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WELSH STATUTORY INSTRUMENTS

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**2015 No. 1841 (W. 269)**

**SOCIAL CARE, WALES**

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

<i>Made</i>	- - - -	<i>27 October 2015</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>3 November 2015</i>
<i>Coming into force</i>	- -	<i>6 April 2016</i>

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 6 April 2016.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2. In these Regulations—

“the Act” (*“y Ddeddf”*) means the Social Services and Well-being (Wales) Act 2014;

“the 2011 Act” (*“Deddf 2011”*) means the Budget Responsibility and National Audit Act 2011(2);

“the Charging Regulations” (*“y Rheoliadau Gosod Ffioedd”*) means the Care and Support (Charging) (Wales) Regulations 2015(3);

“adequate security” (*“sicrwydd digonol”*) means a charge by way of a legal mortgage for an amount which is at least equal to the adult’s required amount and any interest or administration costs which are to be treated in the same way as the adult’s required amount and which is capable of being registered as a first legal charge in favour of the local authority in the land register(4);

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(1) 2014 anaw 4. The powers to make regulations are exercisable by the Welsh Ministers; see section 197(1) of the Act for the definitions of “specified” and “regulations”.

(2) 2011 c. 4.

(3) S.I. 2015/1843 (W. 271).

(4) See the Land Registration Act 2002 (c. 9), section 132(1) for the meaning of “charge”, “legal mortgage” and “register”.

- “assessed income” (“*incwm asesedig*”) has the meaning given in the Charging Regulations;
- “capital limit” (“*terfyn cyfalaf*”) is the amount specified in regulation 11(2) of the Charging Regulations;
- “care and support plan” (“*cynllun gofal a chymorth*”) means a plan prepared in accordance with section 54 of the Act, or a plan which a local authority prepares when it meets an adult’s needs for care and support under section 36 of the Act;
- “deferred payment agreement” (“*cytundeb ar daliad gohiriedig*”) has the meaning given in section 68(2) of the Act;
- “required amount” (“*swm gofynnol*”) is so much of the charge that the adult is required (or is going to be required) to pay under section 59 of the Act and any amount the adult is required to pay in accordance with regulations made under section 57(2) of the Act as is specified or determined in accordance with regulation 5;
- “specified time” (“*amser penodedig*”) means the time specified in regulation 7.

### **Local authority required to enter into a deferred payment agreement**

- 3.—**(1) A local authority<sup>(5)</sup> is required to enter into a deferred payment agreement with an adult if—
- (a) paragraph (2) applies to the adult;
  - (b) the condition in regulation 4 is met; and
  - (c) the adult agrees to all the terms and conditions included in the deferred payment agreement in accordance with regulation 11.
- (2) This paragraph applies if—
- (a) the adult’s needs for care and support are being met (or are going to be met) under section 35 or section 36(1) of the Act 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<sup>(6)</sup>;
  - (b) the adult is required (or is going to be required) to pay a charge under section 59 of the Act;
  - (c) the local authority has carried out a financial assessment under section 63 of the Act;
  - (d) the local authority is satisfied that the adult has an interest in a property which the adult occupies as his or her home or which the adult used to occupy as his or her home<sup>(7)</sup>, 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 of the Act<sup>(8)</sup>, and
    - (ii) the adult’s capital, less the value of that interest, does not exceed the capital limit; and
  - (e) the adult’s weekly assessed income is insufficient to meet the full amount due from the adult under section 59 of the Act for the provision of care and support in a care home and any amount the adult is required to pay in accordance with regulations made under section 57(2)<sup>(9)</sup> of the Act.

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<sup>(5)</sup> 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.

<sup>(6)</sup> See section 197(1) of the Act for the meaning of “care home”.

<sup>(7)</sup> See section 68(10) of the Act which provides that a reference to person’s home is a reference to the property which the person occupies as his or her only or main residence, and a reference to a person’s interest in a property is a reference to the person’s legal or beneficial interest in that property.

<sup>(8)</sup> See the Care and Support (Financial Assessment) (Wales) Regulations 2015 which make provision for calculating capital.

<sup>(9)</sup> Section 57(2) of the Act permits the making of regulations by the Welsh Ministers which provide for the payment of additional costs where a person expresses a preference for particular accommodation (where the costs of that accommodation are

### **Adequate security**

4.—(1) A local authority must obtain—

- (a) adequate security for the payment of the adult's required amount and any interest or administration costs which are to be treated in the same way as the adult's required amount; and
- (b) the consent referred to in paragraph (2), if the local authority considers it necessary to do so.

(2) The consent required by paragraph (1)(b) is consent which in the opinion of the local authority is genuine and informed consent, given in writing, to the matters specified in paragraph (3) by any person—

- (a) whom the local authority considers has an interest in the property over which the charge will be created; and
  - (b) whose interest the local authority considers may prevent it from exercising a power of sale of the property or recovering the required amount and any interest and administration costs which are to be treated in the same way as the required amount.
- (3) The matters specified for the purpose of paragraph (2) are—
- (a) the creation of a charge; and
  - (b) the charge taking priority over and ranking before any interest the person has in the property over which the charge will be created.

### **Required amount**

5.—(1) The adult's required amount is the sum which is specified or determined in accordance with paragraph (2).

(2) The sum is the lowest of—

- (a) 100% of the amount due from the adult under section 59 of the Act 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 made under section 57(2) of the Act, less any amount which the local authority requires the adult to contribute under regulation 6;
- (b) such lesser part of the amount due under section 59 of the Act, and, as the case may be, in accordance with regulations made under section 57(2) of the Act as the adult requests to be deferred, less any amount which the local authority requires the adult to contribute under regulation 6;
- (c) the amount deferred in accordance with sub-paragraphs (a) or (b), less any amount which, during the time the deferred payment agreement is in force and in accordance with the terms and conditions of the deferred payment agreement, the local authority does not agree to defer payment of until the specified time.

### **Adult's contribution**

6.—(1) If in any week during which the deferred payment agreement is in force the adult's weekly assessed income exceeds the amount of the appropriate minimum guarantee applicable in the adult's case, the local authority is permitted not to defer an amount due to the local authority under section 59 of the Act and any amount the adult is required to pay in accordance with regulations made under section 57(2) of the Act for meeting the adult's needs for that week by the provision of accommodation in a care home.

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in excess of the amount that the local authority would usually expect to incur in providing or arranging the provision of accommodation to meet that person's needs).

(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 assessed income in that week exceeds the amount of the appropriate minimum guarantee.

(3) Where the local authority decides 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 local authority.

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

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

(6) But nothing in this regulation requires the local authority to defer any amount which is due to it under section 59 of the Act or in accordance with regulations made under section 57(2) of the Act if, under paragraph (3), or in accordance with the terms of the deferred payment agreement, the local authority is permitted to cease to defer that amount.

(7) For the purposes of paragraphs (1) and (2), the "appropriate minimum guarantee" ("*gwarant isafswm briodol*") is to be construed in accordance with section 2(3) of the State Pension Credit Act 2002<sup>(10)</sup>.

#### **Time for payment of the required amount**

7. 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 deferred payment agreement is made or such longer time as the local authority may permit.

#### **Termination**

8. The adult may terminate the deferred payment agreement at any time prior to the specified time by giving the local 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 costs which the adult has agreed is to be treated in the same way as the required amount.

#### **Interest**

9.—(1) A local authority may charge interest on an adult's required amount provided that, before entering into the deferred payment 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<sup>(11)</sup> under section 4(3) of the 2011 Act<sup>(12)</sup>.

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<sup>(10)</sup> 2002 c. 16.

<sup>(11)</sup> The Office of Budget Responsibility is established by section 3 of the 2011 Act.

<sup>(12)</sup> A copy of the report is available at <http://budgetresponsibility.org.uk/>.

- (5) The relevant period is the period starting on—
- (a) 1 January and ending on 30 June in any year; or
  - (b) 1 July and ending on 31 December in any year.
- (6) “Financial year” (“*blwyddyn ariannol*”) has the meaning given in section 25(2) of the 2011 Act.

### **Administrative costs**

**10.**—(1) A local authority may require the adult to pay an amount towards the local authority’s administrative costs provided that it informs the adult that it proposes to do so, before entering into the deferred payment 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 deferred payment agreement, give the adult an estimate of the amount which it proposes to require the adult to pay towards the local authority’s administrative costs in respect of making the deferred payment agreement and registering any charge on the land register or on the land charges register;
- (b) before entering into the deferred payment agreement, give the adult an indication of the amount which the adult will be required to pay towards the local authority’s administrative costs during the period when the deferred payment 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 local 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 payment.

### **Terms, conditions and information**

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

27 October 2015

*Mark Drakeford*  
Minister for Health and Social Services, one of  
the Welsh Ministers

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## 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

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