



Implementation of the Social Services and Well-being (Wales) Act 2014

Royal British Legion response

About us

1. The Royal British Legion (RBL) was created as a unifying force for the military charity sector at the end of WWI, and still remains one of the UK's largest membership organisations. We are the largest welfare provider in the Armed Forces charity sector, providing financial, social and emotional support, information, advice, advocacy and comradeship to hundreds of thousands of Service personnel, veterans and their dependants every year. In 2014, we provided services and grants to over 450,000 Service personnel, veterans and dependants – more than ever before – and spent £1.4m every week on welfare support. For further information, please visit www.britishlegion.org.uk
2. The Legion provides long- and short-term care to older people from the ex-service community across the UK in our six registered care homes. All homes provide personal and nursing care, and some also provide dedicated dementia care and respite care. Lister House currently has a specially designed wing to meet the needs of beneficiaries between the ages of 18 and 64 years. We also provide a number of community-based support services, including a handy van service and a community dementia support service through our Admiral Nurses.
3. The Legion also provides a number of welfare services to wounded, injured and sick Service personnel and veterans, and other working age disabled individuals. As well as investing in the Battle Back Centre at Lilleshall and MOD Personnel Recovery Centres, we also assist disabled beneficiaries with accessing state benefits to enable independent living, and with War Pensions and compensation claims.

General Comments

4. In 2014, the Legion published the largest and most comprehensive survey of the ex-Service community in the UK to date. The Household Survey found that the UK ex-Service community (Veterans and dependants) is comprised of around 6.1 to 6.2 million members. Of these, 385,000 live in Wales which represents around 13% of the Welsh population. Nearly two thirds (64%) of the UK Ex-Service community are over 65 and nearly half (46%) are over 75 years of age.
5. The Household Survey 2014 further showed that those aged 65 or over in the ex-service population, and particularly those aged 75+ are less likely to report the majority of conditions compared with the UK population of the same age. This suggests that the retired ex-Service community enjoy better health than is average for the UK. However, as life expectancy increases and the National Service generation increasingly moves into the older age brackets, the Legion estimate that the number in the ex-Service community aged 85+ is set to nearly double over the next ten years from 548,000 in 2014 to 1,027,000 by 2025. Correspondingly, well

funded and accessible social care provision will become increasingly important to Veterans and their dependents in the UK over the coming decade.

6. For some Veterans with social care need, the provision of Veteran focussed support will be crucial. We would welcome, and be pleased to work on, any measures the Welsh Government could undertake to help Local Authorities uphold the pledges of the Armed Forces Community Covenants and ensure that preference for Veteran-specialised care is taken into account when designing care packages for local residents.
7. The Legion was the key player in the UK Government's decision in 2011 to enshrine the principles of the Armed Forces Covenant in statute. The Covenant is the nation's recognition of its moral obligation to members of the Armed Forces and their families, and establishes how they should be treated, stating that the Armed Forces and their families "deserve our respect and support, and fair treatment". The two key principles underlying the Covenant are:
 - 'No disadvantage': the Covenant commits the Government to removing, where possible, disadvantage experienced as a result of Service. For example, when Service personnel and their families are posted somewhere new, they should not experience difficulty in getting their children into local schools.
 - 'Special treatment': for personnel and veterans who are injured as a result of their Service, or for families bereaved by Service, it is sometimes appropriate for the principle of 'special treatment' to be applied e.g. the provision of higher grade prosthetics for those who lose limbs as a direct result of their Service.
8. Following the publication of the Covenant, we warmly welcomed the publication of "*Package of Support for the Armed Forces Community in Wales*" by the Welsh Government which sets out firm proposals to incorporate the principles of the covenant into Government policy.
9. The Legion is grateful for the opportunity to respond to this consultation from the Welsh Government. Whilst we recognise that the scope of the consultation encompasses multiple aspects of the implementation of the Social Care and Wellbeing Act 2014, our comments relate specifically to *The Care and Support (Care and Support (Financial Assessment) (Wales) Regulations) 2015*.

Financial Assessments

10. Many of the reforms the Welsh Government has sought to implement via the Social Care and Wellbeing Act are predicated on both an effective assessment of need by a local authority and a financial assessment of means. It is this means test that we believe unfairly discriminates against a core group of Veterans, injured as a result of Service and currently receiving War Disablement Pension Scheme payments.
11. The Legion is disappointed to note that the regulations in their current form fail to address this serious and unfair disparity, despite previous productive conversations with Welsh Government officials and Ministers. The Legion remains grateful to Welsh Government officials for their cooperation on this matter to date but remains of the view that the current discrepancy in existing regulations must be rectified.

12. Those injured as a result of service in the UK armed forces are eligible for compensation payments as recompense for their pain and loss of amenity. Depending on when the injury occurred, this compensation is paid either via the War Disablement Pension Scheme or the Armed Forces Compensation Scheme.
13. For those injured before April 2005, the War Disablement Pension scheme provides regular payments to individuals dependent on the percentage of whole body injury, from 20 to 100 per cent. It also, in some cases, provides supplementary allowances to recipients. Those who develop these needs as a result of other illnesses or old age, and not the Service induced condition for which they receive the War Pension, are not eligible for these additional allowances.
14. For those injured after April 2005, the Armed Forces Compensation Scheme (AFCS) pays a lump sum to all recipients and a non-taxable payment for life, known as the Guaranteed Income Payment (GIP), to the most severely injured. This scheme does not have additional supplements attached, but the Government has recently legislated to provide those with very high awards (50 per cent GIPs) automatic entitlement to a new benefit, the Armed Forces Independence Payment, which mirrors the new Personal Independence Payment (replacing Disability Living Allowance).
15. Therefore two soldiers could be injured just days apart, with the same injury and in the same theatre of conflict and be eligible for different compensation schemes.
16. Despite differences in administration there can be no doubt that the purposes of the Armed Forces Compensation Scheme and the War Disablement Pensions scheme are aligned in providing injury compensation for the pain and loss of amenity from an injury in Service. The previous UK Government Veterans minister Anna Soubry MP confirmed the purpose of the War Pensions scheme in October 2014 by referring to it as providing, “no fault compensation for Service personnel disabled as a result of their service in HM Forces where the cause of the injury, disability or disease is before 6 April 2005.”¹ Similarly, AFCS is described by UK Government literature as, “compensation for any injury, illness or death which is caused by service on or after 6 April 2005.”² The payments received under either therefore are equitable and are not, and should never be treated as, standard income. To do so undermines the compensatory principle of the schemes.
17. In spite of the above, it is only War Disablement Pensions that aren’t routinely disregarded by local authorities in Social Care financial assessments. Welsh Government charging Guidance instructs only a £10 disregard of War Pension payments should be in place, with discretion from local authorities to disregard further. Currently we are aware of only one Welsh council who exercises a full disregard of War Pension payments for both residential and non-residential Social Care means test (see Figure 1).

Figure 1: Local Authority social care means tests and War Pensions policies³

Name of Adult Social care providing council	Does the council disregard 100% of War Disablement Pensions payments in the income means test for both residential and non residential social care
Blaenau Gwent	No

¹ Anna Soubry, *War Pensions: Written question – 206085*, April 2014

² <https://www.gov.uk/government/publications/armed-forces-compensation/armed-forces-compensation>

³ Based on results of FOI request undertaken in November 2014 by the Royal British Legion

Caerphilly	No
Cardiff	No
Carmarthenshire	No
Ceredigion	No
Swansea	No
Conwy	No
Denbighshire	No
Flintshire	No
Gwynedd	No
Anglesey	No
Merthyr Tydfil	No
Monmouthshire	No
Neath Port Talbot	No
Newport	No
Pembrokeshire	No
Powys	No
Rhondda Cynon Taf	No
Torfaen	Yes
Vale of Glamorgan	No
Bridgend	No
Wrexham	No

18. The Welsh Government has recognised the issue in various correspondence with the Legion and in Assembly Plenary, as stated by the Deputy Minister for Health on 22.4.15:

“...We do need to think about what changing the rules and the current disregard would mean for local authority finance, but we are committed to looking seriously at the information the legion provides to us, about the scale of the challenge in each of the local authorities. But, in Wales, it’s also fair to point out that veterans do still benefit from the cap on charging that this Welsh Government has introduced. So, veterans in Wales are in a better position than their colleagues in the rest of the UK, but I do recognise that it’s an issue to take seriously, to consider the evidence the legion provides, and to think how sensibly and seriously the whole Government can respond to the call that’s been made.”⁴

In correspondence with the Legion, the Minister for Health and Social Services also appears to have accepted that a discrepancy exists stating:

“...I appreciate and understand the concerns raised around the treatment of the War Disablement Pension within the financial assessment process applied to a person assessed by their local authority as in need of some form of care and support. Following a recommendation made by the Ministry of Defence in 2010 a full disregard was applied to payments and awards under the Armed Forces Compensation Scheme but this recommendation did not appear to capture the WDP. I am, therefore, giving consideration to what would appear to be a disparity in the treatment of military compensation awards as part of my considerations in developing

⁴National Assembly for Wales Plenary 22nd April 2015.

a new charging and financial assessment framework that will be put in place under our Social services and well-being (Wales) Act.”⁵

The Welsh government has also made clear that it is committed to ensuring no veterans are disadvantaged due to service – one of the key principles of the Armed Forces Covenant.

19. The £10 disregard is inconsistent with local authorities’ other means testing policies. Through a Freedom of information Request sent to every council, RBL has found that 100 percent of councils in Wales use discretion to provide a full disregard of War Pension compensation from means assessments for council tax and housing benefit.
20. Similarly we are pleased to note that Universal Credit also discounts both War Pensions and AFCS GIPs from financial means tests. Iain Duncan Smith, in his role as Secretary of State with oversight of Universal Credit, has stated that, *“Under Universal Credit, we don’t take into account compensation payments for injury a veteran receives when calculating their entitlement. This means they don’t have to worry about having their benefit reduced because of this compensation. This is only fair.”*⁶ The Social Care financial assessment risks being uniquely left behind from this “fairness” by not offering parity between civilian, post 2005 military compensation and pre-2005 military compensation.
21. Moreover there is also a clear breach of the military covenant. The covenant was signed into statute in 2011 and outlines the nation’s commitment to those who serve in our armed forces. When civilians pursue their employers for civil damages through the civil justice system, compensation is usually awarded as a lump sum, disregarded as income for the first year, and then must be placed in a trust fund to ensure continued disregard. Not allowing those injured due to service to enjoy the same benefit because of the way their compensation is delivered to them is contrary to the primary principle of ‘No disadvantage’. The welcome exclusion of AFCS Guaranteed income payments since 2012 shows that delivery method of the compensation should not pose a barrier to disregarding compensation paid in regular instalments.
22. We recognise that there are complexities involved in assessing War Pensioners, due to the payment of an additional attendance allowance to a few disabled veterans. But where that additional attendance allowance isn’t paid, the individual is still disadvantaged by only having £10 disregarded from their War Pension entitlement.
23. When the additional attendance allowance is paid to those few War Pensioners with high social care needs due to their injury, and is therefore designed to cover some of the costs of care, we see no problem with including solely this supplementary allowance in local authorities’ income assessments to ensure that the state is not paying out twice for the same care needs. The remaining payments, however, should be fully disregarded.
24. We are concerned that some of the correspondence from both UK and Welsh Government to the Legion and its supporters contains the false assertion that all War Disablement Pensions are intended to cover the costs of care. As stated above, whilst it is true that some War Pensioners will be in receipt of an additional

⁵ Mark Drakeford to Peter Evans correspondence 28 February 2016 ref MD/00526/15.

⁶ Iain Duncan Smith, *Politics Home website*, June 2015: <https://www.politicshome.com/economy-and-work-foreign-and-defence/articles/opinion/house-commons/iain-duncan-smith-mp-helping#sthash.aACZd7jE.dpuf>

attendance allowance designed to pay for care, this amounts to only around 5% of all War Disablement Pensioners, and it is only this extra allowance that is specifically designed to contribute towards this cost. The Legion urges the Welsh Government to revisit their argument as we don't believe that it constitutes an accurate portrayal of the War Disablement Pension Scheme.

Potential costs to the Government

25. Following discussions with the Welsh Government, the Royal British Legion have undertaken a cost estimating process to assess the cost to the Welsh Government of providing a full disregard of the War Pensions from Social Care means tests. We believe that the cost is unlikely to be higher than £1.61m in 2015 falling to £1.22m by 2025, see figure 2. The full costing document to understand the methodology behind this estimation is available in Appendix 1 of this response.

Figure 2: Estimated costs of fully disregarding War Pensions in Wales

	2015	2020	2025
65+ Residential Care (£)	239,570	215,637	179,658
65+ Non-Res Care (£)	746,163	673,920	566,280
Under 65 Res Care (£)	57,644	52,403	41,924
Under 65 Non-Res Care (£)	567,836	514,800	435,240
Total (£)	1,611,212	1,456,760	1,223,102

26. This estimate of £1.61m supposes a slightly higher care need for War Pensioners compared to the general population, and that all those receiving non-residential care would receive services with a cost to the individual that would be equal to or in excess of the weekly cap in place. The actual cost to the Welsh Government could be significantly lower.

27. We understand that a change in charging regulations alone will fail to address the underlying funding. Using the Ministry of Defence's statistics on War Disablement Pensioner locations, we've modelled the total cost of the disregard against local authority populations applying an assumption of uniform need. Figure 3, below, shows that the financial burden on a local authority ranges between £27,069.30 per year and £143,585.00. Therefore alongside a change in regulations, the Legion strongly believes that measures should be put in place, such as the creation of a centrally administered fund, to address the risk of the burden of cost falling unevenly across local authorities in Wales.

Figure 3: Cost of a War Pension disregard by local authority

Local authority	War Disablement Pensioners ⁷	% of total	Potential cost of disregard
Blaenau Gwent	150	2.19	£35,307.79
Bridgend	375	5.48	£88,269.47
Caerphilly	420	6.14	£98,861.80

⁷ Ministry of Defence, *Annual Location of UK Armed Forces Pension and Compensation Recipients as at 31 March 2014*, June 2015

Cardiff	430	6.28	£101,215.66
Carmarthenshire	360	5.26	£84,738.69
Ceredigion	115	1.68	£27,069.30
Conwy	385	5.62	£90,623.32
Denbighshire	230	3.36	£54,138.61
Flintshire	375	5.48	£88,269.47
Gwynedd	255	3.73	£60,023.24
Isle of Anglesey	205	2.99	£48,253.98
Merthyr Tydfil	235	3.43	£55,315.53
Monmouthshire	230	3.36	£54,138.61
Neath Port Talbot	400	5.84	£94,154.10
Newport	270	3.94	£63,554.02
Pembrokeshire	295	4.31	£69,438.65
Powys	320	4.67	£75,323.28
Rhondda Cynon Taf	610	8.91	£143,585.00
Swansea	440	6.43	£103,569.51
The Vale of Glamorgan	285	4.16	£67,084.79
Torfaen	190	2.78	£44,723.20
Wrexham	270	3.94	£63,554.02
Total	6,845	100.00	£1,611,212.00

Conclusion

28. The Royal British Legion firmly believes that the current charging guidance for Social Care in Wales contains an unfair anomaly that breaches the Armed Forces covenant. The Welsh Government has demonstrated strong leadership to date in ensuring the Armed Forces covenant is delivered locally and there have been examples of tangible initiatives which have demonstrated the Welsh Government's commitment to this agenda. Tackling this obvious breach of the armed forces covenant is another opportunity to make good this commitment.
29. The Legion estimates that this change could benefit just under 500 War Disablement Pensioners in Wales who are currently disadvantaged under existing regulations.
30. The situation that results in a small group of veterans paying for their social care out of their military compensation must be rectified as a matter of urgency; The Social Services and Well-being (Wales) Act 2014 regulations provide the opportunity for the Government to show commitment that what the state gives in compensation for pain and injury with one hand, isn't taken back with the other.

For further information or clarifications, please contact Andy Pike, Policy Adviser, on 0203 207 2124 or apike@britishlegion.org.uk or Peter Evans, Wales Public Affairs Manager, on 0333011 4382 or pevans@britishlegion.org.uk

July 2015

Appendix 1: Disregarding War Pensions from Social Care Financial Assessments (Wales) - Draft costings paper

Background

1. This paper provides a draft estimate of potential costs to the Welsh Government of disregarding War Disablement Pension payments from Social care financial assessments throughout Wales. The below projections are a rough estimate based on limited publically available information and should be treated as such.
2. This document is part of the Royal British Legion and Poppy Scotland's "Insult to Injury" campaign. Further briefings on the campaign are available from the Legion's Public Affairs and Public Policy team.

Projected populations

Estimated War Pensioner Population with Social Care need

3. As of 2013 the adult (16+) population of Wales is estimated to be 2.5 million⁸ of which 114647 are receiving state supported care services⁹. Therefore the proportion in receipt of care services is 5 percent of the national adult population.
4. There are currently 6625 War Disablement Pensioners (WDP) living in Wales¹⁰. This figure excludes War Widows to be in line with current charging policies for Armed Forces Compensation Scheme which don't disregard Survivor's Guaranteed Income Payments.
5. It is likely that the health condition that will make a veteran eligible for social care will be unrelated to their pensionable condition. Therefore the percentage of War Pensioners that live in Wales who have Social Care needs could mirror that of the general population.
6. If 5 percent of the adult population in Wales receive state supported care service, 5 percent of the 6625 War Disablement Pension recipients is a potential population 331 people on War Pensions receiving state supported care service.
7. Throughout the UK, War Pension recipients are split into a steady 60 percent aged over 65 and 40 percent aged below 65. Applying this split to the 331 estimated to receive state supported care would indicate 199 individuals over 65 and 132 under 65.
8. Using the figures for state supported care services amongst the general population published by Statistics Wales, Figures 1 and 2 show how this would affect the likely populations for War Pensioners accessing both residential and non-residential care by age group:

⁸ Statistics Wales, *2013 Mid-year population estimates for Wales*, 2014

⁹ Statistics Wales, *Adults receiving services by local authority and measure*, 2014

¹⁰ Ministry of Defence, *War Pension Scheme Annual Statistics, 1 April 2009 - 31 March 2015*, June 2015

Fig 1. WDP with care need population estimates over 65

	Wales General population	War Disablement Pensioners	Percentage of age group (%)
65+ Residential Care	17,038	40	20
65+ Non-Res Care	68,524	159	80

Fig 2. WDP with care need population estimates under 65

	Wales General population	War Disablement Pensioners	Percentage of age group (%)
Under 65 Res Care	2,288	11	8
Under 65 Non-Res Care	26,797	121	92

Future estimated populations

9. Consultant actuarial firm, Punter Southall were commissioned by the Royal British Legion to estimate future populations of the Armed Service community in the UK. These population estimates for Wales for 2020 and 2025 allow us to estimate projected numbers of recipients going forward.
10. Punter Southall estimates that there will be 300,000 in the ex-Service community in Wales by 2020, falling to 252,000 in 2025.¹¹
11. Both within the UK and Wales, around 2 percent of the ex-service population receive a war disablement pension. If this percentage holds over the coming decade and doesn't fall as Armed Forces Compensation Scheme continues to become the primary scheme for compensation, that would result in an estimate of 6,000 War pensioners in Wales in 2020, falling to 5040 in 2025. Without allowing for unforeseeable (yet inevitable) demographic change, figure 3 projects the effect of this decreasing population on the estimated care service populations.

Fig 3. Future WDP with care need population estimates

	2015	2020	2025
65+ Residential Care	40	36	30
65+ Non-Res Care	159	144	121
Under 65 Res Care	11	10	8
Under 65 Non-Res Care	121	110	93
Total	331	300	252

Estimated costs of a disregard

12. The average weekly amount received by War Disablement Pensioners as of March 2015 is £86.58.¹² If we pursue the premise that the health condition that will make a veteran eligible for social care is unrelated to their pensionable condition, then we can use this average as the amount of offset throughout. The 3 percent of War Pensioners who receive a WDP at 100 percent are offset by the 5 out of 6 who receive it at under 50 percent level (including 40 percent of all WDP recipients who are receiving it due to the minimum 20 percent disablement)

¹¹ Royal British Legion, *A UK household Survey of the ex-Service Community*, 2014

¹² Ministry of Defence, *War Pension Scheme Annual Statistics, 1 April 2009 - 31 March 2015*, June 2015

13. The average weekly income raised by local authorities in Wales for the support of social care are:

- £91 – residential care for those aged over 65
- £8 – non residential care for those aged over 65
- £77 – residential care for those aged 18-64
- £13 – non-residential care for those aged 18-64¹³

Non residential care costs

14. As of April 2015 the Welsh Government has increased the weekly cap on care costs to £60 for non residential care.

15. Therefore, in isolation of other factors that may affect financial contributions, the maximum cost of disregarding War Pension payments for those in receipt of non residential care is £60 per week per War Pensioner regardless of age.

Residential care costs

16. There is currently no cap on an individual's contribution to state supported residential care costs. Therefore, as above, councils are able to charge an individual an average of £91 per week to those over 65 and £77 for those under.

17. The first £10 of a War Disablement Pension is currently routinely disregarded from the financial means test and therefore will not go towards an individual's contribution. However, with an average War Pension of £86.58, this leaves £76.58 that can currently contribute towards a local authority's weekly income for supporting care.

18. In the absence of other factors and data on the specific care needs of War Pensioners in residential care, it is possible to use the averages referenced in paragraph 12 above to quantify the loss of income to local authorities as £76.58 for those over 65 and £67 for those under.

The cost of extending the disregard to eligible War Pensioners

19. Figures 4 and 5 extrapolate the costs identified above to the War Pensioner population identified earlier in this document.

Fig 4. Weekly cost of disregard

	2015	2020	2025
65+ Residential Care (£)	3,063	2,757	2,297
65+ Non-Res Care (£)	9,540	8,640	7,260
Under 65 Res Care (£)	737	670	536
Under 65 Non-Res Care (£)	7,260	6,600	5,580
Total (£)	20,600	18,667	15,673

¹³ Statistics Wales, *Social Services Revenue Expenditure by client group, 2014*

Fig 5. Yearly cost of disregard

	2015	2020	2025
65+ Residential Care (£)	159,713	143,758	119,772
65+ Non-Res Care (£)	497,442	449,280	377,520
Under 65 Res Care (£)	38,429	34,935	27,949
Under 65 Non-Res Care (£)	378,557	343,200	290,160
Total (£)	1,074,141	971,173	815,401

Potential higher social care needs

20. The Royal British Legion's 2014 Household survey found that veterans over the age of 65 were significantly less likely than men of the same age in the general population (the vast majority of veterans being male) to report a limiting health condition (activities limited a lot: 16 percent veterans, 25 percent general population; activities limited a little: 26 percent for both). Within the 16-64 year old age group, veterans were more likely to report being limited a lot (13 percent vs 6 percent) and a little (11 percent vs 7 percent). Across all age groups, veterans are 1.5 times more likely than males in the general population to be limited a lot (15 percent vs 10 percent) and nearly twice as likely to be limited a little (20 percent vs 11 percent) by a health condition.
21. To take this into account we can produce upper estimates where War Pensioners are assumed to be 1.5X more likely to have a limiting health condition. We would predict that the more extensive potential care needs of those on 80-100 percent War Pensions will be offset by the better health (comparable to the general population) of veterans aged 65 and over, as outlined above.
22. Figure 6 applies a 1.5 multiplier to the yearly costs in figure 5 and therefore gives upper end cost estimates.

Fig 6. Yearly cost of disregard with a 1.5 multiplier

	2015	2020	2025
65+ Residential Care (£)	239,570	215,637	179,658
65+ Non-Res Care (£)	746,163	673,920	566,280
Under 65 Res Care (£)	57,644	52,403	41,924
Under 65 Non-Res Care (£)	567,836	514,800	435,240
Total (£)	1,611,212	1,456,760	1,223,102

Conclusion

23. The Royal British Legion, having undertaken this cost estimating process believe that a fair estimation of the cost to the Welsh Government of providing a full disregard of the War Pensions from Social Care means tests is **unlikely to be higher than £1.61m in 2015 falling to £1.22m by 2025.**
24. This estimate of £1.61m supposes a higher care need for War Pensioners compared to the general population, and that all those receiving non-residential care would receive services with a cost to the individual that would be equal to or in excess of

the weekly cap in place. The actual cost to the Welsh Government could be significantly lower.

25. **NB.** It is important to note that this estimate has been put together from publically available data by the Royal British Legion and doesn't take into account a number of variables that could factor into a means testing assessment or inflation. Nor does it factor in complexities within the War Pension allowance structure, relying purely on an average weekly receipt figure. As such any conclusion drawn out should be treated accordingly.

Andy Pike
Policy Adviser, the Royal British Legion
June 2015