

## **REGULATORY APPRAISAL**

### **SOCIAL SERVICES, WALES**

#### **THE COMMUNITY CARE, SERVICES FOR CARERS AND CHILDREN'S SERVICES (DIRECT PAYMENTS) (WALES) AMENDMENT REGULATIONS 2006**

##### **Background**

1. Direct Payments offer individuals more flexibility in how to meet assessed care needs by enabling local authorities to offer cash payments to service users to purchase their own care. From 1 November 2004 local authorities have had a duty to offer Direct Payments to all people who are potentially eligible (under the 2004 Regulations and the Children Act 1989) to receive them. The current eligible groups are:
  - adult disabled persons receiving particular community care services (that is a person to whom section 29 of the National Assistance Act 1948 applies);
  - persons receiving carers services under section 2(1) of the Carers and Disabled Children Act 2000;
  - the following persons receiving services under section 17 of the Children Act 1989:
    - a person with parental responsibility for a disabled child;
    - a disabled person with parental responsibility for a child;
    - a disabled child aged 16 or 17.
  - persons aged 65 or over receiving particular community care services.
2. Not all community care services are eligible for a direct payment arrangement but the most important exclusion is residential care.

##### **Purpose and intended effect of the measure**

3. These Regulations will redefine the prescribed description of adults aged 18 to 64 who are eligible for Direct Payments, which under Regulation 3(2)(a) of the main 2004 Regulations is by reference to section 29 of the National Assistance Act 1948, to a more general definition of a person of whom a local authority have decided his or her needs call for the provision of a particular community care service. Such care services would encompass respite care; day services and domiciliary care. This change of definition will bring this age group into line with people aged 65 or over.

##### **Risk Assessment**

4. The purpose of the Direct Payments Scheme is to empower individuals to make day to day decisions on how best to meet their care needs to suit their individual circumstances. It provides flexibility and promotes innovation in the

way that individuals meet their assessed care needs. Not introducing these Regulations would mean that a number of persons aged 18 to 64, who are potentially eligible to receive Direct Payments would remain ineligible, leaving them at a disadvantage compared to those who currently receive Direct Payments.

5. The existing main 2004 Regulations set out a prescribed description of persons aged 18 to 64 who are potentially eligible for direct payments by reference to a person to whom section 29 of the National Assistance Act 1948 applies. Section 29 of the 1948 Act applies to:

“..persons aged 18 or over who are blind, deaf or dumb or who suffer from mental disorder of any description, and other persons aged 18 or over who are substantially and permanently handicapped by illness, injury or congenital deformity...”

6. In particular, the words ‘substantially and permanently handicapped’ have left some room for the exercise of judgement as to whether some particular individuals could fall into the direct payments prescribed description of persons. Possible examples include, people with Asperger’s Syndrome (a form of autism) and a co-existing mild learning disability whose condition is generally well managed and controlled but may require intermittent support from care services; younger adults who are becoming frailer due to the effects of the onset/ development of arthritis/rheumatism or people who are recuperating from a hospital operation that may require support for the first few months. The numbers are relatively small.
7. The conclusion, therefore, was that it would be appropriate to redefine the prescribed descriptions of persons who are eligible for direct payments from section 29 of the 1948 Act to a more general definition of a person of whom a local authority have decided his or her needs call for the provision of a particular community care service. This re-definition removes any possible ambiguity.

## **Options**

### Option 1: Do Nothing

8. This would mean that a number of persons aged 18 to 64 receiving particular community care services would continue to be ineligible to benefit from a Direct Payments arrangement.

### Option 2: Make the Legislation

9. This would remove any ambiguity in defining those eligible for direct payments and therefore, all adults aged 18 to 64 receiving particular community care services would be potentially eligible to receive direct payments.

## **Benefits**

10. The main benefit which should stem from the new Regulations will be the extended empowerment of persons in receipt of particular community care

services so that they can exercise more independence and choice on how their care services are provided in the best way to meet their circumstances.

### **Costs**

11. The main areas of costs associated with the draft Regulations relate to additional direct payments administrative costs for local authorities and additional costs for local direct payments support scheme providers. The local support scheme providers are a vital source of advice and help for persons who have taken up a direct payments arrangement. These local support schemes are commissioned by local authorities and provided by voluntary sector organisations such as the Shaw Trust, the Rowan Organisation and the Cardiff and Vale Coalition. Many of these local support schemes are working at or close to their existing capacity. A small increase in the number of individuals due to change in eligibility may mean that some local support schemes will be unable to effectively provide the support that is required for direct payments recipients without increasing their capacity. The additional direct local authorities administrative and local support schemes costs have been estimated as £0.8 million and this sum is being made available to local authorities from 2006-07 through the Revenue Support Grant.
12. The number of people affected by this change will be relatively small and the extra administration costs per authority are estimated to be some £5,000 to £6,000 per annum. Annual extra cost around £120,000.
13. As stated previously, in terms of the local support schemes, the available information suggests that all are already working at or near capacity. A very small increase in numbers will require extra staff resource for the support schemes. However, the diverse nature of the size and structure of the existing support schemes organisations means that a costing that only allows for a few hours of additional staff costs per week would not be appropriate. The support schemes would have to recruit on a minimum half time or full time basis leaving a relatively large funding gap that could not be absorbed by the support schemes. We have therefore allowed for additional staff and add on costs of some £18,000 per local support scheme. Annual extra cost around £410,000.
14. Adding these two elements together comes to some £24,000 per authority or £530,000 per annum. However, when one applies the normal local authority Revenue Support Grant (RSG) Standard Spending Assessment (SSA) population based formula for distributing these resources between the local authorities, authorities with smaller populations such as Monmouth, Pembroke, Neath Port Talbot, Torfaen and Ceredigion would each receive between £15,000 and £23,000 as their annual allocation through the RSG. However, while these 5 authorities account for some 17% of the population, in direct payment terms these 5 authorities account for 30% of the overall take up. It was therefore concluded that it would be inappropriate to leave local authorities, which had been comparatively successful in managing their direct payments scheme with a potential funding deficit in implementing the new direct payments arrangements due to the impact of applying the SSA population based distribution formula. Accordingly the global amount being made available was increased to £800,000 to ensure that every authority would

receive as a minimum some £24,000 per annum when the SSA population based distribution formula was applied.

## **Consultation**

### With Stakeholders

15. These draft Regulations were subject to a public consultation between 20 February 2006 and 8 May 2006. A list of those consulted is attached at Annex 1. Eleven consultation responses were received and a summary of the responses is attached at Annex 2. Responses were generally supportive of the changes proposed by the draft Regulations and no amendments were suggested.

### With Subject Committee

16. These Regulations were notified to the Health and Social Services Committee, via the list of forthcoming legislation, on 19 January 2006 (HSS(2)-1-06(p3a), item no: HSS (2) 06) and have remained on the list ever since. They were identified for detailed scrutiny.

17. The Regulations were scrutinised by the Committee on 5 July 2006 (HSS(2)-12-06(p3)). No amendments were proposed, but two points of clarification were raised concerning the availability of promotional material on direct payments in different formats. The Regulations were agreed as clarified. A transcript of the discussion is attached at Annex 3.

## **Review**

18. The Welsh Assembly Government will monitor the operation of the new arrangements following legislation and implementation. On an annual basis we shall work with the local authorities to survey a range of matters relating to direct payments including overall take up and take up by different client groups. Each year we shall publish some of the key information from this survey. We have also established a Wales Direct Payments Overview Group, which brings together representatives from social services, the direct payments support schemes, Social Services Inspectorate Wales, the voluntary sector and recipients of direct payments. This Overview Group will provide advice to the Welsh Assembly Government on the implementation of the direct payments scheme and how it could be developed further.

## **Summary**

19. These draft Regulations will extend the coverage of the direct payments scheme to encompass potentially all adults aged 18 to 64 in receipt of particular community care services. Thus, extending the opportunities to empower people so that they can exercise more independence and choice on how their care services are provided in the best way to meet their own circumstances.

## **Annex 1**

### **List of Consultees – The Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Amendment Regulations 2006**

Local Authority Chief Executives and Directors of Social Services in Wales  
The Welsh Local Government Association

#### **Direct Payments Support Schemes:**

The Shaw Trust  
The Rowan Organisation  
Penderels Trust  
AVOW (Association of Voluntary Organisations Wrexham)  
GAVO (Gwent Association of Voluntary Organisations)  
Cardiff and Vale Coalition of Disabled People  
RCT Centre for Independent Living  
Centre for Independent Living – Anglesey

#### **Voluntary Organisations**

Age Concern Cymru  
Crossroads Wales  
Wales Council for Deaf People  
SENSE Cymru  
Deaf Association Wales  
RNID Cymru  
RNIB Cymru  
Carers Wales  
Disability Wales  
Wales Council for the Blind  
Princess Royal Trust for Carers  
Wales Mobility & Drivers Assessment Service  
Epilepsy Wales  
Contact a Family Wales  
SCOPE Cymru  
Leonard Cheshire  
Learning Disability Wales  
All Wales People First  
National Autistic Society  
Circles Network  
MENCAP in Wales  
AWFPC (All Wales Forum of Parents and Carers)  
Down’s Syndrome Society  
Vision 21  
Alzheimer’s Society  
Cruse Bereavement Care  
Depression Alliance  
MIND Cymru

Wales Council for Voluntary Action  
MDF Wales  
US Network  
HAFAL  
The Samaritans  
The Churches Counselling Service in Wales  
Rural Stress Information Network  
Awetu

**Others**

Learning Disability Advisory Group Members  
Carers Strategy Review Panel Members  
Wales Direct Payment Overview Group Members

## Annex 2 – Summary of responses to the Consultation

Respondent	Comments	WAG Response
Age Concern Cymru (ACC)	<ul style="list-style-type: none"> <li>• <b>ACC</b> supports the move to extend DPs to those aged 18-65. A Joseph Rowntree study into DPs for older people reported a positive impact upon their social, emotional and physical health</li> <li>• <b>ACC</b> is pleased to see that the potential increase in costs to local support schemes will be met through an increase in the RSG, but are not in a position to comment on the adequacy of the amount proposed.</li> <li>• <b>ACC</b> believes that funding support schemes is critical to the functioning of the Direct Payments Scheme</li> <li>• <b>ACC's</b> main concern is ensuring that older people in Wales are aware of the existence of Direct Payments. Uptake has increased since the offer of a Direct Payment became mandatory but it is still patchy throughout Wales.</li> <li>• <b>ACC</b> would like to take this opportunity to raise the need for DPs to become part of the culture of care management and to root out assumptions made about older people's ability to take up the option of a Direct Payment.</li> </ul>	Comments noted

Respondent	Comments	WAG Response
<b>Carers Wales (CW)</b>	<ul style="list-style-type: none"> <li>• <b>CW</b> welcomes the extension of eligibility to all adults aged 18-64 in receipt of community care services.</li> <li>• Support Services need to be available to ensure that more people feel confident in using the scheme.</li> <li>• Direct services from local authorities need to be freely available to back up and supplement services purchased with a Direct Payment</li> </ul>	Comments noted
<b>Ceredigion County Council (CCC)</b>	<ul style="list-style-type: none"> <li>• <b>CCC</b> are in agreement with the proposed extension of the eligible groups of adults aged 18 to 64 to those potentially eligible to receive Direct Payments. This will enable all adults aged 18 or over to be eligible for services under the same criteria. This will increase the numbers of people who can exercise more independence and choice.</li> <li>• It is difficult to predict how many people will be affected.</li> <li>• The Support Scheme run by the Rowan Organisation is operating to near capacity and any significant increase in the numbers of DP users</li> </ul>	<p>Comments noted</p> <p>In addition to the additional resources being made available to local authorities it is open to the local authorities to gather evidence about any unmet new cost pressures to include as a bid within the</p>



Respondent	Comments	WAG Response
		social services part of the Local
<b>Ceredigion CC cont</b>	<ul style="list-style-type: none"> <li>would have to be met by a corresponding increase in Support Scheme staff. The estimated money allocated through the RSG will help but will not fully cover the cost. The authority hopes that further funds could be made available by WAG if evidence was provided of need.</li> <li>There will be increase costs to the Authority, whatever the scale of the increase in the number of recipients. All publicity and guidance material will have to be updated and this will incur printing and administrative costs. The envisaged increase in take-up will also impact on existing administrative capacity in terms of the operation and monitoring of the payments. These additional requirements will not be met adequately from the additional amount allocated and access to further funds if needed and evidenced would be of assistance.</li> </ul>	Authorities Expenditure Sub Group Report which forms part of the Revenue Support Grant arrangements.
<b>Conwy Borough (CCBC)</b>	<ul style="list-style-type: none"> <li><b>CCBC</b> has not issues with the proposed change to remove the</li> </ul>	Comments noted
<b>Conwy cont</b>	<p>disability link</p> <ul style="list-style-type: none"> <li>Given the term disability is so wide anyway, and the eligibility criteria for community care, this change in definition will not really have an impact as most clients would fit the definition of disability.</li> </ul>	
<b>Crossroads (CW)</b>	<ul style="list-style-type: none"> <li><b>CW</b> welcome and fully supports the WAG's proposed change to the DP arrangements which will extend the categories of people potentially eligible for DPs to include all people aged 18 to 64 in receipt of community care services.</li> </ul>	Comments noted
<b>Denbighshire County</b>	<ul style="list-style-type: none"> <li><b>DCC</b> is of the opinion that extending the DP scheme to encompass all</li> </ul>	Comments noted

Respondent	Comments	WAG Response
<b>Council (DCC)</b>	adults who have assessed care needs is appropriate.	
<b>Flintshire County Council (FCC)</b>	<ul style="list-style-type: none"> <li>• <b>FCC</b> believe that these changes will have minimal impact on existing scheme and support them</li> </ul>	Comments noted
<b>Monmouthshire County Council (MCC)</b>	<ul style="list-style-type: none"> <li>• <b>MCC</b> are entirely in agreement with the proposal to extend the groups eligible for a Direct Payments to include all 18-64 year olds who have assessed community care needs.</li> </ul>	Comments noted
<b>Newport City Council (NCC)</b>	<ul style="list-style-type: none"> <li>• <b>NCC</b> support the proposed changes to the DP Scheme. It is likely to be helpful in the following ways: <ul style="list-style-type: none"> <li>a) Coherent and simplified eligibility criteria will help promote a better understanding about direct payments; more people will be able to access the benefits of direct payments if they choose to do so.</li> </ul> </li> </ul>	Comments noted
<b>Swansea City Council (SCC)</b>	<ul style="list-style-type: none"> <li>• <b>SCC</b> is of the view that it seems sensible and equitable to enable all adults eligible for Social Services provision , to also be able to choose to receive their support through Direct Payments.</li> <li>• WAG guidance "Creating a Unified &amp; Fair System for Assessing &amp; Managing Care 2002 required LA's to revisit the way that they set their Eligibility Criteria for adult service users.</li> </ul>	Comments noted
<b>Swansea CC continued</b>	<ul style="list-style-type: none"> <li>• This resulted in identifying 4 levels of risk – critical, substantial, moderate and low – against which adult's needs are assessed to determine whether they are eligible to receive a service.</li> <li>• Swansea Social Services currently provides services to people when their needs have been assessed as critical or substantial.</li> <li>• It is not envisaged therefore that there are significant numbers of people who will meet current eligibility criteria and who do not have a disability in the meaning of section 29 of the National Assistance Act 1948.</li> </ul>	

Respondent	Comments	WAG Response
	<ul style="list-style-type: none"> <li>The resource implications of the proposed change are therefore likely to be limited for both Social Services and the support provider. However, any additional money from WAG to support the infrastructure is welcome to ensure the effective delivery and administration of DPs.</li> </ul>	
<b>Torfaen CBC (TCBC)</b>	<ul style="list-style-type: none"> <li><b>TCBC</b> supports the principle of the proposed change in the DP legislation to extend the eligible categories to include all people aged 18-64 who have assessed community care needs.</li> </ul>	Comments noted

### Annex 3

#### **Is-ddeddfwriaeth: Diwygio Rheoliadau Gofal Cymunedol (Gwasanaethau ar gyfer Gofalwyr a Gwasanaethau Plant) (Taliadau Uniongyrchol) (Cymru) 2006**

#### **Secondary Legislation: the Community Care (Services for Carers and Children's Services) (Direct Payments) (Wales) Amendment Regulations 2006**

[116] **Rhodri Glyn Thomas:** Nid oes gwelliannau wedi'u cynnig, ond mae dau bwynt o eglurhad ar bapur 3b. Helen Mary, a ydych yn hapus i'w cyflwyno fel ag y maent?

**Rhodri Glyn Thomas:** No amendments have been proposed, but there are two points of clarification on paper 3b. Helen Mary, are you happy to present them as they are?

[117] **Helen Mary Jones:** Ydwyf.

**Helen Mary Jones:** Yes.

[118] **Brian Gibbons:** I think that we went into some of these issues in great detail when we had the previous scrutiny session, dealing with the first one. When the scheme was announced, some £90,000 was made available to local authorities across Wales to promote this scheme and to make the information available. As part of any assessment process—and more so after these regulations—and of sharing the conclusions with service users, the option of direct payments should be raised, even though there is a fair amount of information out there in the form of leaflets, booklets, DVDs, CD-ROMs and so on. In the individual situation, the possibility of going down the direct payments route should be routinely raised with users, and explained to them. There are several support agencies like the Gwent Association of Voluntary Organisations, the Shaw Trust, and the Rhondda Cynon Taf National Centre for Independent Living, which are operating to give support. You will be aware—and I think that it is mentioned in the supporting documentation—that we are providing something in the order of £800,000 to support this further. That is a massive investment in the support infrastructure for independent living. That is not money going into the coffers for direct payments, but it is to put in place the infrastructure and the people at a local level to allow this to happen. That is on top of the money that is already in the system. The amount of money that we are making available to the direct payment schemes is substantial and will provide the necessary capacity to publicise it fully and to make information available at a local level.

[119] **Helen Mary Jones:** Thank you for that. I would like to push you slightly. You said in your response that the option of direct payments should always be raised. I think that the experience on the ground is that that is not always the case, and particularly so perhaps with regard to children. What are you doing on this? Presumably, it is the job of the Social Services Inspectorate for Wales to ensure that that is raised. It may be something that many families or people do not want, but it should be offered as an option. It has been put to me that that is not routinely the case in all counties.

[120] Secondly, what have you done, or what would you be prepared to do, to assess the information that is available, particularly in minority languages

other than English and Welsh? It has been suggested to me that it may be particularly appropriate for some people from ethnic minority communities to use direct payments, because they can then make sure that they are getting culturally appropriate care, which may not be easy to get with mainstream services. What assessment have you made of how counties are using the promotional opportunities that you are making available to them to ensure that those communities in particular get that information? We know that people from minority communities tend to under-use public services and under-access entitlements in quite a big way, so, if you have not yet been able to look at that with the appropriate county council, I would press you to do so.

[121] **Brian Gibbons:** I think that we have dealt with some of that. I said that direct payments 'should' always be raised, but it was just that there are, obviously, some emergency situations. I think that the 'should' should be read as 'could' or 'will', excepting where common sense dictates otherwise.

[122] **Helen Mary Jones:** Common sense in the provision of social services can be slightly dangerous. I am sure that you did not mean that, Minister, but I can think of circumstances in which someone might say, 'This child is so profoundly disabled that common sense dictates that he or she will not be able to cope with direct payments'.

[123] **Brian Gibbons:** No.

[124] **Helen Mary Jones:** I know that you did not mean that, but now that we have a verbatim record, we have to be very careful.

[125] **Brian Gibbons:** You are quite right on the interpretation. However, in that context, we have also tried to make information available in British Sign Language, large print, audio and so forth. I know that, in Cardiff, information is available in Urdu, Somali, and Hindi as well as English and Welsh—as the expectation would be. As I said, the level of resource that goes in to underpin this is substantial, and I do not think that there could be much excuse for any local authority not really to make a serious effort to make this information universally available in their communities. I am sure that you are right; direct payments would be far more suitable as a way of providing care to certain groups than the standard package perhaps, on cultural and religious grounds.

[126] **Rhodri Glyn Thomas:** Diolch yn fawr, Weinidog. Torrwn am egwyl yn awr. **Rhodri Glyn Thomas:** Thank you very much, Minister. We will now take a break