
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for local authorities to enter into a deferred payment agreement with an adult and specify the amount of the agreement and conditions which relate to the agreement. Regulation 2 sets out the circumstances in which a local authority must enter into a deferred payment agreement.

Regulation 3 sets out the circumstances in which a local authority may enter into a deferred payment agreement.

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 deferred amount. It sets out that, for 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 deferred amount and any interest and administration costs which are treated in the same way as the adult's deferred amount and which is capable of being registered as a first legal charge in favour of the local authority in the land register. In the case of a deferred payment agreement which the authority is permitted to enter into, paragraph (3) provides that adequate security is such a charge or such other security as the authority considers will secure payment of the deferred amount.

The regulation also provides that if the authority considers that it is necessary to do so it must also obtain written consent to the matters specified in paragraph (5) from a person who has an interest in the asset over which it has obtained the charge.

Regulation 5 makes provision as to the amount which is deferred under the agreement. Regulation 5(1) provides that, subject to paragraph (3), the deferred amount is the sum in paragraph (2).

Regulation 5(2) provides in effect that, in cases where the adult is required to pay charges for the costs of their care and support to the authority, the amount is 100% of the amount due to the authority from the adult under section 14 (power of local authority to charge) or the amount due to the authority under section 30(2) (additional costs in cases where the adult expresses a preference for particular accommodation) or such lesser amount as the adult requests. In either case these amounts may be reduced by the amount by which the local authority is permitted not to defer under regulation 6 or in accordance with terms and conditions of the agreement.

In the case of a loan, regulation 5(2)(b) provides that the deferred amount is the whole of the loan made to the adult to obtain accommodation in a care home or supported living accommodation.

Regulation 5(3)(a) provides in effect that apart from in the circumstance described in subparagraph (b) the deferred amount and interest and costs which have been added to it must not exceed the equity limit specified in paragraph (5). Paragraph (b) of regulation 5(3) requires the authority to defer payment of an amount which exceeds the equity limit if regulation 5(4) applies. Regulation 5(4) applies if the equity limit was not exceeded when amounts were last deferred. This may arise if the value of the adequate security has fallen since the date of the last deferral. Regulation 5(7) makes clear that interest and administration costs can continue to be added to the deferred amount even after the equity limit is reached.

Regulation 6(1) and (2) provides in effect that the local authority does not have to defer an amount, where, after payment by the adult of the amounts due to the authority, or payment by the adult of the charges due to the provider of care and support in a care home or supported living accommodation, the adult would retain at least £144 of his or her weekly income.

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

It also provides, by paragraphs (3) and (4), that the local authority may include a term in the agreement to require the adult to pay, or ensure payment of, the amounts which in accordance with the regulation the adult has decided not to defer.

Regulations 7 and 8 make provision as to the time for repayment of the deferred 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 administration costs.

Regulation 11 details terms and conditions which must or may be in the agreement.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via careactconsultation@dh.gsi.gov.uk or the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.