



# Social Services and Well-being (Wales) Act 2014

2014 anaw 4

## PART 5

### CHARGING AND FINANCIAL ASSESSMENT

#### *Enforcement of debts*

#### **70 Recovery of charges, interest etc**

- (1) Any amount due to a local authority under this Part is recoverable by the authority as a debt due to it.
- (2) But subsection (1) does not apply in a case where a deferred payment agreement could be entered into, in accordance with regulations under section 68, unless—
  - (a) the local authority has sought to enter into such an agreement with the person from whom the amount is due, and
  - (b) that person has refused.
- (3) An amount recoverable by a local authority under subsection (1) is recoverable summarily as a civil debt (but this does not affect any other method of recovery).
- (4) An amount is recoverable under this section within six years of the date on which the amount becomes due to the local authority.
- (5) Where a person mentioned in subsection (6) misrepresents or fails to disclose (whether fraudulently or otherwise) to a local authority any material fact in connection with the provisions of this Part, the following amounts are due to the authority from that person—
  - (a) any expenditure incurred by the authority as a result of the misrepresentation or failure, and
  - (b) any amount recoverable under this section which the authority has not recovered as a result of the misrepresentation or failure.

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*Status: This is the original version (as it was originally enacted).*

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- (6) The persons are—
- (a) an adult—
    - (i) who appears to the local authority to have needs for care and support or (in the case of a carer) support under Part 3, and
    - (ii) who has capacity to understand whether a fact may be material in connection with the provisions of this Part;
  - (b) an adult—
    - (i) to whom something is provided in order to meet another person's needs for care and support or (in the case of a carer) support under Part 3, and
    - (ii) who has capacity to understand whether a fact may be material in connection with the provisions of this Part;
  - (c) an adult of a description specified in regulations in relation to care and support or (in the case of a carer) support which appears to the local authority to be needed by—
    - (i) a child, or
    - (ii) an adult who does not have capacity to understand whether a fact may be material in connection with the provisions of this Part.
- (7) The reasonable costs incurred by a local authority in recovering or seeking to recover an amount due to it under this Part are recoverable by the authority as a debt due to it; and subsection (3) applies to the recovery of those costs as if they were amounts to which subsection (1) applies.
- (8) Regulations may—
- (a) make provision for determining the date on which an amount becomes due to a local authority for the purposes of this section;
  - (b) specify cases or circumstances in which an amount due to a local authority under this Part is not recoverable by it under this section;
  - (c) specify cases or circumstances in which a local authority may charge interest on an amount (including any costs recoverable by the authority under subsection (7)) due to it under this Part;
  - (d) where interest is chargeable, provide that it—
    - (i) must be charged at a rate that exceeds the rate specified in or determined in accordance with the regulations;
    - (ii) may not be charged at a rate that exceeds the rate specified in or determined in accordance with the regulations.

## **71 Creation of a charge over an interest in land**

- (1) Where a person—
- (a) fails to pay to a local authority an amount that is recoverable by the authority under this Part, and
  - (b) has a legal or beneficial interest in land in Wales or England,
- the local authority may create a charge in its favour over the person's interest in the land to secure payment of that amount.
- (2) Where the person has interests in more than one parcel of land, the local authority may create the charge over whichever one of those interests it chooses.

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- (3) The charge may be in respect of any amount that is recoverable by the local authority under this Part; but this is subject to subsection (4).
- (4) Where the charge is created over the interest of an equitable joint tenant in land, the amount of the charge must not exceed the value of the interest that the person would have in the land if the joint tenancy were severed (but the creation of the charge does not sever the joint tenancy).
- (5) On the death of an equitable joint tenant in land whose interest in the land is subject to a charge under this section, the following persons' interests in land become subject to a charge—
  - (a) if there are surviving joint tenants, their interests in the land;
  - (b) if the land vests in one person, or one person is entitled to have it vested in himself or herself, that person's interest in the land.
- (6) The amount of the charge created under subsection (5) must not exceed the amount of the charge to which the interest of the deceased joint tenant was subject.
- (7) A charge under this section must be created by a declaration in writing made by the local authority.
- (8) A charge under this section, other than a charge over the interest of an equitable joint tenant in land—
  - (a) in the case of unregistered land, is a Class B land charge within the meaning of section 2 of the Land Charges Act 1972;
  - (b) in the case of registered land, is a registrable charge taking effect as a charge by way of legal mortgage.
- (9) Where an amount is charged over a person's interest in land under this section, interest is chargeable upon that amount from the day on which the person mentioned in subsection (1) dies.
- (10) The rate of interest chargeable under subsection (9) is—
  - (a) a rate specified in or determined in accordance with regulations, or
  - (b) if no regulations are made, a rate determined by the local authority.

## **72 Transfer of assets to avoid charges**

- (1) This section applies in a case where the needs of a person ("P") have been or are being met by a local authority under sections 35 to 42 or section 45 and where—
  - (a) a person ("the transferor") (who may be P but need not be so) has transferred an asset to another person (a "transferee"),
  - (b) the transfer was undertaken with the intention of avoiding charges for having P's needs met, and
  - (c) either the consideration for the transfer was less than the value of the asset or there was no consideration for the transfer.
- (2) The transferee is liable to pay to the local authority an amount equal to the difference between—
  - (a) the amount the authority would have charged the transferor were it not for the transfer of the asset, and
  - (b) the amount it did in fact charge the transferor.

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- (3) But the transferee is not liable to pay to the authority an amount which exceeds the benefit accruing to the transferee from the transfer.
- (4) Where an asset has been transferred to more than one transferee, the liability of each transferee is in proportion to the benefit accruing to that transferee from the transfer.
- (5) In this section “asset” means anything which may be taken into account for the purposes of a financial assessment.
- (6) The value of an asset (other than cash) is the amount which would have been realised if it had been sold on the open market by a willing seller at the time of the transfer, with a deduction for—
  - (a) the amount of any encumbrance on the asset, and
  - (b) a reasonable amount in respect of the expenses of the sale.
- (7) Regulations may specify cases or circumstances in which liability under subsection (2) does not arise.