

A Consultation on a Proposal for a Bill to Abolish Charges for Non-Residential Social Care



Foreword

As someone who grew up in North Lanarkshire and saw the changes that came to our community as the old industries died out and new ones struggled to be born, I understand the challenges that have to be overcome by disabled people to find the help and support they need to play full lives in the community.

Social care is essential to many disabled people to help them take part in the lives of the communities they were born and grew up in, but it is also essential for those who are facing the end of their lives and want to spend their time with dignity and respect in their own communities.

Charging for non-residential social care is increasingly raised with me as an MSP for Central Scotland. I know that many people now find it hard to live a good life with the increasing amounts that they have to pay as a contribution towards their support.

Local Authorities throughout Scotland are faced with hard choices. In order to maintain their services in times of austerity, they have to seriously consider all sources of income but this can have serious consequences for the most vulnerable in our communities if they are hit by a triple whammy of welfare benefits cuts, social care service cuts and increased care charges.

Social Care Charging leads to many disabled people being driven into poverty and many others being unable to enjoy the things in life that non-disabled people take for granted. Living as a disabled person means all sorts of extra costs, e.g. more laundry, special diets and extra heating. All this adds up and when you add in Social Care Charges many people fall below the poverty line. Worse than that, Social Care Charging may stop many people who need help from taking it up, leading to further social problems.

Social Care Charging may be only one part of a triple whammy but it is a problem that it is wholly within the powers of the Scottish Government to solve.

Since 2002, successive Labour/Lib Dem and SNP administrations have had the power to regulate both social care systems throughout Scotland and who is covered by Free Personal Care. For various reasons they have chosen not to do this and the current government has made it clear that it has no plans to do so.

I am proposing to bring a Bill forward in the next session of the Scottish Parliament if I am re-elected in May 2016 so that social care services for people in their own home are provided free of charge in Scotland. If for any reason I am not able to sit in the next Scottish Parliament, this consultation will prepare the ground for the early introduction of a Bill by another MSP.

I want to know your views on whether we should:-

1. Abolish all non-residential Social Care Charges and, in effect, treat social care needs in the same way that we treat health care needs – needs which intimately affect the needs of our citizens and which, if we don't meet them, will damage their lives and damage our communities.

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2. Treat all social care services the same when abolishing Social Care Charges – some services, like Meals On Wheels, are “replacement” services for something everyone has to do anyway. Many people arrange community alternatives from supermarkets or private suppliers and this may be something that is not included in a future bill.

These are important issues that may affect us all. One in five people in Scotland has a disability. The number of people living into their 80s and 90s are increasing. Finding an answer to the question of how our society manages their support and helps to keep as many people as possible being fully active and a functioning part of our community is essential.

I hope you will be able to take part in this consultation and I look forward to reading your responses in due course.

Yours Sincerely

Siobhan McMahon MSP

1. My Proposal

I want to introduce a bill to ensure that social care services provided to people in their own home are free of charge.

This consultation is primarily to find your views on this, and whether or not you agree that this would be a good step to take.

However social care and Social Care Charging are full of many areas that are not clearly delineated and I want to get your views on some of the most important of these. I need to do this so that if legislation is introduced it is properly drafted in line with service users’ views.

As an alternative to primary legislation, existing regulations could be amended to deal with some of the concern over Social Care Charging.

These regulations give the Scottish Government the power to vary the care charging system across Scotland to achieve greater consistency. There are currently a number of inconsistencies and variances in how Social Care Charging is applied from area to area and across age groups. I would like your views on whether action should be taken to amend this situation.

Additionally some social care services are subject to a means test while others are charged on a flat rated basis. I am seeking your views on this different approach to charging for social care services and whether all such services should be included within the scope of the proposed Bill.

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2. EASY READ GUIDE TO THIS CONSULTATION



Care and support helps people who cannot manage by themselves with everyday tasks. This means that they can live good lives like anyone else without a disability.



If you need care, your local council will meet you to talk about what sort of care you need.



If your local council decides you should get support they will work out how much it would cost them to give you the care and support you need.



Some people pay for all of their care out of their own money.



Most people will get some of their care paid for by the local council but will have to pay for some of that care themselves out of their own income including benefits.



Each local council will charge everyone a single price for some services like Meals On Wheels.

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For services like Care At Home, your local council must work out how much money and savings you have.



People have told me that the way they pay for care and support, and the amount they pay, is unfair and confusing.



Social Care Charges can stop people asking for the help they need. This can make people's health worse.



The Scottish Government has said that it wants charging to be fairer but nothing much has changed.



I would like the Scottish Parliament to pass a new law so that everyone gets social care without having to pay.



I would like to know if you think this is a good idea. You can answer the questions and let me know.

Siobhan McMahan MSP

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3. The Case For Abolishing Social Care Charges

For those people who use it, social care is an example of the essential practical assistance and support needed to participate in society and lead an ordinary life. Without such support, disabled people and other social care users cannot enjoy their human rights on an equal basis to non-disabled people. As such, social care provides an essential infrastructure for the equality and human rights of disabled people and others who use social care and support.

All of the rights protected by the Equality Act, European Convention on Human Rights, the Human Rights Act and in subsequent human rights conventions, belong to disabled people as much as to everyone else.

Article 19 of the United Nations Convention on the Rights of Persons with Disability says that states signed up to it must ensure that disabled people have a right to live in the community, with the support they need, and are able to make choices like other people do.

A society which pursues a policy of charging those who are entitled to use non-residential care services does not do this. Instead, Social Care Charging uncompromisingly **demands** that they pay more than any non-disabled person to achieve the same basic human rights. In some instances, this can lead to a disabled individual deciding to forego much needed care and support, a decision which will entail significant risk of harm or further deterioration of an illness or condition.

For those who are obliged out of necessity to accept local authority Social Care Charges, this situation often leads to a stunted life of poverty with insufficient resources to pay for anything more than the bare essentials of life, i.e. heating and food, at the level of spending deemed permissible by the local authority.

The realities of life will dictate little opportunity to improve living conditions, participate in the social and civic life of their community or save for that rainy day. It will be hard to save for family events, such as a holiday or the wedding of a son or daughter, or for putting aside a deposit for a new home. Again, Social Care Charging in Scotland must be seen as representing a fundamental violation of a disabled individual's legitimate freedom to enjoy basic human rights.

Social care free at the point of need is as important as health and education free at the point of need is in achieving equalities and human rights.

Enabling disabled people to participate in the economic, social, cultural and civic life of the community not only allows them the freedom to exercise their human rights, it also benefits society as a whole.

Many disabled and older people already contribute to public services through general taxation. In 2014, 46% of working-age disabled people were in employment and many will already be paying national insurance and income tax.¹ Most disabled and older people also make a contribution

¹ www.gov.uk/government/statistics/family-resources-survey-financial-year-201314, Disability Data Table 4.1

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towards Council Tax, even taking into account any Council Tax Reduction allowance they may be awarded.

If additional funding is required to pay for social care and support in Scotland then it should be funded on the same basis as other basic social infrastructures such as health and education - through the system of general taxation.

The current system of Social Care Charging remains largely unchanged 13 years after the introduction of Free Personal Care. Local Authorities have not delivered significant reform as they cooperate on the basis of consensus. Every reform proposed will bring winners and losers and councils which may lose out have been reluctant to support such changes without financial compensation.

Without such financial compensation a change in one part of the financial calculation leading to a loss of income for a council could be made up by simply increasing the charging income arising from another part. This would leave councils no worse off but, equally, the position of disabled people would not be changed.

This was implicitly recognised 13 years ago when the Scottish Government introduced Free Personal Care. They provided the money for local councils to implement the change but also took the power to make councils set a standard charging system for Scotland just in case there was a temptation to switch charging over to “non-personal care”.

Ensuring a consistency of approach in Social Care Charging is one of the key issues in establishing “portability” of care within Scotland. Along with national eligibility criteria and legal duties to maintain existing support packages, consistent Social Care Charges have been seen as essential to allowing disabled people equal rights to free movement².

The Scottish Government has never used its power to regulate charges. Yet local councils have been gradually increasing the income they get from charges by switching charges for over 65s to “non-personal care” (often flat rate charges such as community alarms or meal services) and also by increasing charges for all care services for under 65s.

Now is the time to complete the journey that Scotland began 13 years ago when it became the first part of the United Kingdom to provide a degree of security for all older people when they started to need care to live in their own homes. Let us make sure that this security is extended to everybody who needs social care to enjoy their basic human rights. That surely would be a fairer Scotland.

4. Background to Social Care Charges

Non-residential social care helps hundreds of thousands of people across Scotland live valued lives in the community. These services support both disabled people and people who have long term conditions as well as those who want to live the last few years or months of their lives within the homes and communities they have spent their lives in.

² <http://www.inclusionScotland.org/index.php/publications/5-a-vision-for-an-inclusive-scotland>

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They are provided by local authority social work departments throughout Scotland following an assessment of need and an eligibility assessment based on local criteria. Mainly it is those who are judged as being at Critical or Substantial risk in their current living situation who are given social care support.

In some situations, the NHS is also responsible for meeting social care needs. This is usually when the need is mainly for healthcare rather than social care, however there are many grey areas here. Any social care support supplied by Health Authorities needs to be provided free of charge.

Local Authorities are empowered to charge for social care services under section 87 of the Social Work (Scotland) Act 1968, though they are not allowed to charge for services defined as being personal care, nursing care or personal support for people over the age of 65. Free Personal Care for those over 65 was introduced in 2002 through the Community Care and Health (Scotland) Act 2002 (“the 2002 Act”).

There is no legal obligation placed upon councils to charge for social care services for anyone else but they are currently empowered by the 2002 Act to make decisions about whether or not to charge for these services, and, if they choose to, to develop and administer local charging policies. This does not mean a local authority must charge for services, only that it has the power to do so.

All 32 Local Authorities in Scotland have now chosen to exercise this power, charging people requiring social care under the age of 65 for a wide range of services and those over 65 for a much more restricted range of services. In turn this means that what is charged for, and by how much, varies across the country and by age.

Each council currently has a different range of services that they charge for and varying rates for each service. The current range of services that may be charged for include

- Individual Self Directed Support Budgets
- Care At Home Hours
- Housing Support Services
- Meals Services
- Sheltered Housing
- Very Sheltered Housing
- Residential Respite
- Day Services
- Night Services
- Shopping Services
- Handyman Services
- Transport To and From Services
- Community Alarms
- Telecare.

In recent years Local Authorities have increased non-residential Social Care Charges regularly as part of council income. COSLA suggests that the annual rate of increase in care charge income may be

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more than 10% per annum, which is far higher than inflation.³ This puts an increasing burden on disabled and older people who have to pay these charges.

COSLA estimates that in 2012/13 adults aged 18-64 paid nearly £24.7 million for non-residential care services while older people paid £25.4 million.

5. Methods of Charging for Social Care Services

There are two different ways that Local Authorities charge people for social care services. These are Means Tested Services and Flat Rated Services. Means Tested Services can result in significant variations in the amount people pay both within a local authority area and between areas but there is a basic affordability test. Flat Rated Services can mean that people are charged hugely disparate amounts for similar services depending on which Local Authority they live in and everyone has to pay this regardless of income.

a. Means Tested Services

Payment for most services is subject to a Means Test which takes into account the income and savings a person has. There are four stages in the means test calculation of how much an individual has to pay.

1. Working out how much a service costs and how much should be charged.
2. Working out how much income and savings a person has
3. Working out what living expenses a person should be allowed
4. Working out how much of the balance should be taken by the council.

Understandably this is a complicated process which is carried out by social workers collecting a range of personal and financial details and then inputting them into appropriate computer software to calculate the payment figures. Few councils even attempt to meet a recommendation of the COSLA Guidance to make the calculation accessible and transparent. For example, no Easy Read information has ever been produced by councils on the operation of charging systems, despite the fact that people with learning disabilities pay two thirds of all charges levied on disabled people.

After 13 years of discussion about this problem, there remains a huge variation in charging for services.

One council charges £111 for a single day at a Local Authority day centre. Others charge less than £5 or nothing at all. The rate for a single hour of care at home varies from £8.86 in West Lothian up to £18.50 in Angus.⁴

³ http://www.cosla.gov.uk/sites/default/files/documents/charging_guidance_2015_16.doc , page 8

⁴ <http://www.idascotland.org/docs/Comparative%20Information%20on%20the%20Care%20Tax.pdf>

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Hourly chargeable rates for care at home in 2014							
Aberdeen City	£15.05	East Dunbartonshire	£14.00	Highland	£15.45	Renfrewshire	£14.24
Aberdeenshire	£14.60	East Lothian	£11.50	Inverclyde	£10.91	Scottish Borders	£12.80
Angus	£18.50	East Renfrewshire	£12.50	Midlothian	£9.50	Shetland Islands	£16.18
Argyll & Bute	£14.60	Edinburgh, City of	£12.50	Moray	£10.70	South Ayrshire	£9.51
Clackmannanshire	£11.00	Eilean Siar	£16.00	North Ayrshire	£11.00	South Lanarkshire	£9.89
Dumfries & Galloway	£15.76	Falkirk	£9.00	North Lanarkshire	£15.50	Stirling	£10.10
Dundee City	£13.63	Fife	£0.00	Orkney Islands	£14.66	West Dunbartonshire	£14.70
East Ayrshire	£11.55	Glasgow City	£12.82	Perth & Kinross	£11.47	West Lothian	£8.86

Similar variations in treatment apply to the way income is treated. For example, some councils count Bereavement Allowance as income for care charging; other councils ignore this time limited benefit payable following the death of what was often the disabled person’s primary carer.

The income disregards allowed by Local Authorities for living expenses vary considerably throughout Scotland with a disabled person under 65 being allowed between £123 and £177. This puts many disabled people at a disadvantage; even those at the higher end are still only being allowed the same amount any non-disabled person over 65 seeking care would be allowed.

Currently in England, councils are required to have systems in place for taking account of disability related expenditure – spending such as extra laundry costs, additional wear and tear on clothes, additional heating due to lack of mobility and special diets. This does not routinely happen in Scotland and those few councils that do so, only do so on a discretionary basis.

The final major form of variation is in the tax rate (“taper” is the term used by Local Authorities) that is applied on the balance of incomes. Disabled people are expected to pay the full cost of their service or a tapered amount of their spare income – whichever is the least. For most disabled people who need more than two or three hours of support a week, it is this taper that determines how much they actually pay. The current tapers applied by Scottish Local Authorities are shown in this table.⁵ (Edinburgh uses a complicated tiered taper rate.)

Tax (or Taper) Rates By Scottish Local Authority for adults under the age of 65 in 2014							
Aberdeen City	67%	East Dunbartonshire	50%	Highland	50%	Renfrewshire	85%
Aberdeenshire	100%	East Lothian	45%	Inverclyde	25%	Scottish Borders	24%
Angus	66%	East Renfrewshire	60%	Midlothian	70%	Shetland Islands	70%
Argyll & Bute	75%	Edinburgh, City of	20%/50%	Moray	100%	South Ayrshire	25%
Clackmannanshire	75%	Eilean Siar	50%	North Ayrshire	40%	South Lanarkshire	50%
Dumfries & Galloway	55%	Falkirk	100%	North Lanarkshire	38%	Stirling	75%
Dundee City	65%	Fife	50%	Orkney Islands	15%	West Dunbartonshire	50%
East Ayrshire	60%	Glasgow City	50%	Perth & Kinross	100%	West Lothian	65%

The situation has not improved over the last 13 years. In fact more people are now being charged and paying more than ever before.

This group of services is clearly recognised by Local Authorities as being something they should provide on the basis of need as they fall clearly within a definition of social care. They only charge those who they assess as being able to pay.

⁵ <http://www.ldascotland.org/docs/Comparative%20Information%20on%20the%20Care%20Tax.pdf>

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b. Flat Rated Services

There is a second group of services that Local Authorities have decided to charge everyone that uses them a single price for regardless of the income that they have.

Services such as Telecare, Community Alarms and Meals Services are called “flat rated” services – that is everyone who uses this service has to pay a standard charge regardless of income. This approach is justified by an argument that these are replacement services for standard costs. For example, everyone has to have a meal so if you are getting a meal delivered you no longer have to buy ingredients and cook one for yourself. The argument is less clear for community alarms but these services often do not provide support directly, rather they are simply a contact point for people in need of support which then contacts next of kin or other emergency services. In such cases the community alarm service could be seen as a replacement for a local phone point or mobile phone.

The services seem moderately priced – community alarms are between £1 and £5 per week while meals at home average £3 each - but the number of people having to pay on a flat rated basis is quite large, meaning there is a significant overall contribution to Local Authorities from these services.

In 2013 there were 114,000 users of community alarms and telecare services.⁶ 86% of these users are over 65 and it is estimated that these users contribute a total of £15.3 million in charges for these services alone.⁷

In 2013 a much smaller number of people used meals services; 8,045⁸. Users of meals services take an average of 5 meals per week and pay different rates from £1.92 to £4.88 per meal. 93% of these users are over 65 and it is estimated that meals service users contribute a total of £5.3 million annually in charges for meal services alone⁹.

The argument made by Local Authorities to treat these two groups of services differently may have some merit and I am interested in your views as to whether any Bill should treat these the same or simply include the range of services that are currently means tested.

6. Scottish Government and Local Authority efforts to mitigate the impact of social care charges

There is a widespread acknowledgement amongst councils that social care is important in supporting the human rights of disabled and older people; “COSLA recognises the well-established political and philosophical position which contends that the realisation of human rights depends on access to certain fundamental goods. For disabled people and frail older people, we would agree that access

⁶ Social Care Services, Statistical Release, 2014, <http://www.gov.scot/Publications/2014/11/1085/downloads>

⁷ <http://www.idascotland.org/docs/Comparative%20Information%20on%20the%20Care%20Tax.pdf>

⁸ Social Care Services, Statistical Release, 2014, <http://www.gov.scot/Publications/2014/11/1085/downloads>

⁹ <http://www.idascotland.org/docs/Comparative%20Information%20on%20the%20Care%20Tax.pdf>

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to care can be important to the realisation of their human rights.”¹⁰ Scottish Local Authorities have made a number of efforts to resolve any barriers or unfairness that arises from charges and these include:

a. National Guidance

The Community Care and Health (Scotland) Act 2002 included a power for Ministers to introduce regulations on Social Care Charges, with the aim of achieving greater consistency across Scotland. It was agreed at this time that self-regulation through COSLA would be permitted if that would achieve the policy objective of greater consistency. This was on the understanding that COSLA’s guidance on the matter would be the subject of regular review.

COSLA has produced national guidance annually to support Local Authorities in the setting of local rates for Social Care Charges. This Guidance has six over-arching objectives:

1. To assist Local Authorities in determining whether to charge for social care services, taking into consideration the full range of legal, financial and policy drivers;
2. To assist Local Authorities in developing a framework of charges for non-residential social care services that is fair, equitable, accessible and transparent;
3. To create an enabling environment for Local Authorities to work together to generate greater consistency across Scotland in the charges levied on people who use services;
4. To define financial decision making processes that ensure the personal, social and economic circumstances of individuals are given due regard in determining whether charges should apply;
5. To ensure that people who use services understand the reason for charging, and its contribution to supporting social care services, and are able to contribute to the development of charging policies at a national and local level; and
6. To ensure that Local Authorities have considered the contribution of social care to the human rights of supported people and the financial implications of charging on the supported person’s quality of life, in terms of both their standard of living and their social and economic participation within the community.

However, such guidance remains simply advisory and Local Authorities remain able to choose which parts of the guidance they apply and which they don’t. Annually each council makes its own interpretation of this guidance and submits it to councillors for ratification as part of the extended budget process.

b. National Working Group

In 2011, a National Working Group was set up following concerns that the guidance had not achieved the desired best practice. Third sector and Disabled People’s Organisations joined the group alongside COSLA, the Scottish Government and representatives from Local Authorities to help bring together concerns and achieve a greater degree of consistency and fairness.

¹⁰ PE1533_F_COSLA_07.01.15.pdf at <http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01533>

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The national guidance is produced annually and ratified by COSLA’s Leaders’ Group which has representatives from member councils. COSLA works by developing “policies for local government which represent, as far as possible, consensus between [their] political groups.”¹¹ A consensus approach helps to maintain an organisation with diverse views but it can also lead to slow progress in tackling issues which might lead to any particular council being worse off.

Some groups began to develop a view that it was COSLA’s own structure and decision making process that led to the lack of substantive movement in the charging guidance. In 2014, a number of carers and Disabled People’s Organisations walked out of the working group citing concerns that their proposals to change Social Care Charges were having no effect¹².

c. Changes in Social Care Charging rates between 2002-2015

The National Guidance and establishment of the National Working Group has not achieved its aims of greater charging consistency throughout Scotland. This can be seen clearly if we look at the way different social care services are charged for.

The following table shows the change in the levels of the taper applied by local councils to the “excess income” part of the charging calculation. It shows the levels of taper applying in 2002 and the levels applying in 2015¹³. The amount of consistency achieved can be assessed by comparing the two figures, where available.¹⁴

Change in Tax (or Taper) Rates By Scottish Local Authority for people under the age of 65 from 2002 to 2015											
	2002	2015		2002	2015		2002	2015		2002	2015
Aberdeen City	100%	67%	East Dunbartonshire	50%	50%	Highland	50%	50%	Renfrewshire	24%	85%
Aberdeenshire	100%	100%	East Lothian	n/a	45%	Inverclyde	n/a	25%	Scottish Borders	n/a	24%
Angus	66%	66%	East Renfrewshire	n/a	60%	Midlothian	n/a	70%	Shetland Islands	n/a	70%
Argyll & Bute	50%	75%	Edinburgh, City of	n/a	20%/50%	Moray	n/a	100%	South Ayrshire	n/a	25%
Clackmannanshire	n/a	75%	Eilean Siar	50%	50%	North Ayrshire	50%	40%	South Lanarkshire	n/a	50%
Dumfries & Galloway	50%	55%	Falkirk	n/a	100%	North Lanarkshire	25%	38%	Stirling	n/a	75%
Dundee City	n/a	65%	Fife	n/a	50%	Orkney Islands	15%	15%	West Dunbartonshire	n/a	50%
East Ayrshire	50%	60%	Glasgow City	n/a	50%	Perth & Kinross	n/a	100%	West Lothian	n/a	65%

n/a = information not available

This bar chart shows only data from councils where figures were available for both years. It shows that two councils have reduced their taper rate, five have increased theirs and six have made no change.¹⁵

¹¹ <http://www.cosla.gov.uk/about/decision-making-cosla>

¹²

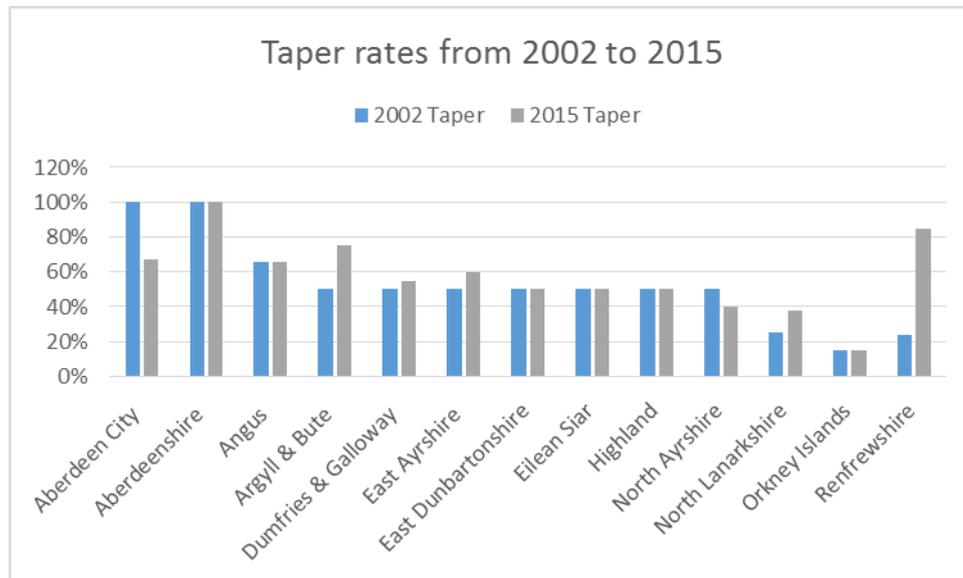
http://www.heraldscotland.com/news/13174714.Disability_groups_quit_Cosla_over_rising_cost_of_care_charges/

¹³ Figures from Cosla National Guidance 2002 and LDAS National Survey 2015.

¹⁴ <http://www.ldascotland.org/docs/Comparative%20Information%20on%20the%20Care%20Tax.pdf>

¹⁵ <http://www.ldascotland.org/docs/Comparative%20Information%20on%20the%20Care%20Tax.pdf>

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These tables and charts will help respondents to assess the effectiveness of the national guidance in achieving the consistency across Scotland that both COSLA and the Scottish Government said they were looking for in 2002.

d. Discretionary Waiving of Social Care Charges

Given that charging is notionally discretionary, COSLA recommends that there should be a right of appeal to the Head of Social Work in each area for a waiver of the charges. This allows individuals who believe they have special circumstances to appeal against the payments that have been requested of them. However most councils will only give temporary waivers on the grounds that the system has been set up fairly and that the “means tested” approach means that no one should be left with a bill that they cannot afford to pay. These temporary waivers are only usually granted when there is a level of debt at the time of the first financial assessment.

e. Annual Adjustment of Social Care Charges

Most councils annually uprate their charging policy between March and May to take into account any changes that have been proposed in the COSLA guidance. Typically this takes the form of approving a new set of figures for the various financial elements of the charging system. Any increases to the personal threshold or rates for particular services need to be agreed by councillors.

Councils face increasingly difficult financial challenges. In the context of overall reductions in public sector budgets, between 2010/11 and 2013/14, Scottish Government funding for councils decreased by 8.5 per cent in real terms (allowing for inflation) to £10.3 billion. At the same time, demand for council services has increased, largely due to population changes¹⁶.

¹⁶ http://www.audit-scotland.gov.uk/docs/local/2015/nr_150305_local_government_overview.pdf

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As a result Local Authorities continue to consider Social Care Charging as one element in how they bring local income and expenditure into balance. Some of the plans to adjust Social Care Charges in the current year of 2015-16 include:

- South Lanarkshire Council is increasing the cost of its meals services by 20% and the care charge taper tax rate by 10%.¹⁷
- Edinburgh Council has increased the charge it makes for an hour of care at home by 14%.¹⁸
- Midlothian Council has increased its charges for Telecare by 50%.¹⁹
- East Renfrewshire has plans to double its charging income by collecting an additional £220,000.²⁰
- West Lothian Council has brought forward plans to increase its charging income by 300%, an increase of £750,000 in total.²¹

7. Financial Implication of Social Care Charging

a) Total Cost

COSLA says Local Authority financial returns for 2012/13 show total income from Social Care Charges to social work service users for non-residential services was £52.7 million, of which £25.4 million was for services for older people, £24.7 million for adults aged 18-64, and £2.7 million was for children and families social work:

Table 2: Council charging income from people who use non-residential social work services, 2008/09 to 2012/13

	2008-09	2009-10	2010-11	2011-12	2012-13	Change in last year	
	£'000	£'000	£'000	£'000	£'000	£'000	%
Children and Families	1,441	1,543	1,665	2,323	2,680	357	15%
People aged 18-64, with:							
physical or sensory disabilities	3,279	3,663	3,444	3,571	4,708	1,137	32%
learning disabilities	11,513	12,366	13,934	14,631	16,899	2,268	16%
mental health problems	681	687	806	1,365	2,757	1,392	102%
addictions/ substance misuse	863	681	620	887	303	-584	-66%
HIV/ AIDS	2	0	0	0	0	0	0%
Subtotal: people aged 18-64	16,338	17,397	18,804	20,454	24,667	4,213	21%
Older Persons	25,478	25,241	23,068	24,782	25,355	573	2%
Criminal Justice social work services	1,812	1,368	1,299	179			
Service Strategy	29	126	79				
TOTAL SOCIAL WORK	45,098	45,675	44,915	47,738	52,702	4,964	10.4%
<i>Of which:</i>							
ADULT SOCIAL CARE	41,816	42,638	41,872	45,236	50,022	4,786	10.6%

¹⁷ http://www.southlanarkshire.gov.uk/downloads/file/9375/overall_position_of_revenue_budget_2015-2016_and_savings_proposals

¹⁸ http://www.edinburgh.gov.uk/info/20200/budget_and_finance/1128/council_budget_201516

¹⁹ http://www.midlothian.gov.uk/download/meetings/id/4294/24_financial_strategy_saving_proposals, p13

²⁰ <http://www.eastrenfrewshire.gov.uk/CHttpHandler.ashx?id=13058&p=0>

²¹ www.westlothian.gov.uk/yoursay14

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Source: LFR3 analysis, Social Work Scotland (December 2014)

b) Increase in Income from Social Care Charges 2011/12-2012/13

Income from non-residential charges for all Social Work services increased overall by nearly £5 million (10.4%) between 2011/12 and 2012/13. Income from Adult Social Care charges increased by nearly £4.8 million (10.6%), a larger percentage change than in 2010-11 (8%).

Most (88%) of the additional income from Adult Social Care non-residential charges came from adults with disabilities or mental health problems: the total increase for adults aged 18-64 was 21%. The total increase in the four years from 2008/09 to 2012/13 was about 50%.

Charging income for services for older people increased in 2011/12 (by 7%) for the first time in many years and this trend continued in 2012/13 with a further increase of 2%. Most of the £25 million raised from older people comes from

- Home Meals Services (approx. £5 million)
- Community Alarms (approx. £15 million)
- Home Care, Respite & Day Care (approx. £5 million)

The actual cost of ending Social Care Charges will depend on a number of factors other than just the actual income collected by Local Authorities.

There may be additional costs from the further take up of non-residential care services if there is no financial charge to act as a disincentive.

c) Learning from the Costs of Introducing Free Personal Care

The initial experience of the introduction of Free Personal Care is instructive here. Immediately after this change the costs for the implementation of the policy rose quite sharply compared to pre-introduction estimates: £146 million in the first year compared to an original estimate of £122 million. Researchers found that the main reason this took place was a “failure to anticipate that DWP would not pay Attendance Allowance to self-funding care home residents receiving free personal care costs.”²² While there was a rise in the numbers taking up personal care services, a significant part of this was unmet need from people from a BME community or those who were carers themselves.²³ Nor was there any reduction in the number of informal carers or significant change in their caring behaviour within the first 2 years of the change.²⁴

Despite the introduction of Free Personal Care, the overall number of older people receiving home care has fallen by 5,300 between 2003 and 2014. Inside these figures was a significant fall of 22% in

²² Bell, D., & Bowes A, Financial care models in Scotland and the UK, Joseph Rowntree Foundation, 2006, pp 57-58

²³ Ibid., p62.

²⁴ Ibid., p 69.

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the number of people in the 65-84 age bracket getting home care and a rise in the number over 85s by 6%.²⁵

This fall is primarily due to the introduction of eligibility criteria by Local Authorities which restricts access to social care except for those with the most critical support needs.

As a result while it may be reasonable to expect some further take up of services if my bill was implemented, we can expect the use of eligibility criteria by Local Authorities to limit such changes.

In addition any increases may be more than offset by a reduction in additional emergency support services such as hospital admissions for those whose health or condition subsequently deteriorated.

Some research on this suggests that additional demand for services could be easily offset by the savings in emergency services by a factor of nearly 2 to 1²⁶.

d) The Costs of Administering the Means Test

The costs of administering Social Care Charges, including carrying out financial assessments, collecting care charges and pursuing those who choose not to pay charges are significant. While campaigners against Social Care Charges use a higher figure²⁷, the Scottish Government estimates that 15% of income generated from non-residential Social Care Charges would be the cost of administration.²⁸ This is about £8 million per year.

The actual cost of the changes will depend on what is included in the legislation and I am interested in finding out your views on what the financial implications of any possible changes might be. Nonetheless it is my view that this is an affordable Bill and that there will be significant savings following its implementation that will reduce the cost that will need to be met by additional Scottish Government spending.

8. Scotland Against The Care Tax's "End Social Care Charges" petition

In 2013, Scotland Against the Care Tax (SACT) was founded to pursue a coordinated campaign to end Social Care Charges on the grounds that they breached the human rights of disabled people. Its founding paper stated that Social Care Charges:

- are a breach of the civic and human rights of disabled and older people to live an independent life, free from discrimination; and to enjoy their possessions and their home
- are a form of double taxation that places an intolerable burden on disabled and older people and are an inefficient way of providing additional revenue for care services
- should be abolished and all social care should be like health care, free at the point of need.

²⁵ <http://www.gov.scot/Publications/2014/11/1085/downloads> , 00464921.xls, Table 3

²⁶ <http://www.ldascotland.org/docs/What%20would%20it%20cost%20to%20get%20abolish%20social%20care%20charges.pdf>

²⁷ Ibid.

²⁸ Public Petitions Committee, 3rd Meeting, 2015 (Session 4), Tuesday 17 February 2015, PPC/S4/15/3/7

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Scotland Against the Care Tax launched a national petition:

Calling on the Scottish Parliament to urge the Scottish Government to abolish all local authority charges for non-residential care services as under Part 1, Paragraph 1, Subsection (4) of the Community Care and Health (Scotland) Act 2002.

The legislation mentioned in the petition gave the Scottish Government the power to regulate Local Authority Social Care Charges without further legislation.

The argument presented by Scotland Against the Care Tax started from the premise that social care in any form is an equality and human rights issue. It is an essential part of the infrastructure of a fair and just society which respects, upholds and guarantees the equality and human rights of its citizens.

This petition was signed by 2,763 people on the Change.org website and another 1,250 signed the paper copies.²⁹

9. Scottish Government's Response To the Petition

In December 2014, the Scottish Government Minister responsible for this area stated, "I am sympathetic to the aims of the petition and am determined that the Scottish Government should take action to improve the consistency and fairness of the current approach to charging for non-residential care.

"The Scottish Government has held in reserve its powers under the Community Care and Health Act 2002 to set charges for social care, on the understanding that COSLA will work with Local Authorities to ensure greater consistency on the charges made to service users for their social care.

"I await the deliberations of COSLA leaders on the introduction of a standard financial template, and will consider after that decision has been made whether there is any additional need for intervention to ensure that the charges are fair and consistent."³⁰

This Standard Financial Template was a proposal from COSLA that could set a uniform approach to the first part of the care charge calculation – the Income Assessment. However early views that this would lead to substantive change did not materialise and it mainly benchmarked the lowest figures for the treatment of each element of income. Only six councils were affected by a small change in the treatment of savings³¹.

²⁹ <https://www.change.org/p/scottish-parliament-end-non-residential-social-care-charges-for-older-and-disabled-people>

³⁰ PE1533_E Scottish Government 18.12.14.pdf at

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01533>

³¹ <http://www.ldascotland.org/index.php/stop-the-care-tax/211-the-game-s-a-bogey-for-efforts-to-make-care-charges-fair>

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In May 2015 the Cabinet Secretary suggested that while the standard financial template had only set a minimum level for charges it had stopped things getting worse and this was a reason to hold off further intervention:

“Finally I think the agreement of the Standard Financial Assessment Template is a positive step and its introduction as a minimum is intended to ensure that councils are not required to introduce less generous rates and thresholds simply in order to align with the COSLA charging guidance.

“I recognise that charges made by Local Authorities for social care, where necessary, need to be fair and affordable. We have already, in partnership with local government, ensured that no-one in the last six months of a progressive terminal illness should be charged for the care that they receive at home, and we continue to work with our colleagues in local government to improve the system of charging for social care and address the issues raised by Committee members.”³²

I am aware of no further plans by the Scottish Government to intervene on the question of Social Care Charging using their existing regulatory powers.

10. Consultation Questions

1. Do you support the principle that non-residential social care services should be available free at the point of delivery to those who have been assessed by a relevant professional as requiring them (as is the case within health care)?
2. Do you agree that legislation is a necessary and appropriate means of addressing the issues identified?
3. The current system has resulted in varying charges in different areas for the same level and quality of service. Do you agree that there should be consistency across Scotland? What do you think the advantages and disadvantages would be?
4. Should all social care related services be free at the point of delivery? If you answered Yes, please explain your reasons. If you answered No, please explain which services should be excluded, and why. (Please refer to the services set out on page 7)
5. What are the likely financial implications (if any) of any proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise?
6. What do you think the implications of the proposed Bill are for equality? (Positive/Negative/No significant implications/Undecided). Please explain your answer. If you answered Negative, please suggest any ways this impact could be minimised or avoided.
7. Are there any other comments you would wish to make that are relevant to this proposal?

³² PE1533_L Scottish Government 11.05.15.pdf at <http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01533>

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11. How the consultation process works

This consultation is being launched in connection with a draft proposal which I have lodged in the Scottish Parliament. <http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

A minimum 12 week consultation period is required, following which responses will be analysed.

Lodging a draft proposal in this way is normally the first stage in the process of introducing a Member's Bill. The second stage normally involves lodging a final proposal, accompanied by a summary of consultation responses. Under the Parliament's rules, if a final proposal secures the necessary cross-party support from other MSPs, the member who lodged it secures the right to introduce a Member's Bill. However, that right may only be exercised until the beginning of June in the penultimate year of the Parliamentary session – and since that deadline has already passed, I will not be able to introduce a Bill on the strength of the current proposal (regardless of the level of support it obtains from other MSPs).

Instead, my aim in lodging this draft proposal is to begin a debate on how to reform the law, in the hope and expectation that a Bill can be introduced – and passed – in the new session (beginning after the 2016 election).

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at: Constituency Office:

Unit 32, Coatbridge Business Centre, 204 Main Street, Coatbridge, ML5 3RB, Telephone: 01236 423 555, e-mail: Siobhan.mcmahon.msp@scottish.parliament.uk

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website under Parliamentary Business/Bills/Proposals for Members' Bills

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12. How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via Smart Survey, please follow this link:

[Social Care Charges consultation survey](#)

The platform for the online survey is Smart Survey, a third party online automated survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the Data Protection Act 1998. Any information you send in response to this consultation (including personal data and sensitive personal data) will automatically be forwarded to Smart Survey, provided to the MSP progressing the Bill and will also be seen by specified staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or directly from this link:

[Privacy Notice](#)

The terms and conditions for Smart Survey are available here:

<https://www.smartsurvey.co.uk/terms-of-use>

Electronic or hard copy submissions

If possible, please submit your response electronically – preferably in MS Word document. Please keep formatting of this document to a minimum, and avoid including any personal data other than your name (or the name of the group or organisation on whose behalf you are responding).

Any additional personal data (e.g. contact details) should be provided in the covering e-mail (or a covering letter).

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain the role of that organisation and how the

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view expressed in the response was arrived at (for example, whether it reflects an established policy or was voted on by members).

Where to send responses

Responses prepared electronically should be sent by e-mail to:

Siobhan.Mcmahon.msp@scottish.parliament.uk

Responses prepared in hard copy should be sent by post to:

Siobhan McMahon MSP
The Scottish Parliament
Edinburgh
EH99 1SP

You may also contact Siobhan McMahon MSP's office by telephone on (0131) 348 6390.

Deadline for responses

All responses should be received no later than 5pm on Friday 30th January 2016.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received on my website <http://siobhanmcmahon.org/consultations/>. As published, responses will normally include the name of the respondent, but other personal data (signatures, addresses and contact details) will not be included.

Copies of all responses will be provided to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member's Bill). NGBU will treat responses in accordance with the Data Protection Act 1998. The summary may cite, or quote from, your response and may name you as a respondent to the consultation – unless your response is to be anonymous or confidential (see below).

I am also obliged to provide copies of all responses to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses (other than confidential responses) available to MSPs or staff on request.

Requests for anonymity or confidentiality

If you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly. You still need to supply your name, but any response treated as anonymous will be published without the name (attributed only to "Anonymous"), and only the anonymised version will be

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provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.

If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly. If the response is treated as confidential (in whole or in part), it (or the relevant part) will not be published. However, I would still be obliged to provide a complete copy of the response to NGBU, and a copy of any non-confidential parts (i.e. a redacted copy) to SPICe when lodging my final proposal. As the Parliament is subject to the Freedom of Information (Scotland) Act (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

In summarising the results of this consultation, NGBU will aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published (or published only in part).

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory statements or material. If I think your response contains such material, it may be returned to you with an invitation to provide a justification for the comments or remove them. If the issue is not resolved to my satisfaction, I may then disregard the response and destroy it.

Data Protection Act 1998

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or confidentiality. I will not publish your signature or personal contact information, or any other information which could identify you and be defined as personal data.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: ico.org.uk

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Freedom of Information (Scotland) Act 2002

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOI(S)A). So if the information you send me is requested by third parties the Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about Freedom of Information can be found at:

www.itspublicknowledge.info.