

2015 No. (W.)

SOCIAL CARE, WALES

**The Care and Support (Deferred
Payment) (Wales) Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for local authorities to enter into a deferred payment agreement with an adult in respect of the costs of the provision of accommodation in a care home.

Regulation 3 sets out the circumstances in which a local authority must enter into a deferred payment agreement but this requirement is subject to specified conditions being met.

Regulation 4 makes provision as to the amount which is deferred under the agreement. Regulation 4(1) provides that, subject to paragraph (3), the required amount is the sum in paragraph (2).

Regulation 4(2) provides that in cases where the adult is required to pay charges for the costs of their care and support to the authority, the amount is 100% of the amount due to the authority under section 59 (power of the local authority to charge) or such lesser amount as the adult requests. In either case these amounts may be reduced by the amount which the local authority is permitted not to defer under regulation 5 or in accordance with the terms and conditions of the agreement.

Regulation 4(3)(a) provides that apart from the circumstance set out in sub-paragraph (b) the required amount and interest and costs which have been added to it must not exceed the equity limit specified in paragraph (5). Sub-paragraph (b) of regulation 4(3) requires the authority to defer payment of an amount which exceeds the equity limit if regulation 4(4) applies. Regulation 4(4) applies if the equity limit was not exceeded when amounts were last deferred. This may arise if the value of the security has fallen since the date of the last deferral. Regulation 4(7) makes clear that interest and administration costs can

continue to be added to the deferred amount even after the equity limit is reached.

Regulation 5(1) and (2) provides in effect that the local authority does not have to defer an amount where, after payment by the adult of the amounts due to the authority, the adult would retain at least the amount of the appropriate minimum guarantee.

Paragraphs (3) and (4) also provide that the local authority may include a term in the deferred payment agreement to require the adult to pay, or ensure payment of, the amounts which in accordance with regulation 5, the local authority has decided not to defer.

Regulation 6 makes provision as to the time for repayment of the required amount.

Regulation 7 makes provision in connection with the termination of the deferred payment agreement.

Regulations 8 and 9 make provision as to the charging of interest in certain circumstances and the payment of administrative costs.

Regulation 10 provides for the terms, conditions and information which may be included in a deferred payment agreement.

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**The Care and Support (Deferred
Payment) (Wales) Regulations 2015**

Made ***

Laid before the National Assembly for Wales ***

Coming into force ***

The Welsh Ministers, in exercise of the powers conferred by section 68 and section 196(2) of the Social Services and Well-being (Wales) Act 2014⁽¹⁾, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Care and Support (Deferred Payment) (Wales) Regulations 2015 and they come into force on X.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the Act” means the Social Services and Well-being (Wales) Act 2014 and a reference to a section is a reference to a section of the Act;

“capital limit” is the amount specified in regulation 11(2) of the Care and Support (Charging) (Wales) Regulations 2015⁽²⁾;

“care home” means a care home, within the meaning given in section 3 of the Care Standards Act 2000⁽³⁾ in respect of which a person is registered under that Act;

“care and support plan” means a plan prepared in accordance with section 54 of the Act;

(1) 2014 anaw 4
(2) 2015/
(3) 2000 c.14

“deferred payment agreement” has the meaning given in section 68(2) of the Act;

“net weekly income” has the meaning given in the Care and Support (Charging) (Wales) Regulations 2015;

“required amount” is so much of the charge that the adult is required (or is going to be required) to pay under section 59 as is specified or determined in accordance with regulation 4.

“specified time” means the time specified in regulation 6.

Local Authority required to enter into a deferred payment agreement

3.—(1) Subject to paragraph (2), a local authority⁽¹⁾ is required to enter into a deferred payment agreement with an adult if—

- (a) the adult’s needs for care and support are being met or are going to be met under sections 35 or section 36(1) and the care and support plan for the adult specifies that the local authority is going to meet the adult’s needs by the provision of accommodation in a care home;
- (b) the adult is required (or is going to be required) to pay a charge under section 59; and
- (c) the local authority has carried out a financial assessment under section 63.

(2) The requirement in paragraph (1) does not apply unless the following conditions are met—

- (a) the local authority is satisfied that the adult has a legal or beneficial interest in a property which the person occupies as his or her only or main residence or which the person used to occupy as his or her only or main residence, and that—
 - (i) the value of that interest has not been disregarded for the purposes of calculating the amount of the adult’s capital in accordance with regulations made under section 64(2) of the Act⁽²⁾;
 - (ii) the adult’s capital, less the value of that interest, does not exceed the capital limit;
- (b) the adult’s net weekly income is less than the amount specified in regulation 13 of

(1) see section 197(1) of the Act as to the meaning of “local authority”; the definition in section 197(1) is limited to local authorities in Wales.

(2) see the Care and Support (Financial Assessment) (Wales) Regulations 2015 which make provision for calculating capital.

the Care and Support (Charging) Regulations 2015;

- (c) the adult agrees to all the terms and conditions which the authority has included in the deferred payment agreement in accordance with regulation 10;
- (d) the local authority has obtained the consent referred to in paragraph (3), if the authority considers it necessary to do so; and
- (e) where the person's interest in the property which is referred to in paragraph (a) is subject to any other charges over it, the local authority is satisfied that the adult is likely to be able to continue to make payments in connection with those charges in the event that a deferred payment agreement is entered into.

(3) The consent required by paragraph (2)(d) is consent which in the opinion of the local authority is genuine and informed consent, given in writing, to the matters specified in paragraph (4) by any person—

- (a) who the local authority considers has an interest in the land over which the charge will be created; and
- (b) whose interest the authority considers may prevent it from exercising a power of sale of the land or recovering the required amount.

(4) The matters specified for the purpose of paragraph (3) are—

- (a) the creation of the charge; and
- (b) the charge taking priority to and ranking before any interest the person has in the land over which the charge will be created.

Required amount and equity limit

4.—(1) Subject to paragraph (3), the adult's required amount is the sum which is specified or determined in accordance with paragraph (2).

(2) The sum is—

- (a) The lower of—
 - (i) 100% of the amount due from the adult under section 59 for the provision of care and support in a care home and of any amount which the adult is required to pay in accordance with regulations under section 57(2), less any amount which the local authority requires the adult to contribute under regulation 5;

- (ii) such lesser part of the amount due under section 59, or, as the case may be, in accordance with a requirement in regulations under section 57(2) as the adult requests to be deferred, less any amount which the local authority requires the adult to contribute under regulation 5;
- (iii) the amount deferred in accordance with sub-paragraphs (i) or (ii), less any amount which, during the time the agreement is in force and in accordance with the terms and conditions of the agreement, the authority does not agree to defer payment of until the specified time.

(3) But—

- (a) the required amount and any interest and administration costs which have been treated in the same way as the required amount must not exceed the equity limit and the authority must not agree to defer payment of an amount if to do so would exceed the equity limit; unless
- (b) at the relevant time, the required amount and any interest and administration costs which have been treated in the same way as the required amount exceed the equity limit, in which case the local authority must defer payment of those amounts if paragraph (4) applies.

(4) This paragraph applies if the equity limit was not exceeded at the time when payment of an amount due to the authority under section 59 or 57(2) was last deferred.

(5) The equity limit is 90% of the value of the interest in the property (that is, its current market value at the relevant time) over which the local authority obtains a charge to secure payment of the person's required amount and any interest and administration costs which are to be treated in the same way as the required amount, less the amount of the capital limit and the amount of any charges secured on the property which rank in priority to the authority's charge.

(6) For the purposes of paragraphs (3) and (5), "the relevant time" is the time that an amount under section 59 or 57(2) is due to the authority.

(7) Any interest and administration costs may continue to be treated in the same way as the required amount even after the equity limit is reached.

Adult's contribution

5.—(1) If in any week during which the agreement is in force the adult's weekly income exceeds the amount of the appropriate minimum guarantee, a local authority is permitted not to defer an amount due to the

authority under section 59 or 57(2) for meeting the adult's needs for that week by the provision of accommodation in a care home.

(2) But the amount which, under this regulation, the local authority may decide not to defer in respect of that week may not exceed the amount by which the adult's income in that week exceeds the amount of the appropriate minimum guarantee.

(3) Where the local authority decide not to defer an amount under paragraph (1), it may include a term in the deferred payment agreement to require the adult to pay or ensure payment of the amount due to the authority

(4) In paragraph (3) the amount due to the authority is the amount which, in accordance with this regulation, the authority decides not to defer.

(5) The amount of the adult's weekly income must be calculated in accordance with regulations made under section 64.

(6) But nothing in this regulation requires the local authority to defer any amount which is due to it under section 59 or 57(2) if, under regulation 4(3) of these Regulations, or in accordance with the terms of the agreement, the authority is required to, or is permitted to, cease to defer that amount.

(7) For the purposes of paragraphs (1) and (2), the appropriate minimum guarantee is to be construed in accordance with section 2(3) of the State Pension Credit Act 2002(1).

Time for payment of the required amount

6. The specified time for repayment of the required amount and any interest and administration costs which have been treated in the same way as the required amount is the sooner of—

- (a) the date of sale or disposal of the adult's property; or
- (b) 90 days after the date of the death of the adult with whom the agreement is made or such longer time as the authority may permit.

Termination

7. The adult may terminate the deferred payment agreement at any time prior to the specified time by giving the authority reasonable notice, in writing, and paying to the local authority the required amount together with any amount of interest and any amount which is required to be paid towards administrative

(1) 2002 c.16

costs which the adult has agreed is to be treated in the same way as the required amount.

Interest

8.—(1) A local authority may charge interest on an adult's required amount provided that, before entering into the agreement, it informs the adult that it proposes to do so and of the rate at which interest will be charged.

(2) The interest may be treated in the same way as the adult's required amount, unless the adult requests to pay the interest separately.

(3) The interest rate is a rate that does not exceed the relevant rate for the relevant period plus 0.15%.

(4) The relevant rate is the weighted average interest rate on conventional gilts specified for the financial year in which the relevant period starts in the most recent report published before the start of the relevant period by the Office of Budget Responsibility⁽¹⁾ under section 4(3) of the Budget Responsibility and National Audit Act 2011⁽²⁾

(5) The relevant period is the period starting on—

(a) 1st January and ending on 30th June in any year; or

(b) 1st July and ending on 31st December in any year.

(6) "Financial year" has the meaning given in section 25(2) of the 2011 Act.

Administrative costs

9.—(1) The local authority may require the adult to pay an amount towards the authority's administrative costs provided that it informs the adult that it proposes to do so, before entering into the agreement, and complies with sub-paragraphs (a) to (c) of paragraph (3).

(2) The amount which the local authority requires the adult to pay towards its administrative costs may be treated in the same way as the adult's required amount, unless the adult requests to pay that amount separately.

(3) But the local authority must—

(a) before entering into the agreement, give the adult an estimate of the amount which it proposes to require the adult to pay towards the authority's administrative costs in respect of making the agreement

(1) A copy of the report is available at <http://budgetresponsibility.org.uk/>.

(2) 2011 c.4.

- and registering any charge on the land or land charges register;
- (b) before entering into the agreement, give the adult an indication of the amount which the adult will be required to pay towards the authority's administrative costs during the period when the agreement is in force and information to enable the adult to ascertain any changes to the amount of such payments; ;
 - (c) before requesting payment towards the authority's administrative costs, or treating the amount of such a payment in the same way as the required amount, provide the adult with a statement which sets out the amount of the of the payment.

Terms, conditions and information

10.—The deferred payment agreement may include such terms, conditions and information as the local authority considers necessary or appropriate.

Name

Title of Minister, one of the Welsh Ministers

Date