

EXPLANATORY MEMORANDUM TO
THE CARE AND SUPPORT (DEFERRED PAYMENT) REGULATIONS 2014

2014 No. 2671

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Care and Support (Deferred Payment) Regulations 2014 relate to local authorities' powers to implement deferred payment schemes. These schemes allow individuals to enter into an agreement with their local authority to defer paying the costs of their care and support until a later date so that they should not be forced to sell their home during their lifetime to pay for care.
 - 2.2 The Regulations require local authorities to enter into deferred payment agreements with people who meet the eligibility criteria in regulation 2(2) and give authorities broad discretionary powers beyond this.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 These Regulations are made under sections 34 and 35 of the Care Act 2014 ("the Act") and set out the circumstances when a local authority is required or permitted to enter into a deferred payment agreement with an adult to defer until the time specified in regulation 7 ("the specified time") the costs of care and support which an adult is required to pay the local authority for meeting their needs in a care home or supported living accommodation. Or, if the authority is not meeting the adult's needs, and the reason is that the adult has not asked the authority to do so, to enter into a loan agreement for the costs of care and support in such accommodation under which the repayment of the amount of the loan is deferred until the specified time.
 - 4.2 They also make provision as to the amount which may be deferred under the agreement, for the adult's right to terminate the agreement, the right of the authority to charge interest and administration costs, and for those charges and costs to be deferred until the specified time and the terms and conditions that must be included in the agreement.
 - 4.3 The requirement to enter into a deferred payment agreement arises in respect of an adult the value of whose property has been taken into account in the financial assessment carried out under section 17 of the Act. Under

section 17 of the Act, a local authority has a duty to carry out a financial assessment where it thinks that if it were to meet the adult's needs for care and support it would charge the adult under section 14(1) of the Act. The Care and Support (Charging and Assessment of Resources) Regulations 2014 ("Charging Regulations") make provisions in respect of local authority powers to make a charge for meeting needs under section 14 and in relation to financial assessments under section 17.

4.4 Regulation 12 of the Charging Regulations provides that if the financial resources (in terms of capital) of an adult who is provided with accommodation in a care home (a permanent resident) exceed £23,250, the local authority is not permitted to pay towards the cost of the provision of that accommodation. By paragraph 6 of Schedule 2 to those regulations the value of the adult's main or only home is disregarded for the purposes of calculating an adult's capital resources unless the adult is in receipt of care and support other than by the provision of care and support in a care home.

4.5 There are exceptions, for cases where the home is also occupied by a qualifying relative of the adult (e.g. the adult's partner) but the effect is that many people will have to sell their homes to pay for their care in a care home.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Care Act 2014 contains a number of reforms to the ways in which people pay for their care and support, including making provision for a new universal deferred payment scheme.

7.2 The overarching policy objective of the scheme is to help avoid people being forced to sell their home within their lifetime to pay for their care. People may face this risk if they are 'cash poor' (having little in the way of savings) but 'asset rich' (perhaps owning a property). When a local authority assesses whether someone needs financial support in paying for their care, it considers both assets and savings in its calculation; so consequently someone with a valuable asset but minimal savings would not be eligible for local authority support. This may be problematic as the individual has little in the way of liquid assets (their savings) to pay for their care, and so may be forced into hurriedly selling their property.

7.3 Under the deferred payments scheme, local authorities can enter into an agreement with an individual to pay the costs of the individual's care and

support for them, reclaiming the amount due to them at a later date, or to advance sums to the individual for the purpose of arranging their own care and support. The agreement is typically secured by the authority placing a legal charge on the individual's property, and the individual typically repays the local authority from the proceeds generated from the sale of said property (though these regulations give authorities power to accept other forms of security, and individuals freedom to repay the amount due from other sources).

7.4 Local authorities already have discretionary powers to create deferred payment schemes, accorded to them in the 2001 Health and Social Care Act. However, local authorities' discretionary powers have meant that the scheme has not been universally available – as the independent Commission on Funding of Care and Support noted in its final report when it commented that “the availability and use of deferred payment schemes is patchy”.

7.5 The Government broadly accepted the Commission's recommendation for a “universal offer across the country” which was available to “anyone who would be unable to afford care charges without selling their home”. Starting from April 2015, there will be a new requirement for all local authorities to offer the scheme to anyone who meets the eligibility criteria set out in draft regulations and guidance. This will ensure the scheme is universally available in all authorities, and the eligibility criteria will ensure the scheme is targeted at those most at risk of being unable to afford care charges without selling their home.

7.6 The new universal scheme also gives local authorities powers to charge interest on the amount deferred and pass on any administrative costs they incur to the individual, making the scheme cost-neutral to the local authority and financially sustainable. It also sets out clear rules governing the maximum amount that individuals can defer, affording local authorities further financial protection.

8. Consultation outcome

8.1 The consultation on the package of regulations relating to Part One of the Care Act was published on 5 June 2014, and ran for ten weeks to 15 August. In order to reach a comprehensive and varied pool of experience and expertise, the consultation contained a mix of digital and face-to-face meetings and events with the full spectrum of stakeholders, including: people receiving care and support and their carers; social workers and other frontline practitioners; local authority finance managers, commissioners and elected members; voluntary and private social care providers; national representative groups and other charities and trusts; and NHS agencies, housing departments, DWP Job Centre Plus and other key partners involved in the reforms. In total, the consultation drew over 4,000 responses from many different sources. Responses were carefully analysed and, where appropriate, changes were made to regulations.

- 8.2 A consultation response document will be published at:
<https://www.gov.uk/government/topics/social-care>
- 8.3 In particular, changes were made to these regulations to:
- extend deferred payment schemes to people moving into extra care housing;
 - reflect views expressed about what type of security local authorities should be required to accept;
 - simplify the way in which the maximum amount deferrable is calculated; and
 - clarify how the interest rate will operate.

9. Guidance

- 9.1 Statutory guidance to support implementation of Part One of the Care Act was subject to public consultation as part of the consultation on regulations under that part. The guidance will be published at <https://www.gov.uk/government/topics/social-care> . This guidance is not itself the subject of parliamentary scrutiny.

10. Impact

- 10.1 A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via careactconsultation@dh.gsi.gov.uk or Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 The Government has committed to keeping the impact of the package of regulations under review. We will monitor the impacts of implementation of the policies contained within the Act and regulations under it on an ongoing basis. This will include continuing to work closely with local government to understand the impact of implementation of the reforms.

13. Contact

- 13.1 Edmund Hair at the Department of Health [tel: 020 7210 5676 or email: edmund.hair@dh.gsi.gov.uk] can answer any queries regarding the instrument.