

Backdating Charging:

Clarification suggested by Scottish Government 14 April 2020

During the period that the relevant provisions in the Coronavirus Act apply, local authorities cannot apply a charge without a full assessment that involves the person to deliver services (as expected under the Self-directed Support (Scotland) Act 2013). Where a full assessment does take place and the person is appropriately involved, the local authority may charge in accordance with the Charging for Residential Accommodation Guidance or the COSLA National Strategy & Guidance, Charges Applying to Non-residential Social Care Services. Where a person needs support that includes accommodation, charging may be backdated to the date when the person became a permanent resident (ie, where accommodation is expected to last more than 52 weeks).

No life changing decisions such as moving permanently into a care home should be taken without a full and complete assessment being carried out. This is consistent with section 17(7) to (9) of the 2020 Act, which allows for circumstances where a person is expected to become a permanent resident but a full assessment has not yet been carried out. In those cases, any decisions made before a full assessment should be regarded as interim decisions and the rationale for making an interim decision should be clearly recorded. Any interim decision should be specifically revisited in the full assessment to ensure that there is agreement across all parties.

A final decision will still be made following a full assessment but the 2020 Act allows retrospective charging for the earlier period.

The intention is that it would be possible to back date charges to that point at which a more limited assessment by the local authority had determined the resident was likely to be permanent. However, no charge can be recovered until a full assessment has been completed. Once a full assessment is done, the charge can be backdated to when the interim decision was made, if it confirms that the resident is permanent. But until that point, there is to be no charging.

There should be effective and open communications between local authorities, service providers and service users throughout this process.