulations made by the Welsh Ministers.

(4) The provision that may be made by regulations under subsection (3) includes (but is not limited to) provision applying any other statutory means testing regime as it has effect from time to time, subject to any modifications specified in the regulations.

(5) Unless regulations made by the Welsh Ministers make provision to the contrary, a local authority has no duty to carry out a means assessment under subsection (1) if—
   (a) a determination made by the authority under section 7(1) or 9(1) has effect;
   (b) the person who is the subject of the determination requests that the authority carry out a means assessment under subsection (1);
   (c) the request relates to a service to which the determination relates; and
   (d) the authority reasonably considers that there has been no relevant change of circumstance since the determination was made.

6 Conditions giving rise to the duty to carry out a means assessment

(1) This section contains the conditions referred to in section 5(1) (duty to carry out a means assessment).

(2) Condition 1 is that—
(a) a person is offered a chargeable service; or
(b) a person is being provided with a chargeable service.

(3) Condition 2 is that the person requests that the authority which made the offer, or
is responsible for the provision of the service, carry out a means assessment under
section 5.

(4) Condition 3 is that the person provides the authority with any information or documents
in the person’s possession, or under the person’s control, which the authority reasonably
requires in order to carry out a means assessment under that section.

(5) The Welsh Ministers may by regulations make provision as to who may make
the request mentioned in subsection (3), or provide the information or documents
mentioned in subsection (4), on behalf of a person who is offered or is being provided
with a service.

7 Determinations as to ability to pay

(1) Where a local authority has carried out a means assessment of a person under
section 5(1), the authority must, in the light of that assessment—
(a) determine whether it is reasonably practicable for the person to pay the standard
charge for the service that the person has been offered or is being provided
with; and
(b) if the authority determines that it is not reasonably practicable for the person to
pay the standard charge, determine the amount (if any) which it is reasonably
practicable for the person to pay for that service.

(2) A local authority must discharge its duty under subsection (1) in accordance with
provision in regulations made by the Welsh Ministers.

(3) The provision that may be made by regulations under subsection (2) includes (but is
not limited to) provision—
(a) specifying cases in which it is not reasonably practicable for persons of
specified means, or of means falling within a specified range, to pay for a
particular service, or combination of services;
(b) specifying the maximum amount that it is reasonably practicable for persons
of specified means, or of means falling within a specified range, to pay for a
particular service, or combination of services;
(c) specifying amounts which the local authority must disregard when assessing
a person’s means;
(d) specifying amounts below which a person’s income or assets must not be
reduced (after payment of the charge to be imposed).

(4) In subsection (1) and section 10 “standard charge” means the amount which a person
would be required to pay for a service if no determination under this Measure as to the
person’s ability to pay had effect.

8 Effect of determinations as to ability to pay

(1) In imposing charges under section 1(1), a local authority must give effect to any
determination made under section 7(1) or 9(1).
(2) Subject to any regulations made under subsection (3), a determination is to have effect from such date as the local authority concerned considers reasonable (which may be a date before that on which the determination was made).

(3) The Welsh Ministers may by regulations make provision as to the date from which a determination is to have effect (including provision for a determination to have effect from a date before that on which it was made).

(4) Where a determination replaces an existing determination, the existing determination continues to have effect until the new determination has effect.

(5) For the purposes of subsection (4), a determination replaces an existing determination if it relates to the same person and the same chargeable service as that determination.

9 Replacement by authority of determinations as to ability to pay

(1) If a local authority reasonably considers that any one or more of the conditions in subsection (4) is met, the authority may in accordance with this section replace a determination given under section 7(1), or under this subsection, with a new determination.

(2) In a case where regulations under section 4(1)(d) impose a duty in respect of the service to which the determination relates, the authority’s power under subsection (1) is subject to section 4(2).

(3) A determination under subsection (1) may differ from the determination which it replaces only to the extent considered appropriate by the authority in the light of the condition or conditions in subsection (4) which the authority considers to be met.

(4) The conditions referred to in subsection (1) are that—
   (a) there has been a change in the income or capital of the person who is the subject of the determination;
   (b) there has been a change in the cost of providing the service to which the determination relates (including a change resulting from a change in the level at which or degree to which the service is provided);
   (c) the authority has changed its policy about the exercise of its power to charge under section 1;
   (d) there has been some other change of circumstance which falls within a description specified in regulations made by the Welsh Ministers;
   (e) a mistake was made when the determination was made.

10 Provision of information about charges

(1) A local authority must make arrangements to bring information about the matters referred to in subsection (2) to the attention of persons—
   (a) who receive a chargeable service; or
   (b) who may receive such a service.

(2) The matters are—
   (a) the services in respect of which charges are and are not imposed;
   (b) the standard charges imposed for different types of service (for the meaning of “standard charge”, see section 7(4)); and
(c) the operation of sections 4 to 9.

(3) The arrangements must—

(a) provide for the provision of information in a range of accessible formats (including in writing) about the matters referred to in subsection (2) in response to a request made by a person referred to in subsection (1); and

(b) be framed so that any information is provided free of charge.

(4) Where a local authority has imposed (or altered) a charge under section 1(1), it must provide the person upon whom the charge is imposed with a statement in writing, and in any other accessible format that the person reasonably requests, which—

(a) describes the service, or combination of services, to which the charge relates;

(b) sets out the standard charge for the service, or combination of services, in question (for the meaning of “standard charge”, see section 7(4));

(c) if the charge imposed in the case of that person is not the standard charge, sets out the charge imposed;

(d) explains how the charge was calculated (including details of any means assessment under section 5(1) and how this affected the calculation);

(e) describes the person’s rights to challenge or complain about the charge or the clarity with which the statement is expressed;

(f) contains any other matter which regulations made by the Welsh Ministers require to be included in the statement.

(5) A statement under this section must be provided—

(a) free of charge; and

(b) within twenty one days of the date on which the decision to impose (or alter) the charge was made.

11 Reviews of charging decisions

(1) The Welsh Ministers may by regulations make provision for and in connection with the review of decisions taken by local authorities under this Measure.

(2) The provision that may be made by regulations under subsection (1) includes (but is not limited to) provision—

(a) conferring a right upon an individual to whom a statement must be provided under section 10(4) to request a review and an obligation upon the local authority that provided, or should have provided, the statement to carry out a review and implement its findings;

(b) as to the decisions in respect of which the individual has the right to request a review;

(c) as to the steps that must be taken in order for a person to exercise the right to request a review and the time by which such steps are to be taken;

(d) as to who may request a review on behalf of another person;

(e) as to the procedure to be followed and steps to be taken in connection with, and following, the review;

(f) as to the type of officer or group of officers of the local authority who are to take the decision on the review;

(g) requiring a local authority to provide specified information and assistance to a person who has exercised the right to request a review.
12 Direct payments

(1) This section applies where regulations under section 57 of the Health and Social Care Act 2001 make provision for the making of direct payments by a local authority in Wales in respect of the securing of chargeable services.

(2) The Welsh Ministers may by regulations make provision, in relation to those payments, which corresponds to the provision which is made by, or may be made under, sections 1 to 11 of this Measure.

(3) For the purposes of subsection (2), provision corresponds to that which is made by or under sections 1 to 11 if it makes, in relation to reimbursements or contributions, provision which is in the opinion of the Welsh Ministers equivalent in effect to the provision made by or under those sections in relation to charges for services imposed under section 1(1).

(4) The provision that may be made under this section includes (but is not limited to)—

(a) provision permitting a local authority to determine such amount as it considers reasonable by way of reimbursement or contribution;

(b) provision controlling or limiting the determinations that a local authority may make of those amounts;

(c) provision specifying categories of person, chargeable services or combinations of chargeable services (or categories of person in respect of a particular service or combination of services) in respect of which the reimbursement or contribution must be nil;

(d) provision that a local authority which is making or proposes to make direct payments to a person must, in such circumstances as may be specified in the regulations, invite the person to request an assessment of the person’s financial means;

(e) provision that, where such an invitation is required to be given to a person, the local authority must not determine or (in a case where regulations under this section impose a duty in a case where direct payments are already being made) alter the reimbursement or contribution unless requirements specified in the regulations have been satisfied;

(f) provision requiring a local authority, in such circumstances as may be specified in the regulations, to carry out an assessment of the financial means of a person who requests such an assessment (including provision as to who may make such a request on behalf of another person);

(g) provision requiring a local authority which has carried out such a means assessment—

(i) to determine whether it is reasonably practicable, in the case of that person, for the reimbursement or contribution to be the amount which it would be in the absence of a determination as to the person’s ability to pay, and

(ii) if the authority determines that it is not reasonably practicable for the reimbursement or contribution to be that amount, to determine what amount (if any) it is reasonably practicable for the reimbursement or contribution to be;

(h) provision as to the manner in which a local authority must discharge a duty imposed under paragraph (g), including provision controlling or limiting the determinations to be made by the authority;
(i) provision requiring a local authority, in making a determination as to reimbursement or contribution, to give effect to any determination as to ability to pay made as mentioned in paragraph (g) or (k);

(j) provision as to the date from which a determination as to reimbursement or contribution is to have effect (including provision for a determination to have effect from a date before that on which it was made);

(k) provision permitting a local authority, in such circumstances as may be specified in the regulations, to replace a determination as to ability to pay with a new determination;

(l) provision requiring local authorities to make arrangements to bring to the attention of persons who receive or may receive direct payments information about—

(i) the services in respect of which direct payments may be made subject to reimbursement or contribution,

(ii) the amount which the reimbursement or contribution in respect of different types of service would be in the absence of a determination as to a person’s ability to pay, and

(iii) the operation of regulations under this section;

(m) provision requiring a local authority which has made a determination as to a person’s reimbursement or contribution to provide that person with a statement in such form and containing such matters as are specified in the regulations;

(n) provision for and in connection with the review of decisions taken by local authorities under regulations under this section.

(5) In this section—

“contribution” means an amount determined by way of contribution as mentioned in section 57(5)(a) of the Health and Social Care Act 2001;

“reimbursement” means an amount determined by way of reimbursement as mentioned in section 57(4)(b) of that Act.

13 Chargeable services

(1) For the purposes of this Measure, a chargeable service is a service falling within subsection (2).

(2) The services are—

(a) a service provided under section 29 of the National Assistance Act 1948 (c. 29) (welfare arrangements for blind, deaf, dumb and crippled persons etc) unless the service is one for which payment may be required under section 22 or 26 of that Act;

(b) a service provided under section 45(1) of the Health Services and Public Health Act 1968 (c. 46) (welfare of old people);

(c) a service provided under Schedule 15 to the National Health Service (Wales) Act 2006 (c. 42) (care of mothers and young children, prevention of illness and care and after-care and home help and laundry facilities);

(d) a service provided under paragraph 1 of Part II of Schedule 9 to the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (meals and recreation for old people) unless the service is one for which payment may be required under section 22 or 26 of the National Assistance Act 1948;
(e) a service provided under section 2 of the Carers and Disabled Children Act 2000 (c. 16) (services for carers) unless the service is provided in the form of residential care.

(3) The Welsh Ministers may by order amend subsection (2) so as to add a service of any description or to amend or remove the description of a service which is for the time being included there.

14 Amendments to the Health and Social Services and Social Security Adjudications Act 1983

(1) Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) is amended as follows.

(2) In subsection (1) after “authority” insert “in England”.

(3) In subsection (2)(c) omit “or Schedule 15 to the National Health Service (Wales) Act 2006”.

(4) After subsection (2) insert—

“(2A) Subject to subsection (3) below, an authority in Wales providing a service under section 2 of the Carers and Disabled Children Act 2000 in the form of residential care may recover such charge (if any) for it as they consider reasonable.”.

15 Amendment to the Local Authority Social Services Act 1970

(1) The Local Authority Social Services Act 1970 (c. 42) is amended as follows.

(2) At the end of the table in Schedule 1 to the Act insert—

<table>
<thead>
<tr>
<th>Social Care Charges (Wales) Measure 2010</th>
<th>Charges for local authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 1, 2 and 4 to 12</td>
<td></td>
</tr>
</tbody>
</table>

16 Amendment to the Health and Social Care Act 2001

(1) Section 57 of the Health and Social Care Act 2001 (c. 15) (direct payments) is amended as follows.

(2) After subsection (7A) insert—

“(7B) Section 12 of the Social Care Charges (Wales) Measure 2010 makes further provision for and in connection with the determination of amounts by way of reimbursement as mentioned in subsection (4)(b) or contribution as mentioned in subsection (5)(a) in respect of chargeable services within the meaning of that Measure.”.

17 Orders and regulations

(1) Any power of the Welsh Ministers to make an order or regulations under this Measure is exercisable by statutory instrument.
(2) Any order or regulations under this Measure—
   (a) may make different provision for different cases and purposes; and
   (b) may make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Welsh Ministers consider appropriate.

(3) The Welsh Ministers may by order make such provision as the Welsh Ministers consider necessary or expedient for the general purposes, or any particular purposes, of this Measure, or in consequence of, or for giving full effect to, any provision made by this Measure.

(4) An order under subsection (3) may amend, repeal or revoke any provision of—
   (a) any Act of Parliament or Act or Measure of the National Assembly for Wales (including this Measure); and
   (b) subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

(5) Any statutory instrument containing regulations made under this Measure is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(6) A statutory instrument containing an order which includes provision (alone or with other provision) mentioned in subsection (4)(b) is subject to annulment in pursuance of a resolution of the National Assembly for Wales. But this does not apply if the order also includes provision mentioned in subsection (4)(a).

(7) A statutory instrument containing (alone or with other provision)—
   (a) an order under section 13(3), or
   (b) an order under subsection (3) including provision mentioned in subsection (4) (a),
   must not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

18 Commencement and interpretation

(1) In this Measure “local authority” means a county council or county borough council.

(2) The provisions of this section and sections 17 and 19 come into force at the end of a period of two months beginning on the day on which this Measure is approved by Her Majesty in Council.

(3) The remaining provisions of this Measure are to come into force in accordance with provision made by the Welsh Ministers by order.

(4) An order under subsection (3) may provide for provisions of the Measure to come into force on different days for different purposes.

19 Short title

This Measure may be cited as the Social Care Charges (Wales) Measure 2010.
Annex B: Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011
The Welsh Ministers, in exercise of the powers conferred by sections 2(2), 3(1), 4(1)(d), 4(3)(b), 4(4), 5(2)(a), 5(4), 6(5), 7(2), 8(3), 9(4)(d), 10(4)(f) and 17(2) of the Social Care Charges (Wales) Measure 2010, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 and they come into force on 11 April 2011.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the Measure” (“y Mesur”) means the Social Care Charges (Wales) Measure 2010;

“assessable income” (“incwm asesadwy”) means that part of a service user’s income in respect of which a local authority may make a determination in accordance with section 7 of the Measure; it does not include the income which a local authority must disregard in accordance with regulation 14;

“assessment of needs” (“asesiad anghenion”) means an assessment by a local authority of a service user’s need for community care services undertaken in accordance with section 47 of the National Health Service and Community Care Act 1990 or section 1 of the Carers and Disabled Children Act 2000 and “assessed as needing” (“aseswyd bod arno angen”) is to be read accordingly;

“basic entitlement” (“hawlogaeth sylfaenol”) means, in relation to—

(a) income support—

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(1) 2010 nawm 2 (“the Measure”). See section 17 of the Measure for the definition of “regulations”.
(2) 1990 c. 19.
(3) 2000 c. 16.
the personal allowance and any premiums to which a service user is entitled, but need not include the severe disability premium (“SDP”) where it is paid, and where a service user is a carer, includes any carer premium that person receives,

(b) employment and support allowance—
the personal allowance and any premiums and components to which a service user is entitled, but need not include the SDP where it is paid, and where a service user is a carer includes any carer premium that person receives,

c) guarantee credit —
the personal allowance and any additional amount to which a service user is entitled, but need not include the additional amount added for severe disability where it is paid, and where a service user is a carer, includes any additional amount applicable for carers that person receives;

“day service” (“gwasanaeth dydd”) means a service provided by a local authority which meets a part of a service user’s assessed needs, which takes place away from that person’s home and which is intended to assist the person in meeting others, or taking up new or practising existing interests and includes work opportunities;

“direct payment” (“taliad uniongyrchol”) has the meaning given in regulations 8 and 9 of the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011;

“dual provision” (“darpariaeth ddeuol”) means that the assessed needs of a service user are being met—
(a) in part by a local authority providing or securing a service or services for that person, and
(b) in part by the person receiving a direct payment in order to secure the provision of another or other services;

“employment and support allowance” (“lwfans cyflogaeth a chymorth”) means either contributory employment and support allowance or income-related employment and support allowance in accordance with Part 1 of the Welfare Reform Act 2007(4);

“flat-rate charge” (“ffî unffurf”) means a fixed rate charge for a chargeable service received by a service user which is imposed by a local authority regardless of the means of that service user;

“guarantee credit” (“credyd gwarant”) is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002(5);

“home visiting facility” (“cyfleuster ymweliadau cartref”) means a visit (or visits) which are undertaken by an appropriate officer of a local authority to a service user’s current place of residence, or at such other venue as the service user reasonably requests, for the purposes of gathering information to inform a means assessment for that person and for providing information and offering assistance in relation to that process;

“in writing” (“mewn ysgrifen”) means any expression consisting of words or figures that can be read, reproduced and subsequently communicated and may include information transmitted and stored by electronic means;

“income support” (“cymorth incwm”) means income support paid in accordance with section 124 of the Social Security Contributions and Benefits Act 1992;

“means assessment” (“asesiad modd”) means an assessment of the financial means of a service user undertaken in accordance with section 5(1) of the Measure and regulation 14 and

(4) 2007 c. 5.
(5) 2002 c. 16.
“assessment of a service user’s means” ("asesiad o fodd defnyddiwr gwasanaeth") is to be read accordingly;

“net income” ("incwm net") means, the income that a service user has, or would have left after the deduction from that person’s assessable income of the standard charge (or any other charge) imposed under these Regulations, for a service that has been offered to, or provided, for that person;

“provided” ("darparwyd") in these Regulations includes making arrangements for the provision;

“relevant benefit” ("budd-dal perthnasol") means—
(a) income support, or
(b) employment and support allowance, or
(c) guarantee credit;

“savings credit” ("credyd cynilion") has the meaning given in sections 1 and 3 of the State Pension Credit Act 2002;

“service” ("gwasanaeth") means a chargeable service(6), and where the context requires, chargeable services or a combination of chargeable services and “services” ("gwasanaethau") and “combination of services” ("cyfuniad o wasanaethau") are to be interpreted accordingly;

“service user” ("defnyddiwr gwasanaeth") means an adult who has been offered, or who is receiving, a service provided by a local authority;

“working day” ("diwrnod gwaith") means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971(7).

Local authority – power to charge for services

3. If a local authority exercises its power to charge for a service in accordance with section 1 of the Measure (general power to charge for care services) it must give effect to the provisions of these Regulations.

Service users upon whom and services in respect of which a charge must not be imposed

4.—(1) A local authority must not impose a charge under section 1 of the Measure upon a service user who—
(a) has been offered or is receiving a service and who is suffering from any form of Creuzfeldt Jacob disease where that disease has been clinically diagnosed by a registered medical practitioner;
(b) has been offered or is receiving a service provided as part of a package of after care services in accordance with section 117 of the Mental Health Act 1983 (after care)(8); or,
(c) has had a means assessment undertaken by a local authority and has been assessed as having an income of less than the total amount referred to regulation 15(2).

(2) A local authority must not impose a charge under section 1 of the Measure for any of the services specified in this paragraph—
(a) the provision of transport to attend a day service where the transport is provided by a local authority and where attendance at the day service and the provision of transport to enable such attendance are included as part of the service user’s assessment of needs;

(6) “Chargeable service” is defined in section 13 of the Measure.
(7) 1971 c. 80.
(8) 1983 c. 20.
(b) the provision of a statement of information in accordance with section 10(4) of the Measure (provision of information about charges).

(3) Nothing in this regulation affects the discretion of a local authority to specify additional categories of service user or services upon whom or in respect of which a charge may not be imposed.

(4) Regulations 5 to 16 do not apply to a service user referred to in sub-paragraphs (a) or (b) of paragraph (1).

Maximum reasonable charge for a service

5.—(1) A local authority must exercise the power in section 1(2) of the Measure (to determine a reasonable charge for the provision of a service) in accordance with the provisions of this regulation.

(2) Subject to paragraphs (3) and (4), the maximum amount that a local authority may determine to be a reasonable charge for the provision of a service or combination of services to a service user (“maximum reasonable charge”) (“uchafswm ffl i rhesymol”) is £50 per week.

(3) Subject to paragraph (4), where a service user has assessed needs which are met by way of dual provision £50 per week is the maximum of the aggregate of the amounts that a local authority may require the service user to pay in respect of that provision by way of—

(a) a charge, and

(b) a payment towards the cost of securing the provision of the service calculated in accordance with the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011.

(4) When calculating the maximum reasonable charge that a service user may be liable to pay, a local authority—

(a) must disregard the charge for any service for which it imposes a flat-rate charge, and

(b) may impose the charges in respect of such a service in addition to the maximum reasonable charge.

Procedure for determining a charge

6.—(1) When calculating the amount that a service user pays or may be required to pay for the service received by or offered to that service user, a local authority must adopt the following procedure—

(a) calculate the amount of its reasonable costs for the service received by or offered to the service user;

(b) disregard from that total the amount of any charges for a service referred to in regulation 5(4);

(c) apply the maximum reasonable charge to this resulting amount where the resulting amount would otherwise exceed it and this, subject to sub-paragraph (d), is the amount of the charge that the service user may be required to pay;

(d) subject the amount calculated in accordance with sub-paragraph (c) to a determination of the service user’s ability to pay a charge in accordance with section 7 of the Measure and regulation 15.

(2) The step referred to in paragraph (1)(d) will only be applied where—

(a) the service user has requested, and

(b) the local authority has undertaken,

an assessment of the service user’s means in accordance with section 5(1) of the Measure and regulation 14.
Invitation to request a means assessment

7.—(1) Where a local authority is required by section 4 of the Measure (invitation to request a means assessment) or determines in accordance with paragraph (2) to issue an invitation to a service user to request an assessment of his or her means under section 5(1) of the Measure (duty to carry out a means assessment), the local authority must ensure that the invitation contains full details of—

(a) the services that are being offered to, or provided for, the service user for which a charge is being considered;
(b) its charging policy, which must include the following—
   (i) its policy in relation to which, if any, of the services it provides are subject to a charge,
   (ii) details of the standard charge(9) which may be imposed in relation to any such service,
   (iii) details of any service for which a flat-rate charge is imposed, and
   (iv) details of the maximum reasonable charge for services that may be imposed in accordance with regulation 5, or the maximum reasonable charge that the local authority applies, where that charge is lower;
(c) its means assessment process;
(d) its procedure for dealing with a means assessment for a service user who receives only services for which a flat-rate charge is imposed;
(e) the information and documentation that a service user is required to provide in order that an assessment of the service user’s means can be undertaken;
(f) the time, as specified in regulation 8, within which a service user is required to supply the information and documentation referred to in sub-paragraph (e);
(g) the format in which it will accept the information and documentation referred to in sub-paragraph (e);
(h) any home visiting facility that it provides within its area;
(i) the consequences of failing to respond to the invitation in accordance with sub-paragraph (f);
(j) the named individuals within the authority whom a service user should contact should that person require additional information or assistance in respect of any of the processes attendant upon the issue of the invitation;
(k) a service user’s right to appoint a third party to assist, or to act on his or her behalf, in respect of all or part of the means assessment process; and
(l) the contact details of any organisation in its area which provides support or assistance of the type referred to in sub-paragraph (k).

(2) Where a local authority reasonably considers that one or more of the circumstances prescribed by section 9(4) of the Measure (replacement by authority of determinations as to ability to pay) applies, it must invite a service user to request a new assessment of his or her means under section 5(1) of the Measure with a view to its making a further determination of that person’s ability to pay a charge in accordance with section 9 of the Measure and regulation 15.

(3) A local authority must provide a service user with the information referred to in paragraph (1) in writing, or in any other format that is appropriate to the communication needs of the service user(10).

(9) “Standard charge” is defined in section 7(4) of the Measure.
(10) For an explanation of the meaning of “any format appropriate to the communication needs of the service user”, please refer to the guidance published by the Welsh Ministers, entitled Introducing More Consistency in Local Authority Charging for Non-Residential Social Services.
Response to an invitation to request a means assessment

8.—(1) A service user or, subject to paragraphs (3) or (4), a service user’s representative, must provide a response to the local authority within 15 working days (or such longer period as a local authority may reasonably allow in accordance with regulation 9) of the date the invitation was issued.

(2) A service user complies with the requirement set out in paragraph (1) if that person or that person’s representative—

(a) requests that the local authority carries out an assessment of his or her means in accordance with section 5(1) of the Measure;

(b) requests assistance from any home visiting service that is available, if such assistance is required;

(c) provides the information that has been requested by the local authority in the format that the local authority has agreed to accept it;

(d) provides the documentation that has been requested by the local authority;

(e) requests an extension of time, where one is required, in which to provide the information or documentation (or both) that has been requested in accordance with regulation 7(1)(e), giving the reason or reasons why an extension of time is required.

(3) Where a service user has appointed a representative to act on his or her behalf, the service user must provide the local authority with the following—

(a) the name and address of the representative,

(b) confirmation that the representative is willing to act on his or her behalf,

(c) details of the nature and extent of the representative’s involvement in the means assessment process, and

(d) details of the nature and extent of the information that the local authority may share with his or her representative.

(4) Where a representative has been appointed to act on behalf of a service user by the Court of Protection or in accordance with the Enduring Powers of Attorney Act 1985(11) or the Mental Capacity Act 2005(12), the deputy or attorney so appointed must provide the local authority with—

(a) the original or a certified copy of the registered enduring power of attorney, or lasting power of attorney, or a certified copy of the appropriate order of the court, and

(b) documentation to prove the identity and address of the attorney or deputy and of the service user for whom he or she is acting.

(5) Unless the context otherwise requires, where a representative has been appointed in accordance with paragraph (3) or (4), any reference in this regulation or in regulations 9 to 13 to a service user, includes that person’s representative.

(6) Any request made in accordance with paragraph (2) or appointment made in accordance with paragraph (3) may be made or communicated orally or in writing by a service user but must be confirmed by a local authority in writing, or in any other format that is appropriate to the communication needs of the service user.

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(11) 1985 c. 29 (“the 1985 Act”). The Mental Capacity Act 2005 (“the 2005 Act”) has replaced the 1985 Act, replacing enduring powers of attorney (although enduring powers of attorney made before 1st October 2007 will continue to be valid) with lasting powers of attorney. The 2005 Act permits the Court of Protection to appoint deputies to make decisions for persons who lack capacity under the 2005 Act. Deputies replace “receivers” (although any receiver appointed before 1st October 2007 will continue to retain their powers but will be treated as a deputy by the Office of the Public Guardian (which has replaced the Public Guardianship Office).

(12) 2005 c. 9.
Request for extension of time in which to provide information or documentation

9.—(1) A local authority must agree to any reasonable request for an extension of time made in accordance with regulation 8(2)(e).

(2) If a service user requests an extension of time orally, a local authority may give its response to that request orally, but it must also confirm the response in writing or in any other format that is appropriate to the communication needs of the service user.

(3) When responding to a request for an extension of time a local authority must confirm whether or not the request is granted and if granted, must state the period of the extension.

(4) Where a local authority refuses a request for an extension of time, it must give reasons for its refusal of the request.

Failure to respond to an invitation to request a means assessment

10.—(1) Where a service user fails to respond to an invitation in accordance with regulation 8, a local authority may impose the standard charge for the service that has been offered, or which the service user is receiving, and in either case which is the subject of the invitation.

(2) A local authority’s power to impose the standard charge in accordance with paragraph (1) is subject to the maximum reasonable charge prescribed in regulation 5.

(3) Where paragraph (1) applies, the charge imposed upon a service user will be payable from the date that a statement is provided by the local authority in accordance with section 10(4) of the Measure (provision of information about charges).

(4) If a service user responds to an invitation to request a means assessment after a local authority has imposed the standard charge, or where relevant, the maximum reasonable charge—

(a) the local authority must proceed to undertake an assessment of the service user’s means in accordance with section 5(1) of the Measure (duty to carry out a means assessment) and regulation 14 and make a determination in accordance with section 7 of the Measure (determinations as to ability to pay)(13) and regulation 15;

(b) the actions taken by a local authority under sub-paragraph (a) will not affect the liability of the service user to pay any charges that have been incurred from the date the statement referred to in paragraph (3) was provided; and

(c) the statement provided in accordance with section 10(4) of the Measure as a result of the assessment and determination referred to in sub-paragraph (a) (“yr ail ddatganiad”) will replace the statement provided in accordance with paragraph (3) and the second statement will take effect from the date that it is provided.

(5) In these Regulations any statement, which a local authority is required to provide in accordance with section 10(4) of the Measure is, “provided” (“ddarparu”) on the date that it is issued by a local authority.

Failure to supply all relevant information and documentation

11.—(1) Where a service user has failed to—

(a) supply, or

(b) seek an extension of time in which to supply,

all the information and documentation reasonably requested by a local authority to enable it to undertake an assessment of the service user’s means in accordance with section 5(1) of the Measure

(13) Section 7 of the Measure makes provision for a local authority to determine whether it is reasonably practicable for a service user to pay the standard (or any) charge for a service offered or provided to that service user by a local authority.
and regulation 14, the local authority may make an assessment of that service user’s means on the basis of the partial information or partial documentation (or both) that has been supplied.

(2) Where paragraph (1) applies, the local authority may—

(a) make a determination in accordance with section 7 of the Measure and regulation 15;
(b) subject to the maximum reasonable charge prescribed in regulation 5, impose a charge upon the service user on the basis of its determination; and
(c) proceed to provide a statement in accordance with section 10(4) of the Measure.

(3) Where a charge is imposed in accordance with paragraph (2), that charge will be imposed from the date that the local authority provides the statement referred to in paragraph (2)(c).

Withdrawal of a request for a means assessment

12.—(1) A service user may withdraw a request for a means assessment by notifying a local authority of his or her decision at any time before the means assessment has been completed.

(2) A service user may notify a local authority of the decision to withdraw a request for a means assessment orally, in writing, or in any other format that is appropriate to the communication needs of the service user.

(3) Where a request is withdrawn in accordance with this regulation, a local authority may, subject to the maximum reasonable charge prescribed by regulation 5, impose the standard charge for the service that was the subject of the invitation to request a means assessment.

(4) In any case where a service user notifies a local authority of the withdrawal of his or her request for a means assessment, the local authority must—

(a) acknowledge receipt of the notification in writing and in any other format that is appropriate to the communication needs of the service user;
(b) advise the service user that the withdrawal of this request does not preclude him or her from the submission of a further request for a means assessment in respect of the same or a different service; and
(c) advise the service user whether the standard charge, or the maximum reasonable charge prescribed in regulation 5, will be imposed in respect of the service offered or being received by the service user.

(5) Where a charge is imposed upon a service user in accordance with paragraph (3) it will be imposed from the date that the local authority provides a statement in accordance with section 10(4) of the Measure.

No duty to carry out a means assessment

13. A local authority is under no duty to carry out an assessment of the means of a service user who—

(a) receives only a service or combination of services for which the local authority applies a flat-rate charge, or
(b) fails to respond to an invitation to request a means assessment in accordance with regulation 8, or
(c) withdraws his or her request for a means assessment in accordance with regulation 12.
Means assessment process

14.—(1) Where a local authority carries out an assessment of a service user’s means in accordance with section 5(1) of the Measure, it must ensure that the process of assessment that it employs gives effect to the requirements of this regulation.

(2) When undertaking a means assessment, if a local authority takes into account a service user’s savings or capital, the local authority must—

(a) subject to sub-paragraph (b) and to paragraph (3), calculate the capital of a service user in accordance with Part 3 of the 1992 Regulations;

(b) disregard the value of a service user’s main residence from its calculation of that person’s capital.

(3) Nothing in paragraph (2) affects the discretion of a local authority when calculating a service user’s capital to apply any criteria that are more generous to the service user than those as from time to time applied in the provisions referred to in paragraph (2)(a).

(4) When undertaking a means assessment, if a local authority takes into account a service user’s income, the local authority must—

(a) assess what part of the service user’s income properly constitutes “earnings” (“enillion”) in accordance with the definition of “earnings” in regulations 35 and 37 of the Housing Benefit Regulations 2006(14), or as the case may be, in regulations 35 and 37 of the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006(15);

(b) disregard in full those earnings;

(c) disregard in full any amount received by a service user in respect of savings credit; and

(d) disregard in full any payment received by a service user which is referred to in paragraph 24 of Schedule 3 to the 1992 Regulations (sums to be disregarded in the calculation of income other than earnings)(16).

(5) Nothing in paragraph (4) affects the discretion of a local authority when calculating a service user’s income to apply any criteria that are more generous to the service user than the provisions in paragraph (4).

(6) In this regulation—


Determination as to a service user’s ability to pay a charge

15.—(1) Where a local authority makes a determination as to a service user’s ability to pay a charge in accordance with section 7 (determinations as to ability to pay) or section 9 of the Measure (replacement by authority of determinations as to ability to pay ) it must give effect to the requirements of this regulation.

(2) A local authority must ensure when determining the charge to be imposed for a service offered to or being received by a service user, that it does not reduce the service user’s net income—

(a) where the service user is in receipt of a relevant benefit, to an amount below the total of—

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(14) S.I. 2006/213.

(15) S.I. 2006/214.

(16) Payments referred to in paragraph 24 of Schedule 3 to the National Assistance (Assessment of Resources) Regulation 1992 are described in paragraph 39 of Schedule 9 to the Income Support (General) Regulations 1987 (S.I. 1987/1967) (sums to be disregarded in the calculation of income other than earnings) as “any payment made under or by the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Fund, the Eileen Trust, MFET Limited or the Independent Living Fund (2006).”.

(i) the basic entitlement to the relevant benefit that is being received by that person, and
(ii) an amount of not less than 35% of that entitlement (“a buffer”) (“clustog”), and
(iii) an amount to compensate the service user for disability-related expenditure of not
less than 10% of the amount referred to in paragraph (i); or
(b) where the service user is not in receipt of a relevant benefit, to an amount below the total
of—
(i) the amount the local authority reasonably assesses, having regard to the person’s
age, circumstances and level of disability, would be equal to the service user’s basic
entitlement to a relevant benefit, and
(ii) a buffer of not less than 35% of the amount estimated in paragraph (i), and
(iii) an amount to compensate the service user for disability-related expenditure of not
less than 10% of the amount referred to in paragraph (i).

(3) Nothing in this regulation affects the discretion of a local authority to increase the percentage
of the buffer or the amount to compensate for any disability-related expenditure when making a
determination in accordance with paragraph (1).

Effect of a determination of a service user’s ability to pay a charge

16.—(1) Where a local authority makes a determination in accordance with regulation 15 as to
a service user’s ability to pay a charge for a service which—
(a) is being offered to a service user for the first time; or
(b) is being provided for a service user, but for which a charge is being imposed for the first
time,
it may not impose a charge until the date that a statement is provided in accordance with section 10(4)
of the Measure.

(2) Where a local authority makes a further determination as to a service user’s ability to pay a
charge in accordance with regulation 7(2) it may not impose, or alter a charge until the date that a
statement is provided in accordance with section 10(4) of the Measure.

(3) Where a statement referred to in paragraph (1) or (2) replaces a statement that has previously
been provided in accordance with section 10(4) of the Measure (“the earlier statement”) (“y
datganiad cynharach”), the earlier statement will continue to have effect until the date the subsequent
statement is provided.

Saving

17. Where, immediately before the coming into force of these Regulations —
(a) an assessment of a service user’s means, or
(b) a determination of the charge a service user is to pay,
has effect, such assessment or determination will continue to have effect notwithstanding that it
was not made in accordance with the Measure and these Regulations.

18. Any assessment or determination referred to in regulation 17 will continue to have effect
until replaced by an assessment or determination made in accordance with the Measure and these
Regulations.
**Transitional provision**

19. Where before the coming into force of these Regulations a local authority has obtained information and documentation from a service user to enable it to—

(a) undertake an assessment of the service user’s means, or

(b) make a determination of the charge the service user is to pay,

but the assessment has not been undertaken or the determination has not been made upon the coming into force of these Regulations, the local authority must undertake such an assessment in accordance with the provisions of section 5 of the Measure and regulation 14 or such a determination in accordance with the provisions of sections 7 or 9 of the Measure and regulation 15.

**Transitory provision**

20.—(1) Where an assessment has effect in accordance with regulation 18 a local authority—

(a) must apply the provisions of regulations 4, 5, 6 and 14 to such an assessment, notwithstanding that it was not undertaken in accordance with these Regulations, save that regulation 6(2) does not have effect,

(b) is not required to act in accordance with section 4 of the Measure or regulation 7, save that regulation 7(2) has effect,

(c) must carry out an assessment of a service user’s means in accordance with section 5 of the Measure where each of the conditions in section 6 of the Measure are met and the service user has requested such an assessment, and

(d) must make a determination as to a service user’s ability to pay a charge, in accordance with regulation 15, as though the assessment of the service user’s means had been undertaken in accordance with section 7 or 9 of the Measure.

(2) Regulation 16(3) has effect in respect of any determination made in accordance with paragraph (1)(d) as though the earlier statement referred to in that regulation is a determination which has effect in accordance with regulation 18.

_Gwenda Thomas_  
Deputy Minister for Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers

24 March 2011
EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 1 of the Social Care Charges (Wales) Measure 2010 (“the Measure”) gives local authorities in Wales a discretionary power to impose a reasonable charge upon adult recipients of non-residential social care services (a “service user”).

These Regulations do not require a local authority to impose a charge when it provides or makes arrangements for the provision of a chargeable service (“chargeable service” is defined in section 13 of the Measure); however, in cases where a local authority does determine to impose a charge upon the service user, the charging policy of that local authority must comply with the relevant provisions of these Regulations (and with any regulations made by the Welsh Ministers under section 16 of the Community Care (Delayed Discharges etc) Act 2003).

Regulation 4 prescribes the classes of persons upon whom and services in respect of which no charge may be imposed by a local authority.

Regulation 5 prescribes that a local authority’s power to determine a reasonable charge for a chargeable service, or combination of services is subject to a maximum reasonable charge of £50 per week; it also contains qualifications to this general proposition and specifies the steps to be taken by a local authority to calculate the amount of the charge which a service user will be liable to pay.

Regulations 6 to 16 detail the steps in the process of assessing a service user’s financial means. They also specify the matters which a local authority must take into account when making an assessment of a service user’s means and in making a determination as to the ability of that person to pay a reasonable charge for the service or services provided.

Regulation 7 requires a local authority to issue an invitation to a service user to request a means assessment. Subsequent regulations make provision for the time in which information or documentation is to be supplied to a local authority (regulation 8), requests for an extension of time in which to provide such information or documentation (regulation 9), the consequences of failing to respond to an invitation to request a means assessment in full or at all (regulations 10 and 11), and the withdrawal of such a request (regulation 12).

Regulation 13 prescribes the circumstances in which a local authority is not under a duty to undertake an assessment of a service user’s means.

Regulation 14 contains provision to which a local authority must give effect when undertaking an assessment of a service user’s means in accordance with section 5(1) of the Measure.

Regulation 15 makes provision about the matters which a local authority must take into account when determining the ability of a service user to pay a reasonable charge for the chargeable services that are offered to, or provided for, that person.

Regulation 16 makes provision for the date from which a charge may be imposed.

Regulations 17 and 18 contain savings provision for assessments of means and determinations of a service user’s ability to pay a charge made before the coming into force of these Regulations.

Regulations 19 and 20 contain transitional and transitory provision.
Annex C: Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011
The Welsh Ministers, in exercise of the powers conferred by sections 12 and 17(2) of the Social Care Charges (Wales) Measure 2010, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011 and they come into force on 11 April 2011.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the 2001 Act” (“Deddf 2001”) means the Health and Social Care Act 2001;

“the Measure” (“y Mesur”) means the Social Care Charges (Wales) Measure 2010;

“the 2011 Regulations” (“Rheoliadau 2001”) means the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011;

“assessable income” (“incwm asesadwy”) means that part of D’s income in respect of which a local authority may make a determination in accordance with regulation 17; it does not include the income which a local authority is required to disregard in accordance with regulation 16;

“assessment of needs” (“asesiad anghenion”) means an assessment by a local authority of D’s need for community care services undertaken in accordance with section 47 of the National Health Service and Community Care Act 1990 or section 1 of the Carers and Disabled

(1) 2010 nawm 2 (“the Measure”). See section 17 of the Measure for the definition of “regulations”.

(2) 2001 c. 15.
Children Act 2000 (4) and “assessed as needing” (“aseswyd bod arno angen”) is to be read accordingly;

“basic entitlement” (“hawlogaeth sylfaenol”) means, in relation to—

(a) income support—
   the personal allowance and any premiums to which D is entitled, but need not include the severe disability premium (“SDP”) where is it paid, and where D is a carer, includes any carer premium that person receives,

(b) employment and support allowance—
   the personal allowance and any premiums and components to which D is entitled, but need not include the SDP where is it paid, and where D is a carer includes any carer premium that person receives,

(c) guarantee credit—
   the personal allowance and any additional amount to which D is entitled, but need not include the additional amount added for severe disability where it is paid, and where D is a carer includes any additional amount applicable for carers that person receives;

“charge” (“ffi”) is the amount that a local authority may require a service user to pay for a service which the authority provides or secures in accordance with section 1(1) of the Measure (general power to charge for care services);

“D” (“D”) means an adult who is prescribed for the purposes of—

(a) section 57(1) of the 2001 Act, by regulation 3 of the 2011 Regulations (prescribed descriptions of persons under section 57(1) of the 2001 Act – community care services and services for carers); and

(b) section 57(1A) of the 2001 Act, by regulation 4 of the 2011 Regulations (prescribed descriptions of persons under section 57(1A) of the 2001 Act – community care services), and

in either case, who has been offered, who is receiving or, in the case of a person described in paragraph (b), in respect of whom a suitable person is receiving, a direct payment for securing the provision of a service;

“day service” (“gwasanaeth dydd”) means a service, which meets a part of D’s assessed needs, which takes place away from that person's home and which is intended to assist the person in meeting others, in taking up new or practising existing interests and includes work opportunities;

“direct payment” (“taliad uniongyrchol”) has the meaning given in regulations 8 and 9 of the 2011 Regulations and any reference to a direct payment includes, where the context requires any part or parts of that payment;

“dual provision” (“darpariaeth ddeuol”) means that D’s assessed needs are being met—

(a) in part by a local authority providing or securing a service or services for that person, and

(b) in part by D receiving a direct payment in order to secure the provision of another or other services;

“employment and support allowance” (“lwfans cyflogaeth a chymorth”) means either contributory employment and support allowance or income-related employment and support allowance in accordance with Part 1 of the Welfare Reform Act 2007 (5);

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(3) 1990 c. 19.
(4) 2000 c. 16.
(5) 2007 c. 5.
“flat-rate charge” ("ffî unffurf") means a fixed rate charge for a chargeable service received by a service user which is imposed by a local authority regardless of the means of the service user;

“guarantee credit” ("credyd gwarant") is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002(6);

“home visiting facility” ("cyleuster ymweliadau cartref") means a visit (or visits) which are undertaken by an appropriate officer of a local authority to D’s current place of residence, or at such other venue as D reasonably requests, for the purposes of gathering information to inform a means assessment for that person and for providing information and offering assistance in relation to that process;

“in writing” ("mewn ysgrifen") means any expression consisting of words or figures that can be read, reproduced and subsequently communicated and may include information transmitted and stored by electronic means;

“income support” ("cymhorthdal incwm") means income support paid in accordance with section 124 of the Social Security Contributions and Benefits Act 1992(7);

“means assessment” ("asesiad modd") means an assessment of D’s financial means undertaken in accordance with regulations 13 and 16 and “assessment of D’s means” ("asesiad o fodd D") is to be read accordingly;

“net income” ("incwm net") means, the income that D has, or would have left after the deduction from that person’s assessable income of the standard amount (or any other amount) required under these Regulations by way of a payment towards the cost of securing the service for which a direct payment is, or will be, received;

“relevant benefit” ("budd-dal perthnasol") means—
(a) income support; or
(b) employment and support allowance; or
(c) guarantee credit;

“savings credit” ("credyd cynilion") has the meaning given in sections 1 and 3 of the State Pension Credit Act 2002;

“service” ("gwasanaeth") means a chargeable service and, where the context requires, chargeable services or a combination of chargeable services and “services” ("gwasanaethau") and “combination of services” ("cyfuniad o wasanaethau") are to be interpreted accordingly;

“service user” ("defnyddiwyr gwasanaeth") means an adult who has been offered, or who is receiving, a service provided or secured by a local authority;

“standard amount” ("swm safonol") means the amount which D would be required to pay towards securing the provision of a service if no assessment of that person’s means or determination of the service user’s ability to pay under these Regulations has effect;

“suitable person” ("person addas") means a person appointed in accordance with regulation 9 of the 2011 Regulations to consent to and to receive a direct payment on behalf of D in accordance with regulation 4 of those Regulations;

“working day” ("diwrnod gwaith") means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971(8).

(2) In these Regulations, any reference to D “paying” ("yn talu") or making a “payment” ("taliad") of an amount (towards the cost of securing the provision of a service) is

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(6) 2002 c. 16.
(7) 1992 c. 4.
(8) 1971 c. 80.
to be interpreted as including a reference to the paying or the making of a payment by way of reimbursement or contribution(9).

Direct payments – local authority determination of the amount of a reimbursement or contribution

3. Where a local authority makes a determination, in accordance with regulation 10(4) or 11(4) of the 2011 Regulations as to what amount or amounts (if any) it is reasonably practicable for D to pay towards the cost of securing the provision a service, it must give effect to—
   (a) the provisions of these Regulations; and
   (b) any regulations made by the Welsh Ministers under section 16 of the Community Care (Delayed Discharges etc) Act 2003(10) (free provision of services in Wales).

Persons and services in respect of which reimbursement or contribution must not be required

4.—(1) A local authority must not require or seek any payment towards the cost of securing the provision of a service in accordance with the 2011 Regulations from D who—
   (a) has been offered or is receiving a direct payment to secure the provision of a service, and who is suffering from any form of Creuzfeldt Jacob disease where that disease has been clinically diagnosed by a registered medical practitioner;
   (b) has been offered or is receiving a direct payment to secure the provision of a service, which forms part of a package of after care services in accordance with section 117 of the Mental Health Act 1983 (after care)(11);
   (c) has had a means assessment undertaken by a local authority and been assessed as having a net income of less than the total amount referred to in regulation 17(2).

   (2) A local authority may not seek any reimbursement or contribution for that part of a direct payment which is intended to meet the reasonable cost of transport to attend a day service, where attendance at the day service and the provision of transport to enable such attendance is included in D’s needs assessment.

   (3) A local authority must not seek to recover any amount from D towards the costs of the provision of a statement of information provided in accordance with regulation 19.

   (4) Nothing in this regulation affects the discretion of a local authority to specify additional categories of D or services from whom or in respect of which payment of an amount may not be required or sought.

   (5) Regulations 5 to 19 do not apply to the persons referred to in sub-paragraphs (a) or (b) of paragraph (1).

Maximum reasonable amount of a reimbursement or contribution payable

5.—(1) Subject to paragraphs (3) and (4), the maximum amount that a local authority may determine to be a reasonable amount for D to pay towards the cost of securing the provision of a service (“maximum reasonable amount”) (“uchafswm rhesymol”) is £50 per week.

   (2) Subject to paragraphs (3) and (4), where D has assessed needs which are met by way of dual provision £50 per week is the maximum of the aggregate of the amounts that a local authority may require D to pay in respect of that provision by way of—

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(9) “Reimbursement” and “contribution” are defined in section 12(5) of the Measure.
(10) 2003 c. 5.
(11) 1983 c. 20.
(a) a charge, and
(b) a payment.

(3) When calculating the maximum reasonable amount that D may be required to pay, a local authority—
(a) must disregard the cost of securing any service for which it imposes a flat-rate charge, and
(b) may impose the charges in respect of such a service in addition to the maximum reasonable
amount.

(4) Where D receives a direct payment to enable the purchase of equipment, which would
otherwise be provided by a local authority, the local authority—
(a) must disregard the cost of the purchase of the equipment when calculating the maximum
reasonable amount that D may be required to pay, and
(b) may require D to pay an amount in excess of and in addition to the maximum reasonable
amount towards the cost of securing the equipment.

Procedure for determining a payment

6.—(1) When determining the amount of any payment that D pays, or may be required to pay,
towards the cost of securing a service, a local authority must adopt the following procedure—
(a) calculate the amount of its reasonable cost of securing the provision of the service for
which D is or will receive a direct payment;
(b) disregard from that total the amount of any charge or payment referred to in regulation 5(3)
and (4);
(c) disregard the reasonable costs of securing the provision of transport to attend a day service,
where the requirement to attend such a service is included in D’s needs assessment;
(d) apply the maximum reasonable amount to this resulting amount where the resulting
amount would otherwise exceed it and this, subject to sub-paragraph (e), is the amount
that the local authority may require D to pay;
(e) subject the amount calculated in accordance with sub-paragraph (d) to a determination of
D’s ability to make a payment in accordance with regulation 17.

(2) The step referred to in paragraph (1)(e) will only be applied where—
(a) D has requested a means assessment; and
(b) a means assessment has been undertaken by the local authority,
in accordance with these Regulations.

Invitation to request a means assessment

7.—(1) A local authority must issue an invitation to D to request an assessment of his or her
means in accordance with regulation 13—
(a) if it is reasonably practicable to do so, when the authority offers to make a direct payment
to D, or where relevant, to a suitable person;
(b) if it has not been reasonably practicable to give an invitation as mentioned in sub-
paragraph (a), as soon as reasonably practicable after the offer was made;
(c) if an invitation has not been given under sub-paragraph (a) or (b) prior to the making of
the first direct payment to D, or where relevant, to a suitable person, as soon as reasonably
practicable after the first direct payment is made.
(2) If a local authority reasonably considers that one or more of the conditions set out in paragraph (3) applies, it must invite D to request a new assessment of his or her means in accordance with regulations 13 and 16 with a view to its making a further determination of D’s ability to make a payment in accordance with regulation 17.

(3) The conditions referred to in paragraph (2) are—

(a) there is an increase, or proposed increase, in the amount of the payment which D is required to make as a result in a change to the local authority’s charging policy;

(b) there is a change in D’s financial circumstances;

(c) there has been a change in the cost of providing a service for which D has been assessed as needing; or

(d) a mistake was made when a determination was made in accordance with regulation 17.

(4) Where a local authority is required by paragraph (1), or determines in accordance with paragraph (2), to issue an invitation to D or, where relevant, to a suitable person, to request an assessment of D’s means in accordance with regulations 13 and 16, it must ensure that the invitation contains full details of—

(a) the services which D has been assessed as requiring and for which a direct payment is being considered;

(b) its charging policy, which must include the following—

(i) its policy in relation to which, if any, of the services for which a direct payment may be provided D may be required to make a payment of an amount towards the cost of securing those services,

(ii) details of the standard amount which D may be required to pay towards the cost of securing any such service,

(iii) details of any service which the local authority secures or provides and for which it may require a service user to pay a charge in accordance with section 1(1) of the Measure (general power to charge for care services),

(iv) details of any service for which the local authority requires a service user to pay a flat-rate charge, and

(v) details of the maximum reasonable amount which may be required or sought in accordance with regulation 5, or the maximum reasonable amount that the local authority applies, where that amount is lower;

(c) its means assessment process;

(d) the information and documentation that D or, where relevant, a suitable person, is required to provide in order that an assessment of D’s means can be undertaken;

(e) the time, as specified in regulation 8, within which D or, where relevant, a suitable person, is required to supply the information and documentation referred to in sub-paragraph (d);

(f) the format in which it will accept the information and documentation referred to in sub-paragraph (d);

(g) any home visiting facility that it provides within its area;

(h) the consequences of failing to respond to the invitation in accordance with sub-paragraph (e);

(i) the named individuals within the authority whom D or, where relevant, a suitable person, should contact should that person require additional information or assistance in respect of any of the processes attendant upon the issue of the invitation;

(j) the right of D or, where relevant, a suitable person, right to appoint a third party to assist, or to act on his or her behalf, in respect of all or part of the means assessment process; and
(k) the contact details of any organisation in its area which provides support or assistance of the type referred to in sub-paragraph (j).

(5) A local authority must provide D or, where appropriate, a suitable person with the information referred to in paragraph (1) in writing, or in any other format that is appropriate to the communication needs of that person(12).

Response to an invitation to request a means assessment

8.—(1) D, or subject to paragraph (3) or (4), D’s representative, must provide a response to the local authority within 15 working days (or such longer period as a local authority may reasonably allow in accordance with regulation 9) of the date the invitation was issued.

(2) D complies with the requirement set out in paragraph (1) if that person or that person’s representative—

(a) requests that the local authority carries out a means assessment in accordance with regulations 13 and 16;

(b) requests assistance from any home visiting facility that is provided by the local authority, where such assistance is required;

(c) provides the information that has been requested by the local authority in the format that the local authority has agreed to accept it;

(d) provides the documentation that has been requested by the local authority;

(e) requests an extension of time, where one is required, in which to provide the information or documentation (or both) that has been requested in accordance with regulation 7(4)(d), giving the reason or reasons why an extension of time is required.

(3) Where D has appointed a representative to act on his or her behalf, D must provide the local authority with the following—

(a) the name and address of the representative,

(b) confirmation that the representative is willing to act on his or her behalf,

(c) details of the nature and extent of the representative’s involvement in the means assessment process, and

(d) details of the nature and extent of the information the local authority may share with his or her representative.

(4) Where a suitable person has been appointed in accordance with regulation 9 of the 2011 Regulations (direct payments under section 57(1A) of the 2001 Act), that person must provide confirmation of his or her name and address to the local authority.

(5) Unless the context otherwise requires, where a representative has been appointed in accordance with paragraph (3) or (4), any reference in this regulation or in regulations 9 to 15 to D, includes that person’s representative.

(6) Any request made in accordance with paragraph (2) or appointment made in accordance with paragraph (3) may be made or communicated orally or in writing by D but must be confirmed by a local authority in writing or in any other format that is appropriate to the communication needs of the service user.

(12) For an explanation of the meaning of “any format appropriate to the communication needs of that person”, please refer to the guidance published by the Welsh Ministers, entitled Introducing More Consistency in Local Authority Charging for Non-Residential Social Services.
Request for extension of time in which to provide information or documentation

9.—(1) A local authority must agree to any reasonable request for an extension of time made in accordance with regulation 8(2)(e).

(2) If D requests an extension of time orally, a local authority may give its response to that request orally, but it must also confirm the response in writing, or in any other format that is appropriate to D’s communication needs.

(3) When responding to a request for an extension of time a local authority must confirm whether or not the request is granted and if granted, must state the period of the extension.

(4) Where a local authority refuses a request for an extension of time, it must give reasons for its refusal of the request.

Failure to respond to an invitation to request a means assessment

10.—(1) Where D fails to respond to an invitation in accordance with regulation 8, a local authority may determine that D is required to pay the standard amount towards the cost of securing the service which was the subject of the invitation.

(2) A local authority’s power to require D to pay the standard amount in accordance with paragraph (1) is subject to the maximum reasonable amount prescribed in regulation 5.

(3) Where paragraph (1) applies, D will be required to pay the standard amount imposed by the local authority from the date that a statement is provided by the local authority in accordance with regulation 19.

(4) If D responds to an invitation to request a means assessment after a local authority has determined, in accordance with paragraph (1), to require D to pay the standard amount or, where relevant, the maximum reasonable amount—

(a) the local authority must proceed to undertake an assessment of D’s means in accordance with regulations 13 and 16 and to make a determination of D’s ability to pay in accordance with regulation 17;

(b) the actions taken by the local authority under sub-paragraph (a) will not affect the liability of D to pay any amount or amounts which he or she has been required to pay towards the cost of securing a service from the date that the statement referred to in paragraph (3) was provided; and

(c) the statement provided in accordance with regulation 19 as a result of the assessment and determination referred to in sub-paragraph (a) (“the second statement”) (“yr ail ddarganfod”) will replace the statement provided in accordance with paragraph (3) and the second statement will take effect from the date that it is provided.

Failure to supply all relevant information and documentation

11.—(1) Where D has failed to—

(a) supply, or

(b) seek an extension of time in which to supply, all the information and documentation reasonably requested by a local authority under regulation 7, the local authority may make an assessment of D’s means on the basis of the partial information or partial documentation (or both) that has been supplied.

(2) Where paragraph (1) applies, the local authority may—

(a) make a determination in accordance with regulation 17;

(b) subject to the maximum reasonable amount prescribed in regulation 5, require D to pay an amount on the basis of its determination; and
(c) proceed to provide a statement in accordance with regulation 19.

(3) Where a local authority determines that D is required to pay an amount towards the cost of securing the provision of a service in accordance with paragraph (2), D will be required to pay that amount from the date that the local authority provides the statement referred to in paragraph (2)(c).

Withdrawal of a request for a means assessment

12.—(1) D may withdraw a request for a means assessment by notifying a local authority at any time before the means assessment has been completed.

(2) D may notify the local authority of the decision to withdraw a request for a means assessment orally, in writing, or in any other format that is appropriate to D’s communication needs.

(3) Where a request is withdrawn in accordance with this regulation, a local authority may, subject to the maximum reasonable amount prescribed by regulation 5, require D to pay the standard amount towards the cost of securing the service that was the subject of the invitation to request a means assessment.

(4) In any case where D notifies a local authority of the withdrawal of a request for a means assessment, the local authority must—

(a) acknowledge receipt of the notification in writing and in any other format that is appropriate to D’s communication needs;

(b) advise D that the withdrawal of this request does not preclude the submission of a further request for a means assessment in respect of the same or a different service; and

(c) advise D whether it will require payment of the standard amount, or the maximum reasonable amount prescribed by regulation 5, towards the cost of securing the service for which the direct payment is, or may be made.

(5) Where D is required to pay an amount towards the cost of securing a service in accordance with paragraph (3), D will be required to pay the amount from the date that the local authority provides a statement in accordance with regulation 19.

Duty to carry out a means assessment

13.—(1) Where each of the conditions in regulation 14 is met, a local authority must carry out an assessment of D’s means if D requests such an assessment.

(2) But a local authority is under no duty to carry out a means assessment under these Regulations in the circumstances prescribed by regulation 15.

Conditions giving rise to the duty to carry out a means assessment

14.—(1) The conditions referred to in regulation 13(1) are set out in the following paragraphs of this regulation.

(2) Condition 1 is that D is—

(a) offered a direct payment; or

(b) receiving a direct payment,

to secure the provision of a service.

(3) Condition 2 is that D requests that the local authority which made the offer to pay, or is making the direct payment, carries out a means assessment in accordance with these Regulations.

(4) Condition 3 is that D provides the authority with any information or documents in D’s possession or under his or her control, which the authority reasonably requires in order to carry out a means assessment.
No duty to carry out a means assessment

15. A local authority is under no duty to carry out an assessment of the means of D—

(a) in respect of whom the following circumstances apply—

(i) a determination made by the authority in accordance with regulation 17 has effect,
(ii) D, who is the subject of the determination, requests that the authority carries out a means assessment in accordance with regulations 13 and 16,
(iii) the request relates to a service to which the determination relates, and
(iv) the authority reasonably considers that there has been no relevant change of circumstance since the determination was made; or

(b) who has been assessed as needing, or who is receiving a service or combination of services for which the local authority applies a flat-rate charge; or

(c) who fails to respond to an invitation to request a means assessment in accordance with regulation 8; or

(d) who withdraws his or her request for a means assessment in accordance with regulation 12.

Means assessment process

16.—(1) Where a local authority carries out an assessment of D’s means in accordance with regulation 13, it must ensure that any process of assessment that it employs gives effect to the requirements of this regulation.

(2) When undertaking a means assessment, if a local authority takes into account D’s savings or capital the local authority must—

(a) subject to sub-paragraph (b) and to paragraph (3), calculate D’s capital in accordance with the provisions of Part 3 of the 1992 Regulations (treatment of capital);

(b) disregard the value of D’s main residence from its calculation of the capital of that person.

(3) Nothing in paragraph (2) affects the discretion of a local authority, when calculating D’s capital, to apply any criteria that are more generous to D than those from time to time applied in the provisions referred to in paragraph (2)(a).

(4) When undertaking a means assessment, if a local authority takes into account D’s income, the local authority must—

(a) assess what part of the D’s income properly constitutes “earnings” (“enillion”) in accordance with the definition “earnings” in regulations 35 and 37 of the of the Housing Benefit Regulations 2006(13), or as the case may be, in regulations 35 and 37 of the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006(14);

(b) disregard in full those earnings;

(c) disregard in full any amount received by D in respect of savings credit; and

(d) disregard in full any payment received by D which is referred to in paragraph 24 of Schedule 3 to the 1992 Regulations (sums to be disregarded in the calculation of income other than earnings)(15).

(13) S.I. 2006/213.

(14) S.I. 2006/214.

(15) Payments referred to in paragraph 24 of Schedule 3 to the National Assistance (Assessment of Resources) Regulation 1992 are described in paragraph 39 of Schedule 9 to the Income Support (General) Regulations 1987 (S.I. 1987/1967) (sums to be disregarded in the calculation of income other than earnings) as “any payment made under or by the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust...the Fund, the Eileen Trust, MFET Limited or the Independent Living Fund (2006).”.
(5) Nothing in paragraph (4) affects the discretion of a local authority when calculating D’s income to apply any criteria that are more generous to D than the provisions of paragraph (4).

(6) In this regulation—

Determination as to D’s ability to pay

17.—(1) Where a local authority has carried out an assessment of D’s means in accordance with regulations 13 and 16, the authority must, in the light of that assessment—
(a) determine whether it is reasonably practicable for D to pay the standard amount towards the cost of securing the provision of the service; and
(b) if the authority determines that it is not reasonably practicable for D to pay the standard amount, subject to the maximum reasonable amount prescribed by regulation 5, determine the amount (if any) which it is reasonably practicable for that person to pay towards the cost of securing the provision of the service.

(2) A local authority must ensure that any amount that it requires D to pay towards the cost of securing the provision of a service does not reduce D’s net income—
(a) where D is in receipt of a relevant benefit, to an amount below the total of—
(i) the amount of D’s basic entitlement to the relevant benefit that is being received by that person,
(ii) an amount of not less than 35% of the entitlement referred to in paragraph (i) (“a buffer”) (“clustog”), and
(iii) an amount to compensate for D’s disability-related expenditure of not less than 10% of the entitlement referred to in paragraph (i); or
(b) where D is not in receipt of a relevant benefit, an amount below the total of—
(i) the amount the local authority reasonably assesses, having regard to D’s age, circumstances and level of disability, would be equal to that person’s basic entitlement to a relevant benefit,
(ii) a buffer of not less than 35% of that amount estimated in paragraph (i) , and
(iii) an amount to compensate for D’s disability-related expenditure of not less than 10% of the amount estimated in paragraph (i).

(3) Nothing in this regulation affects the discretion of a local authority to increase the percentage of the buffer or the amount to compensate for any disability-related expenditure when making a determination in accordance with paragraph (1).

Effect of a determination as to D’s ability to pay

18.—(1) Where a local authority makes a determination in accordance with regulation 17 in the circumstances described in paragraph (2), it may not require any payment to be made until the date that a statement is provided in accordance with regulation 19.

(2) The circumstances referred to in paragraph (1) are where a service user—
(a) has been assessed as requiring a service for the first time; or
(b) is currently securing the provision of a service, but in respect of which service D is being required to pay towards the cost of its provision for the first time.

(3) Where a local authority makes a further determination as to D’s ability to pay in accordance with regulation 7(2), it may not require any payment to be made or alter the amount of any payment that is being made until the date that a statement is provided in accordance with regulation 19.

(4) Where the statement referred to in paragraphs (1) or (3) replaces a statement that has previously been provided in accordance with regulation 19 ("the earlier statement") ("y datganiad cynharach"), the earlier statement will continue to have effect until the date the subsequent statement is provided.

**Statement of information about charges**

19.—(1) Where a local authority has required D to make a payment of an amount (or altered the amount of the payment) towards the cost of securing the provision of a service, it must provide D with a statement in writing, and in any other accessible format that D reasonably requests.

(2) Any statement provided by a local authority in accordance with this regulation must contain—

(a) a description of the service in respect of which D is being required to pay towards securing the provision;

(b) details of the standard amount which a local authority requires D to pay towards the cost of securing the service;

(c) if the amount of the payment that D is being required to pay is not the standard amount, details of the amount of the payment required;

(d) an explanation of how the amount that D is being required to pay has been calculated (including details of any means assessment undertaken in accordance with these Regulations); and

(e) details of D’s right to challenge or complain about the amount of the payment, or the clarity with which the statement is expressed.

(3) A statement provided in accordance with this regulation must be provided to D—

(a) free of charge; and

(b) within twenty-one days of the date on which the decision to require (or alter) the amount of the payment was made.

(4) In these Regulations a statement is “provided” ("ddarparu") on the date that it is issued by a local authority.

**Saving**

20. Where immediately before the coming into force of these Regulations—

(a) an assessment of D’s means, or

(b) a determination of the amount it is reasonably practicable for D to pay towards the cost of securing a service,

has effect, such assessment or determination will continue to have effect notwithstanding that it was not made in accordance with these Regulations.

21. Any assessment or determination referred to in regulation 20 will continue to have effect until replaced by an assessment or determination made in accordance with these Regulations.

**Transitional provision**

22. Where before the coming into force of these Regulations a local authority has obtained information and documentation from D to enable it to—

(a) undertake an assessment of D’s means, or
(b) make a determination of the amount it is reasonably practicable for D to pay towards the cost of securing the provision of a service,

but the assessment has not been undertaken or the determination has not been made upon the coming into force of these Regulations, the local authority must undertake such an assessment in accordance with the provisions of regulation 16 or make such a determination in accordance with the provisions of regulation 17.

Transitory provision

23.—(1) Where an assessment has effect in accordance with regulation 21, a local authority—

(a) must apply the provisions of regulations 4, 5, 6 and 16 to such an assessment, notwithstanding that it was not undertaken in accordance with these Regulations, save that regulation 6(2) does not have effect,

(b) is not required to act in accordance with regulation 7 save that regulation 7(2) has effect,

(c) must carry out an assessment of D’s means in accordance with regulations 13 and 16 where each of the conditions in regulation 14 are met and D has requested such an assessment, and

(d) must make a determination as to the amount that D is able to pay towards the cost of securing the provision of a service, in accordance with regulation 17, as though the assessment of D’s means had been undertaken in accordance with regulations 13 and 16.

(2) Regulation 18(4) has effect in respect of any determination made in accordance with paragraph (1)(d) as though the earlier statement referred to in that regulation is a determination which has effect in accordance with regulation 21.

Gwenda Thomas
Deputy Minister for Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers

24 March 2011
Section 1 of the Social Care Charges (Wales) Measure 2010 (“the Measure”) gives local authorities in Wales a discretionary power to impose a reasonable charge upon adult recipients of non-residential social care services, which are directly provided or secured by the local authority (“service users”). The Welsh Ministers have made Regulations under the Measure, the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 (“the Charges Regulations”), with which local authorities are required to comply when exercising this power.

Section 12 of the Measure gives the Welsh Ministers a discretionary power to make provision in regulations which correspond to the provision for a service user (made in the Measure and in the Charges Regulations) for the adult recipient of direct payments (“D”) who receives such payments to secure the provision of services for himself or herself in accordance with the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011, made under section 57 of the Health and Social Care Act 2001.

These Regulations do not require a local authority to seek any payment (whether by way of reimbursement or contribution) from D towards the cost of securing the provision of the service, or combination of services when it makes a direct payment to the D to enable that person to secure the provision of a “chargeable service”; however, in cases where a local authority does require D to make a payment towards the cost of securing such a service, the local authority must comply with the relevant provisions of these Regulations and any regulations made by the Welsh Ministers under section 16 of the Community Care (Delayed Discharges etc) Act 2003.

Regulation 4 prescribes the circumstances in which a local authority may not require any payment from D towards the cost of securing the provision of a service.

Regulation 5 prescribes that a local authority’s power to determine the “reasonable amount” that D may be required to pay towards the cost of securing a service is subject to a maximum reasonable amount of £50 per week. It also contains qualifications to this general proposition and it specifies the steps to be taken by a local authority to calculate the amount of the payment which D may be liable to pay.

Regulations 6 to 16 detail the steps in the process of assessing D’s financial means; they also specify the matters which a local authority must take into account when assessing D’s means and when making a determination as to D’s ability to pay a reasonable amount towards the cost of securing the service that he or she has been assessed as needing.

Regulation 7 requires a local authority to issue an invitation to D to request a means assessment. Subsequent regulations make provision for the time in which information or documentation must be supplied to a local authority (regulation 8), requests for an extension of time in which to provide information or documentation (regulation 9), the consequences of failing to respond to an invitation to request a means assessment in full or at all (regulations 10 and 11) and the ability of D to withdraw a request (regulation 12).

Regulation 13 imposes a duty upon a local authority to carry out an assessment of D’s financial means in prescribed circumstances and regulation 14 sets out those circumstances.

Regulation 15 sets the circumstances in which a local authority is under no duty to carry out a means assessment.

Regulation 16 contains provision to which a local authority must give effect when undertaking an assessment of D’s means.
Regulation 17 makes provision for the matters that a local authority must take into account when determining the ability of D to pay a reasonable amount towards securing the services that D has been assessed as requiring.

Regulation 18 makes provision for the date from which payment of a reimbursement or contribution may be required.

Regulation 19 contains requirements about the information that a local authority must provide in any statement it issues to D.

Regulations 20 and 21 contain savings provision for assessments of means and determinations of ability to pay towards the cost of securing a service made before the coming into force of these Regulations.

Regulations 22 and 23 contain transitional and transitory provision.
The Welsh Ministers, in exercise of the powers conferred on them by sections 11, 12 and 17(2) of the Social Care Charges (Wales) Measure 2010(1), make the following Regulations:

**Title, commencement and application**

1.—(1) The title of these Regulations is the Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011 and they come into force on 11 April 2011.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2.—(1) In these Regulations—

“the Measure” (“y Mesur”) means the Social Care Charges (Wales) Measure 2010;

“the Regulations” (“y Rheoliadau”) means the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011;

“charge” (“ffi”) means a charge imposed under section 1 of the Measure;

“gross payments” (“taliadau gros”) means payments which are made at such a rate as the authority estimate to be equivalent to the reasonable cost of securing the provision of the service concerned;

“home visit” (“ymweliad â'r cartref”) means a visit which is undertaken by an appropriate officer of a local authority to a requester’s current place of residence or such other venue as the requester reasonably requests;

“in writing” (“yn ysgrifenedig”) means any expression consisting of words or figures that can be read, reproduced and subsequently communicated and may include information transmitted and stored by electronic means;

“requester” (“ceisydd”) means any person—

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(1) 2010 nawm 2 (“the Measure”). See section 17 of the Measure for a definition of “regulations”. 

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(a) to whom a statement must be provided under section 10(4) of the Measure and who requests a local authority to review its decision to impose a charge on them; or
(b) to whom a statement must be provided under regulation 19 of the Regulations and who requests a local authority to review its decision to determine a reimbursement or contribution;

“review period” (“cyfnod adolygu”) means a period commencing on the date the local authority receives a request for a review and ending on the earlier of the date the local authority sends its decision on the review to the requester or the date the local authority receives a withdrawal of the request;

“service” (“gwasanaeth”) means a chargeable service as defined by section 13 of the Measure;

“statement” (“datganiad”) means a statement that is in a format that is appropriate to the communication needs of the requester and, if a requester has appointed a representative, their representative;

“working day” (“diwrnod gwaith”) means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971(2).

Right to request a review

3.—(1) A requester may request a review of a decision to impose upon them or determine, in relation to a service received by the requester, a—

(a) charge;
(b) reimbursement; or
(c) contribution(3).

(2) A request may relate to (but is not limited to) the following circumstances—

(a) a local authority having not complied with any of the duties imposed upon it by the Measure or by regulations made under it;
(b) a local authority having not correctly applied its own charging policy in imposing a charge, or determining a reimbursement or contribution;
(c) an error having been made in the calculation of the charge, reimbursement or contribution;
(d) a charge having been imposed for a service that has not at any time been provided to the requester;
(e) the requester’s financial circumstances having changed since the charge, reimbursement or contribution was calculated;
(f) a requester considering that they do not have the financial means to pay the charge, reimbursement or contribution as to do so would cause them financial hardship.

(3) A request for a review must state which one or more of the circumstances listed in paragraph (2) or any other circumstances are the reason for the review being requested.

(4) A request may be made at any time after a local authority has issued a statement under—

(a) section 10(4) of the Measure; or
(b) regulation 19 of the Regulations.

(5) A request may be made to a local authority either orally or in writing.

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(2) 1971 c. 80.

(3) “Reimbursement” and “contribution” are defined in section 12(5) of the Measure.
A local authority must appoint a person (an “appointed person”) who is a member of the staff of the local authority to deal with the review and reference to “appointed person” in these Regulations is to be construed accordingly.

Regulations 4 to 11 will not apply where a local authority reasonably believes that there has been no relevant change in any of the circumstances listed in paragraph (2) that gave rise to a previous request for a review by or on behalf of the same person and the requester has not stated any other additional circumstances.

Where paragraph (7) applies, the local authority must send a statement to the requester stating that the request for a review will not be considered by the authority because the authority reasonably believes that—

(a) there has been no relevant change in any of the circumstances listed in paragraph (2) that gave rise to a previous request for a review by or on behalf of the same person; and

(b) the requester has not stated any other additional circumstances.

Representatives

4.—(1) Subject to paragraph (2), a review may be requested by a person (a “representative”) acting on behalf of a requester and reference to a “representative” in these Regulations is to be construed accordingly.

(2) If the requester wishes to appoint a representative to request a review on the requester’s behalf, the requester must provide the local authority with their authorisation, either orally or in writing, of the appointment.

(3) If the local authority receives the requester’s oral authorisation, the local authority must provide the requester and their representative with a statement confirming that the requester has given their oral authorisation of the appointment.

(4) Where a representative has been appointed in accordance with this regulation, the representative may act on the requester’s behalf for the whole of the review period unless the requester’s authorisation states otherwise or the requester has withdrawn their authorisation under paragraph (5).

(5) A requester may withdraw their authorisation by giving notice, either orally or in writing, to the appointed person.

(6) Where a representative has been appointed in accordance with this regulation, any reference in regulations 5(1), 6(1)(l) and (m), 7(1), 8(1), (2) and (5) and 9(2) to a requester means that person’s representative to the extent that it is consistent with the requester’s authorisation.

Withdrawal of request

5.—(1) A request may be withdrawn orally or in writing by the requester at any time during the review period.

(2) A withdrawal can only be made to the appointed person.

(3) Where a request is withdrawn, the local authority must provide the requester and any representative with a statement to confirm that the request has been withdrawn and that no further action upon it will be taken as a result.

Acknowledgement of the request

6.—(1) Subject to paragraph (2), a local authority must within five working days of the receipt of any request that complies with regulation 3 send the requester and any representative a statement stating—
(a) the date on which the request was received;
(b) the nature of the request;
(c) if the requester has not already appointed a representative, that the requester may appoint a representative to assist them and act on their behalf during the whole or part of the review period;
(d) how the local authority will carry out the review;
(e) that the requester need not pay the charge, reimbursement or contribution, or the part which is the subject of the review, during the review period;
(f) if the requester decides not to pay the charge, reimbursement or contribution, or the part which is the subject of the review, during the review period, that the requester or any representative must notify the local authority, either orally or in writing, of that decision;
(g) whether, in the event that the requester does not pay the charge, reimbursement or contribution during the review period, the local authority will seek to recover, after the review period, any amount that has accrued and not been paid during the review period;
(h) that if the requester has requested a review of a contribution and has notified the local authority that they will not pay the contribution during the review period, the local authority will make gross payments to the requester during the review period;
(i) what, if any, further information or documentation the local authority reasonably requires from the requester in order to carry out a review and the time limit for the provision of such information or documentation which is specified in regulation 8;
(j) that an appropriate officer of the local authority would be available to carry out a home visit for the purposes of collecting the further information or documentation;
(k) the procedure for requesting a home visit;
(l) the contact details of the appointed person who will be responsible for providing a response to any enquiries the requester may have about the review;
(m) the contact details of any organisation that might be able to assist the requester during the review period.

(2) Paragraph (1) does not apply where a local authority sends its decision on the review to the requester and any representative within five working days of the receipt of the request.

**Home visit**

7.—(1) The requester may elect to provide any information or documentation reasonably required by the local authority during a home visit by notifying the appointed person either orally or in writing.

(2) If an election is made under paragraph (1), the local authority must carry out a home visit.

**Time limit for the provision of further information or documentation**

8.—(1) Subject to paragraph (2), if further information or documentation is reasonably required by the local authority, the requester must provide the local authority with that information or documentation within 15 working days of the date of the request for further information or documentation being made.

(2) Within the period specified in paragraph (1), the requester may ask the local authority, either orally or in writing, for an extension of time to provide the further information or documentation.

(3) Any request for an extension should state the reason why the information or documentation required cannot be provided within the period specified by paragraph (1).

(4) A local authority must grant any reasonable request for an extension.
(5) If an extension is granted by the local authority, the local authority must confirm in a statement sent to the requester that—
   (a) the time limit for the provision of further information or documentation has been extended; and
   (b) the length of that extension.

(6) In the event that the local authority does not receive the further information or documentation or a request for an extension of time within the time specified in paragraph (1), it may treat the request as if it has been withdrawn.

(7) If paragraph (6) applies, the local authority must send a statement to the requester and any representative stating—
   (a) that the local authority are now treating the request as if it has been withdrawn;
   (b) that the charge, reimbursement or contribution is now payable;
   (c) the amount (if any) that has accrued and not been paid by the requester during the review period; and
   (d) if the local authority seeks to recover any accrued amount from the requester, the amount and the date by which the amount must be paid.

Decision

9.—(1) As soon as possible, and in any event within 10 working days of receiving sufficient information and documentation to carry out the review, the local authority must—
   (a) make a decision on the review and the action that is necessary to implement it;
   (b) send a statement to the requester and any representative stating—
      (i) the decision;
      (ii) the reasons for that decision;
      (iii) that the requester has a right to make a complaint under the Social Services Complaints Procedure (Wales) Regulations 2005(4) if they are dissatisfied with the decision;
   (c) if the requester’s charge has been amended as a result of the review, provide the requester with a statement containing the information set out in section 10(4) of the Measure; and
   (d) if the requester’s reimbursement or contribution has been amended as a result of the review, provide the requester with a statement containing the information set out in regulation 19(2) of the Regulations.

(2) If the local authority concludes that it is unable to meet the deadline specified in paragraph (1), it must as soon as possible and in any event within the period specified in paragraph (1) provide the requester with a statement stating—
   (a) that it will not be able to provide a decision within the deadline specified in paragraph (1);
   (b) the reasons for not being able to comply with that deadline;
   (c) the date by which it will provide a decision; and
   (d) that the requester may elect not to pay the charge, reimbursement or contribution for the remainder of the review period by notifying the local authority either orally or in writing.

(3) Before making a decision under paragraph (1)(a), the local authority must consider—
   (a) the details of the request;

(4) S.I. 2005/3366 (W 263).
(b) the local authority’s current charging policy;
(c) the Measure;
(d) the Regulations;
(e) the Social Care Charges (Means Assessments and Determination of Charges) (Wales) Regulations 2011;
(f) the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011;
(g) any guidance published by the Welsh Ministers under section 7 of the Local Authority Social Services Act 1970(5);
(h) the requester’s income and expenses; and
(i) any circumstances both current and foreseeable that may affect the requester’s ability to pay the charge.

(4) A statement will be deemed to have been provided under paragraph (1) on the date it is issued by the local authority.

Payment of the charge, reimbursement or contribution during and after the review period

10.—(1) If a request is made, the requester may elect to not pay their charge, reimbursement or contribution or the part which is the subject of the review, during the whole of the review period but any unpaid amount will accrue.

(2) If an election is made under paragraph (1), the requester must notify the local authority of their election, either orally or in writing, within five working days of receiving a statement under regulation 6(1).

(3) If a local authority sends a statement to the requester under regulation 9(2), the requester may elect to not pay their charge, reimbursement or contribution or the part which is the subject of the review, during the remainder of the review period and any amount that is not paid during the remainder of the review period will not accrue.

(4) If an election is made under paragraph (3), the requester must notify the local authority of the election, either orally or in writing, within five working days of receiving a statement under regulation 9(2).

(5) Where a local authority is notified that the requester will not pay their contribution during the whole or remainder of the review period, the local authority must make gross payments to the requester during—

(a) the whole of the review period where an election under paragraph (1) is made; or
(b) the remainder of the review period where an election under paragraph (3) is made.

(6) Subject to paragraphs (7) and (8), a local authority may recover any unpaid amount that has accrued during the review period under paragraph (1) after the review period.

(7) The accrued amount that may be recovered under paragraph (6) is the amount of the charge, reimbursement or contribution that the local authority has decided is correct under regulation 9(1)(a).

(8) A local authority may not recover any charge, reimbursement or contribution, or the part which is the subject of the review, that has not been paid between the sending of a statement under regulation 9(2) and the end of the review period.

(9) If a local authority decides that the charge, reimbursement or contribution that should be payable by the requester is less than that previously imposed on the requester, the local authority must within 10 working days of sending its decision to the requester, pay the requester the difference

(5) 1970 c. 42.
between the amount that should be payable and the amount, if any, that has already been paid by
the requester.

(10) If a local authority decides that the amount that should be payable by the requester is more
than that previously imposed on the requester, the local authority may, subject to paragraph (8),
recover the difference between the amount of the charge, reimbursement or contribution that should
be payable and the amount, if any, that has already been paid by the requester.

(11) The amount that a local authority must pay under paragraph (9) or may recover under
paragraph (10), where the amount of the charge, reimbursement or contribution has been amended
due to a change in the requester’s financial circumstances, can not relate to any period of time before
that change in financial circumstances.

(12) If recovering any amount from the requester under paragraph (6) or (10) the local authority
must—

(a) have regard to the requester’s personal financial circumstances; and
(b) be satisfied that the recovery of the amount will not cause the requester to suffer financial
hardship(6); or
(c) if the local authority believes that the recovery of the amount would cause the requester to
suffer financial hardship, offer the requester the option of repaying the amount in periodic
instalments.

Transitional provision

11. Where, immediately before the coming into force of these Regulations, a review of a charge,
reimbursement or contribution has been requested but not yet been decided by the local authority,
the local authority may continue with the review and these Regulations do not apply in relation to
that review except that the local authority must send a decision to the requester within three months
of the coming into force of these Regulations.

Gwenda Thomas
Deputy Minister for Social Services, under
authority of the Minister for Health and Social
Services, one of the Welsh Ministers

24 March 2011

(6) For an explanation of the meaning of “financial hardship”, please refer to guidance published under section 7 of the Local
Authority Social Services Act 1970 (c. 42).
Section 1 of the Social Care Charges (Wales) Measure 2010 gives local authorities in Wales a discretionary power to impose a reasonable charge upon adult recipients of non-residential social care services. Regulations 10(2) and 11(2) of the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011 give local authorities in Wales a discretionary power to determine the amount that it is reasonably practicable for a recipient of social care services to pay by means of a reimbursement or contribution towards securing the provision of services by means of a direct payment.

Where a local authority decides to impose a charge or determine a reimbursement or contribution, regulation 3 of these Regulations gives the recipient of the service in relation to which a charge has been imposed or a reimbursement or contribution has been determined (“the requester”) the right to request a review of that decision.

Regulation 4 provides that a request may also be made by a representative acting on behalf of the requester, providing that the requester gives their authorisation.

Regulation 5 gives the requester the right to withdraw a request.

Regulation 6 requires the local authority to provide the requester with a written acknowledgement within five working days of receiving the request. This regulation also prescribes what the acknowledgment must contain.

In the event that the local authority requests further information or documentation from the requester, regulations 7 and 8 provide for how and when that information or documentation must be provided.

Regulation 9 requires the local authority to provide the requester with a decision, with reasons, within 10 working days of having sufficient information and documentation to carry out the review. This regulation also sets out what a local authority must have regard to before making its decision.

Regulation 10 deals with what happens to the charge, reimbursement or contribution from the date the request is received by a local authority until its withdrawal or until the local authority sends a decision to the requester (“the review period”). A requester is not obliged to pay the charge, reimbursement or contribution during the review period but the liability continues to accrue. The local authority may recover any accrued amount after the review period.

In relation to direct payments, if the requester notifies the local authority that they will not pay their contribution during the review period, the local authority must make gross payments to the requester during the review period.

In the event that the local authority decides that the charge, reimbursement or contribution was too high, it must return any over-payment to the requester within 10 working days. If a local authority decides that the charge, reimbursement or contribution was too low, it may recover any under-payment from the requester.

Local authorities must have regard to any guidance issued by the Welsh Ministers under section 7 of the Local Authority Social Services Act 1970, which provides more detail about the review process.
Annex E: Basic Entitlements: The Buffer and Disability Related Expenditure Allowance

PART 1: BASIC ENTITLEMENTS
Basic entitlements should include the Personal Allowance (standard minimum guarantee in Pension Credit cases) and any Premiums; Additional Amounts (in the case of Pension Credit guarantee credit) or Components (in the case of ESA) appropriate to the service user, according to age, disability and personal circumstances. For carers this should include any Carer Premium or Additional Amount for Carers (in the case of Pension Credit guarantee credit). However it need not include the Severe Disability Premium or Additional Amount for Severe Disability (in the case of Pension Credit guarantee credit).

Abbreviations used below:
ESA: Employment and Support Allowance.
ESA (C): Employment and Support Allowance (Contribution based).
ESA (IR): Employment and Support Allowance (Income Related).
DLA: Disability Living Allowance.

Examples of Basic Entitlements:
Current benefit and pension rates can be found in the document ‘Benefit and Pension Rates’ on the Department for Work and Pensions Website, under ‘B’ of the A-Z listings at the following link:

The following examples are given using benefit rates as at October 2010 by means of a guide only. They do not cover every variation of basic entitlement. The appropriate basic entitlement for each service user should be considered on an individual basis. Local authorities should seek guidance from Department for Work and Pensions on basic entitlements where necessary.

Where a service user does not receive any of these benefits local authorities should establish an amount for such individuals that they consider would be equal to their basic entitlement to a relevant benefit based on that person’s age, level of disability and personal circumstances. Local authorities should seek guidance on eligibility criteria for benefits from the Department for Work and Pensions.

A: Single, aged 18 and eligible for Enhanced Disability Premium (EDP)

ESA:
ESA (IR) main phase personal allowance: £65.45
Support Component: £31.40
Enhanced Disability Premium £13.65
**Basic Entitlement = £110.50**
**Income Support:**
Income Support personal allowance: £51.85  
Disability Premium: £28  
Enhanced Disability Premium £13.65  
**Basic Entitlement = £93.50**

**EDP:** Under ESA rules Premiums will only be awarded in ESA(IR). Service users entitled to the support component of ESA (IR) will be automatically entitled to the Enhanced Disability Premium. Under Income Support rules the claimant has an underlying eligibility for Enhanced Disability Premium if they are receiving the highest rate care component of DLA or they have a dependent child receiving this.

**B: Single, aged 40 and eligible for Disability Premium (DP) under Income Support**

**ESA:**
ESA (IR) or ESA (C) main phase personal allowance: £65.45  
Work-related Activity Component: £25.95  
**Basic Entitlement = £91.40**

**Income Support:**
Income Support personal allowance: £65.45  
Disability Premium: £28  
**Basic Entitlement = £93.45**

**DP:** The Disability Premium is not part of the structure of ESA. However, other premiums currently payable in income-related benefits will still be available under ESA (IR).

**C: Carer, Single, aged 50 and eligible for a Carer Premium (CP) and Disability Premium (DP) under Income Support**

**ESA:**
ESA (IR) main phase personal allowance: £65.45  
Work-related Activity Component: £25.95  
Carer Premium: £30.05  
**Basic Entitlement = £121.45**

**Income Support:**
Income Support personal allowance: £65.45  
Disability Premium: £28  
Carer Premium: £30.05  
**Basic Entitlement = £123.50**

**CP:** If a service user receives Carer's Allowance or has underlying entitlement to it they will qualify for the carer premium. If both partners in a couple either receive or have an underlying entitlement to Carer’s Allowance they can both get the carer premium.
D: Couple, aged 50 and 55, where under ESA one member of a couple is eligible for ESA (IR) with a support component and the other is eligible for ESA (C) with a support component.

ESA(C) is a single person benefit. Therefore, there are no increases for partners or dependent children. But in ESA(IR) there are rates for couples, however, there are no allowances for children as they are provided for by the Child Tax Credit system. The ESA component is paid on a single basis, ie there is no couple rate in ESA(C) or ESA(IR). However if both members of a couple are entitled to ESA(C) in their own right they will each be entitled to a component, provided each of them satisfies the Work Capability Assessment.

**ESA:**
- ESA (IR) main phase (over 18) couple allowance: £102.75
- Support Component: £31.40
- Enhanced Disability Premium (couple): £19.65
- Total: £153.80

(The ESA(C) of the other member of the couple (personal allowance + support component = £96.85) will be deducted from the total. So in this case, the couple will receive £56.95 ESA (IR) and £96.85 ESA(C)).

**Basic Entitlement = £153.80**

**Income Support:**
- Income Support (over 18) couple allowance: £102.75
- Disability Premium (couple): £39.85
- Enhanced Disability Premium (couple): £19.65

**Basic Entitlement = £162.25**

**EDP:** Under Income Support there is underlying eligibility for the couple rate of Enhanced Disability Premium if the service user or their partner gets the highest rate care component of DLA and they are both under 60.

E: Single, aged 80.

Guarantee Credit minimum guarantee: £132.60

**Basic Entitlement = £132.60**

F: Couple, aged 80 and 85, where one person is eligible for an additional amount for caring responsibilities.

Guarantee Credit couple minimum guarantee: £202.40
- Additional amount for carers: £30.05

**Basic Entitlement = £232.45**
PART 2: THE BUFFER AND DISABILITY RELATED EXPENDITURE ALLOWANCES

Local Authorities must, when determining a services user’s charge, ensure that their net income is not reduced below an individual’s “basic entitlement” plus a “buffer” of 35% of this amount, and a further Disability Related Expenditure allowance of 10% of this entitlement. Local authorities can operate charging policies that allow for more than the minimum levels above prescribed in the regulations.

Calculation Examples

The examples below have been selected from the basic entitlement examples given in Part 1. They only represent the minimum prescribed in the regulations.

A: Single, aged 18 receiving ESA support component and EDP

**Total Income: £181.90**
- ESA (IR) Personal Allowance (£65.45)
- Support Component (£31.40)
- Enhanced Disability Premium (£13.65)
- Higher rate Disability Living Allowance, Care Component (£71.40)

**Entitlement to be retained by service user: £160.23**
- Basic Entitlement: £110.50 (personal allowance + support component + EDP)
- Buffer: £38.68 (35% of Basic Entitlement)
- Standard Disability Related Expenditure Disregard: £11.05 (10% of Basic Entitlement)

**Income against which a charge could be levied: £21.67**
Actual charge depends on charge rates set and hours of care, subject to the maximum charge.

B: Single, aged 40 and receiving income support with a Disability Premium

**Total Income: £93.45**
- Income Support personal allowance: £65.45
- Disability Premium: £28

**Notional Entitlement to be retained by service user: £135.50**
- Basic Entitlement: £93.45 (Personal Allowance + Disability Premium)
- Buffer: £32.71 (35% of Basic Entitlement)
- Standard Disability Related Expenditure Disregard: £9.35 (10% of Basic Entitlement)

**Income against which a charge could be levied: £0**
E: Single, aged 80

**Total Income: £307.40**
Retirement Pension: £121
+ Occupational Pension: £115
+ Attendance Allowance, higher rate: £71.40

**Entitlement to be retained by service user: £192.27**
Basic Entitlement: £132.60 (Guarantee Credit minimum guarantee)
+ Buffer: £46.41 (35% of Basic Entitlement)
+ Standard Disability Related Expenditure Disregard: £13.26 (10% of Basic Entitlement)

**Income against which a charge could be levied: £115.13**
Actual charge depends on charge rates set and hours of care, subject to the maximum charge.

‘A Best Value Charge?’: a checklist for councillors and managers (based on Charging with Care, Audit Commission, May 2000, Table 2)

A number of questions will help councils to review how their approach to charging for home care compares with best practice.

<table>
<thead>
<tr>
<th>Principle</th>
<th>Key Questions</th>
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<tbody>
<tr>
<td>Establish clear principles to guide charging</td>
<td>Are there principles to guide charging for home care? Do they answer the key questions:</td>
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<tr>
<td></td>
<td>• Who should subsidy be targeted at? Why?</td>
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<td></td>
<td>• How should charges vary with the level of service received? Why?</td>
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<td></td>
<td>• How should charges vary with users’ means and how should national benefits be treated?</td>
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<td></td>
<td>• Is it clear how costs of disability are taken into account?</td>
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<td></td>
<td>• Are members committed to the principles and their implications for charges and services?</td>
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<td></td>
<td>• Are incentives to work for the user or carer preserved?</td>
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<tr>
<td>Consider charging as an integral part of service review</td>
<td>• Are charges reviewed as part of best value review and service planning?</td>
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<td></td>
<td>• Does the approach to charging fit with corporate priorities such as anti-poverty?</td>
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<td>• Are charges designed to deliver service objectives? Is the potential of charges to improve services or extend access considered?</td>
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<td>• Is there an effective process to review charges? (Are options evaluated? Is adequate information available?)</td>
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<tr>
<td>Meet the needs of users</td>
<td>Open communication and consultation</td>
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<td>• Does meaningful consultation take place over the design and management of charges? Do managers know users' key concerns?</td>
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<td>• Do users know that they can ask for charges to be reviewed or waived? Are such systems accessible to all? Is how to find out more or seek advice?</td>
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<td>• Are forms, letters and leaflets well designed (easy to follow, adequate print size, community languages)?</td>
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<td>• Are users told why information is required and given assurances over confidentiality?</td>
<td><em>Ensuring users are able to pay:</em></td>
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<tr>
<td>• Is the council effectively promoting benefits take-up by new and existing users? Is expert advice available to help users maximise their income?</td>
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<tr>
<td>• Are users given a record of the assessment that explains how their charge has been calculated? Do users understand how/if their charge would change if their needs or means changed?</td>
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<tr>
<td>• Is it clear how costs of disability have been taken into account? Will users know when they should ask for a review of their charges?</td>
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<td>• What happens when users cut down or withdraw from services? Are the reasons identified? What help is offered?</td>
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<td>• Does the council pro-actively monitor arrears to identify if users may be having difficulties paying, and initiate action to help tackle problems?</td>
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<tr>
<td>Manage performance effectively</td>
<td>Is key performance information gathered and acted upon? Are targets set and published?</td>
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<td>Are financial assessments carried out efficiently? Are they accurate and are users made aware of the results as soon as possible?</td>
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<td>Are users billed promptly and accurately?</td>
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<td>Do managers monitor the impact of charges on users (users cutting down on services or building up arrears)?</td>
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<tr>
<td>Are charges managed efficiently and effectively?</td>
<td>Are managers aware of the costs of charging?</td>
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<td>Have the costs of charging been minimised by careful review of assessment processes, and methods of billing and payment?</td>
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<td>Could links be improved between finance and care management systems? Do different staff (social services, finance, welfare rights, care providers) work together effectively?</td>
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<td></td>
<td>Are variations in services processed promptly and accurately?</td>
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<td>Are staff adequately trained, so that users are treated consistently and sensitively?</td>
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