
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 266

SOCIAL CARE

**The Community Care (Deferred Payment of
Accommodation Costs) (Scotland) Regulations 2002**

<i>Made</i>	- - - -	<i>5th June 2002</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>6th June 2002</i>
<i>Coming into force</i>	- -	<i>1st July 2002</i>

The Scottish Ministers, in exercise of the powers conferred by sections 6(1) and (3) and 23(4) of the Community Care and Health (Scotland) Act 2002⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Community Care (Deferred Payment of Accommodation Costs) (Scotland) Regulations 2002 and shall come into force on 1st July 2002.

(2) In these Regulations—

“the Act” means the Community Care and Health (Scotland) Act 2002;

“additional payments” means payments made for the purpose mentioned in section 4(2) of the Act (accommodation more expensive than usually provided);

“the Assessment Regulations” means the National Assistance (Assessment of Resources) Regulations 1992⁽²⁾;

“residence” means the dwelling that a person occupies or would normally occupy as their only or main residence.

(3) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

(1) 2002 asp 5.

(2) S.I. 1992/2977 as amended by S.I. 1993/964 and 2230, 1994/825, 1995/858 and 3054, 1996/602, 1997/485, 1998/497 and 1730 and S.S.I. 2001/6 and 138.

Conditions for making deferred payment agreements

2.—(1) A local authority may enter into a deferred payment agreement with a person mentioned in section 6(1) of the Act (deferred payment of accommodation costs) where the conditions set out in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are—

- (a) an assessment of the resources of the person carried out in accordance with the Assessment Regulations, without taking into account the value of the person's residence, has resulted in the person being assessed as having capital at or below the sum first mentioned in regulation 28(1) of the Assessment Regulations (calculation of tariff income);
- (b) the person does not wish to, or is unable to, sell their residence;
- (c) the standard security to be granted in accordance with section 6(2)(c) of the Act will be a standard security granted in respect of the person's residence;
- (d) the value of the person's residence is such that the standard security to be granted in accordance with section 6(2)(c) of the Act will secure the local authority's reasonable estimate of the total amount that will become due to the local authority under the deferred payment agreement when the payment is likely to become due; and
- (e) where the person's residence is subject to one or more standard securities, the person is, in the opinion of the local authority, reasonably able to meet the payments due under that or those securities and the payments due from the person in respect of the cost of the residential accommodation provided or secured, or to be provided or secured, to that person by the local authority.

Restriction on making deferred payment agreements

3. A local authority shall not enter into a deferred payment agreement in respect of the relevant portion mentioned in regulation 4(1) where the capital value of the person's residence is disregarded by virtue of Schedule 4 to the Assessment Regulations (capital to be disregarded), as read without reference to regulation 2(5) of the Community Care (Disregard of Resources) (Scotland) Order 2002(3).

Relevant portion

4.—(1) Subject to paragraph (2), for the purpose of section 6(3) of the Act (determination of relevant portion) the relevant portion is that part of the payments that the person is liable to pay to the local authority as shall be determined by calculating the difference between—

- (a) the payments that the person is liable to pay to the local authority calculated in accordance with the Assessment Regulations; and
- (b) the payments that the person would be liable to pay to the local authority calculated in accordance with the Assessment Regulations without taking into account the value of the person's residence.

(2) Where the person is making or is to make additional payments the relevant portion in respect of the additional payments shall be such amount, if any, as the local authority considers appropriate.

St Andrew's House,
Edinburgh
5th June 2002

FRANCIS MCAVEETY
Authorised to sign by the Scottish Ministers

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning entering into deferred payment agreements by local authorities under section 6 of the [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#). A local authority may enter into such an agreement where the conditions set out in regulation 2 are met.

The conditions are that—

- (a) an assessment of the person's resources in accordance with the National Assistance (Assessment of Resources) Regulations 1992 (S.I.1992/2977), disregarding the value of their home, shows that they have capital at or below the lower capital limit (currently £11,500);
- (b) the person does not wish to, or is unable to, sell their home;
- (c) the person will grant a standard security against their home;
- (d) the value of the person's interest in their home is such that it will meet the local authority's reasonable estimate of the amount that will become due under the deferred payment agreement; and
- (e) where the home is subject to other standard securities the person is, in the opinion of the local authority, able to continue to pay those and make the payments due to the local authority for the provision of residential accommodation.

Regulation 3 prevents the making of a deferred payment agreement (except in relation to additional payments) where the value of a person's home is disregarded, other than for the purpose of making the agreement, when assessing their need for and ability to pay for residential accommodation.

Regulation 4 sets out how the amount that may be the subject of a deferred payment agreement is calculated. The amount deferred is the amount of the person's payments that would be due to the local authority that are attributable to the value of the person's home. Where a person makes additional payments, however, the local authority has discretion as to the relevant portion that may be deferred in respect of those payments. They may defer such amount, if any, as they consider appropriate up to the total of the additional payments.