

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Deferred payment agreements

Section 34 – Deferred payment agreements and loans

222. This section provides for deferred payments agreements and loans. A deferred payment is usually made when a local authority is in a position to charge someone for care and support or related services under Part 1 but may also be made to help an adult (for example a person who makes their own care arrangements) to obtain care and support services which are not provided by a local authority under Part 1. In a deferred payment agreement the charges or loan advanced is repaid by the adult or from their estate at a later specified date, or on the happening of a specified event, such as the sale of property. The debt is normally secured against the person’s property to ensure repayment. Deferring payment can help people delay the need to sell their home or possessions.
223. *Subsection (1)* provides that regulations may specify when an authority may or must offer someone a deferred payment or loan.
224. *Subsection (2)* makes clear that a deferred payment agreement is an agreement where the sum or part of the sum owed to the local authority does not have to be repaid until a specified time.
225. *Subsection (3)* provides that a deferred payment agreement may include services that are not necessary to meet someone’s needs, for example preventive or extra services which may be in addition to the care and support the authority is providing.
226. *Subsection (4) and (5)* allows regulations to be made as to whether a local authority must have, and if so what will constitute security for the deferred payment. Adequate security may include a charge on the individual’s property or a guarantee from a third party.
227. *Subsection (6)* makes clear that a “deferred amount” is the amount which the adult does not have to repay until the time specified or determined in accordance with regulations.
228. *Subsection (8)* makes clear that the section also applies to a loan other than a deferred payment agreement which a local authority agrees to make to an adult to assist the adult to obtain care and support. It makes clear that the loan may be for care and support other than that which the authority considers is necessary for the purposes of meeting needs, for example preventive or extra services.

Section 35 – Deferred payment agreements: further provision

229. The section contains further provisions concerning conditions associated with deferred payments, including interest and administration charges, which may be imposed by regulations made under subsection (1) of section 34.

230. *Subsection (1)* enables regulations to be made to require or allow authorities to charge interest upon a deferred sum, an amount to cover their administrative costs and interest on those costs.
231. *Subsection (2)* enables regulations to be made to specify what costs are administration costs – for example the cost to a local authority of registering a charge at the Land Registry.
232. *Subsection (3)* enables regulations to be made to allow or require a local authority to add any interest or administrative costs to the charges or loan and obtain and specify what will constitute adequate security for the same.
233. *Subsection (4)* makes clear that a local authority may not charge interest at a rate which is higher than any rate specified in regulations.
234. *Subsection (5)* requires regulations to be made so that the adult is permitted to terminate the agreement before the date or occurrence of the event specified in the agreement by giving notice and repaying the sum in full to the authority.
235. *Subsection (6)* allows regulations to make other provision about the duration or termination of the agreement.
236. *Subsection (7)* allows for regulations to be made to address what may happen in a situation where somebody sells or otherwise disposes of property. For example in a case where the agreement provides that it must be repaid when an adult sells their home, regulations might allow the deferred payment agreement to continue rather than to be repaid in cases where a property is sold in order that a new property can be bought as a home for the adult or the adult's partner and that new home can be used as security for the agreement.
237. *Subsection (8)* allows regulations to be made to require authorities to include terms and conditions of a specified type in a deferred payment agreement, to allow local authorities to include such terms and conditions and others which they think are appropriate and to require statements relating to specified matters or in a specified form to be included in the agreement. Regulations under this subsection may provide, for example, that the agreement must contain a term which entitles the adult to receive an annual statement showing the amount they owe under the agreement.
238. *Subsection (9)* allows regulations to be made to enable a local authority to protect or enforce the security it has obtained for the payment of the deferred amount or loan, and for this purpose to make necessary and appropriate amendments to legislation.
239. *Subsection (10)* makes clear that this section also applies to loan agreements.

Section 36 – Alternative financial arrangements

240. This section provides for local authorities to enter into financial agreements of a similar nature to a deferred payment agreement but without interest charges attached: an 'alternative financial arrangement'.
241. *Subsection (1)* enables regulations to be made to require or allow authorities to enter into an 'alternative financial arrangement' with an adult.
242. *Subsection (2)* defines an alternative financial arrangement as one which is in essence the same as a deferred payment agreement or loan (as set out in section 34) and that achieves a similar effect without charging interest.
243. *Subsection (3)* enables regulations to be made for alternative financial arrangements in relation to any issue on which it is also possible to make regulations for deferred payment agreements (as set out in sections 34 and 35) with the exception of the payment of interest.