
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning the entry by local authorities into deferred payment agreements under section 68 of the Social Services and Well-being (Wales) Act 2014 (“the Act”). Regulation 3 sets out the circumstances in which a local authority must enter into a deferred payment agreement with an adult but this requirement is subject to specified conditions being met.

Regulation 4 provides that a local authority must not enter into a deferred payment agreement unless it obtains adequate security for the payment of the required amount. It sets out that, in cases where a local authority is required to enter into a deferred payment agreement, the adequate security must be a charge by way of legal mortgage for an amount which is at least equal to the adult’s required amount and any interest and administration costs which are treated in the same way as the adult’s required amount and which is capable of being registered as a first legal charge over the property in favour of the local authority in the land register.

Regulation 4 also provides that if a local authority considers that it is necessary to do so it must obtain written consent to the matters specified in paragraph (3) from a person who has an interest in the property over which it proposes to obtain the legal charge.

Regulation 5 makes provision as to the amount which is deferred under the agreement. Regulation 5(1) provides that the required amount is the sum specified or determined in accordance with paragraph (2).

Regulation 5(2) provides that in cases where the adult is required to pay charges for the costs of their care and support to a local authority, the amount is 100% of the amount due to the local authority under section 59 of the Act (power to impose charges), and any amount due to the local authority in accordance with regulations made under section 57(2) of the Act (cases where a person expresses preference for particular accommodation), or such lesser amount as the adult requests to be deferred. In any of these cases the amounts may be reduced by the amount which the local authority is permitted not to defer under regulation 6, or in accordance with the terms and conditions of the deferred payment agreement.

Regulation 6 provides in effect that a local authority does not have to defer an amount where, after payment by the adult of the amounts due to the local authority, the adult would retain at least the amount of the appropriate minimum guarantee. The appropriate minimum guarantee is defined in regulation 6(7) and will depend upon the adult’s circumstances.

Paragraphs (3) and (4) of regulation 6 provide that a 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 this regulation, the local authority has decided not to defer.

Regulations 7 and 8 make provision as to the time for repayment of the required amount and the adult’s right to terminate the deferred payment agreement.

Regulations 9 and 10 make provision as to the payment of interest and administrative costs.

Regulation 11 makes provision about the terms, conditions and information which may be included in a deferred payment agreement.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be

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obtained from the Health and Social Services Group, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.