



OFFERYNNAU STATUDOL
CYMRU

WELSH STATUTORY
INSTRUMENTS

2015 Rhif 1840 (Cy. 268)

2015 No. 1840 (W. 268)

**GOFAL CYMDEITHASOL,
CYMRU**

SOCIAL CARE, WALES

**Rheoliadau Gofal a Chymorth
(Dewis o Lety) (Cymru) 2015**

**The Care and Support (Choice of
Accommodation) (Wales)
Regulations 2015**

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

EXPLANATORY NOTE

(This note is not part of the Regulations)

O dan Ran 4 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (“y Ddeddf”) caiff awdurdod lleol ddiwallu anghenion person am ofal a chymorth drwy ddarparu llety. Caiff rheoliadau o dan adran 57 o'r Ddeddf ddarparu, pan fo awdurdod lleol yn mynd i ddiwallu anghenion o dan adrannau 35 i 38 o'r Ddeddf drwy ddarparu neu drefnu i ddarparu llety o fath penodedig ar gyfer person, a'r person o dan sylw wedi mynegi ei fod yn ffafrio llety penodol o'r math hwnnw, rhaid i'r awdurdod lleol ddarparu, neu drefnu i ddarparu'r llety sy'n cael ei ffafrio. Mae'r Rheoliadau hyn yn gymwys i achosion pan fo awdurdod lleol yn diwallu anghenion gofal a chymorth oedolion a phlant drwy ddarparu llety cartref gofal.

Under Part 4 of the Social Services and Well-being (Wales) Act 2014 (“the Act”) a local authority may meet a person's care and support needs by providing accommodation. Regulations under section 57 of the Act may provide that where a local authority is going to meet needs under sections 35 to 38 of the Act by providing or arranging for the provision of accommodation of a specified type for a person, and the person concerned has expressed a preference for particular accommodation of that type, the local authority must provide or arrange for the provision of the preferred accommodation. These Regulations apply to cases where a local authority is meeting care and support needs of adults and children through provision of care home accommodation.

Mae rheoliad 2 o'r Rheoliadau hyn yn pennu'r amgylchiadau y mae'r gofyniad i ddarparu neu drefnu i ddarparu'r llety sy'n cael ei ffafrio gan y person yn gymwys iddynt.

Regulation 2 of these Regulations specifies circumstances in which the obligation to provide or arrange for the provision of the person's preferred accommodation applies.

Mae rheoliad 3 yn pennu'r amodau y mae'n rhaid eu bodloni er mwyn i'r awdurdod lleol fod o dan ofyniad i ddarparu neu drefnu i ddarparu'r llety sy'n cael ei ffafrio gan y person.

Regulation 3 specifies the conditions which must be met in order for the local authority to be required to provide or arrange for the provision of the person's preferred accommodation.

Mae rheoliad 4 yn nodi'r “amod cost ychwanegol”. Pan fo cost y llety sy'n cael ei ffafrio gan y person yn fwy na'r gost y byddai'r awdurdod lleol yn disgwyl ei thynnu fel arfer wrth ddarparu neu drefnu i ddarparu llety addas o'r math hwnnw er mwyn diwallu anghenion y person o dan sylw, nid yw'r awdurdod lleol dan ofyniad i ddarparu neu drefnu i ddarparu'r llety hwnnw oni chaiff yr amod cost ychwanegol ei fodloni.

Regulation 4 sets out the “additional cost condition”. Where the cost of a person's preferred accommodation is more than the cost that the local authority would usually expect to incur in providing or arranging for the provision of suitable accommodation of that type to meet the needs of the person concerned, the local authority is not required to provide or arrange for the provision of that accommodation unless the additional cost condition is met.

Mae rheoliad 5 yn darparu bod rhaid i awdurdod lleol roi rhesymau mewn ysgrifen dros wrthod darparu neu drefnu i ddarparu'r llety sy'n cael ei ffafrio gan berson.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth y Grŵp Iechyd a Gwasanaethau Cymdeithasol, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

Regulation 5 provides that a local authority must give written reasons for a refusal to provide or arrange for the provision of a person's preferred accommodation.

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.

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Gwnaed 27 Hydref 2015

Made 27 October 2015

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* 3 Tachwedd 2015

*Laid before the National Assembly
for Wales* 3 November 2015

Yn dod i rym 6 Ebrill 2016

Coming into force 6 April 2016

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir gan adrannau 57 a 196(2)(c) o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014(1), yn gwneud y Rheoliadau a ganlyn.

The Welsh Ministers, in exercise of the powers conferred by sections 57 and 196(2)(c) of the Social Services and Well-being (Wales) Act 2014(1), make the following Regulations.

Enwi, cychwyn, cymhwyso a dehongli

Title, commencement, application and interpretation

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Gofal a Chymorth (Dewis o Lety) (Cymru) 2015.

1.—(1) The title of these Regulations is the Care and Support (Choice of Accommodation) (Wales) Regulations 2015.

(2) Daw'r Rheoliadau hyn i rym ar 6 Ebrill 2016 ac maent yn gymwys o ran Cymru.

(2) These Regulations come into force on 6 April 2016 and apply in relation to Wales.

(3) Yn y Rheoliadau hyn—

(3) In these Regulations—

ystyr “y Ddeddf” (“*the Act*”) yw Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014;

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

ystyr “llety cartref gofal” (“*care home accommodation*”) yw—

“care home accommodation” (“*llety cartref gofal*”) means—

(a) llety mewn cartref gofal o fewn yr ystyr a roddir i “care home” gan adran 3 o Ddeddf Safonau Gofal 2000(2) pan fo'r llety yng Nghymru neu Loegr;

(a) accommodation in a care home within the meaning given by section 3 of the Care Standards Act 2000(2) where the accommodation is in Wales or England;

(b) llety mewn gwasanaeth cartref gofal o fewn yr ystyr a roddir i “care home service” gan baragraff 2 o Atodlen 12 i Ddeddf Diwygio

(b) accommodation in a care home service within the meaning given by paragraph 2 of Schedule 12 to the Public Services Reform (Scotland)

(1) 2014 dccc 4.

(2) 2000 p. 14. Diwygiwyd adran 3 gan adran 95 o Ddeddf Iechyd a Gofal Cymdeithasol 2008 (p. 14) a pharagraff 4 o Atodlen 5 i'r Ddeddf honno.

(1) 2014 anaw 4.

(2) 2000 c. 14. Section 3 was amended by the Health and Social Care Act 2008 (c. 14), section 95 and paragraph 4 of Schedule 5.

Gwasanaethau Cyhoeddus (Yr Alban) 2010(1) pan fo'r llety yn yr Alban; neu

- (c) llety mewn cartref gofal preswyl o fewn yr ystyr a roddir i "residential care home" gan erthygl 10 o Orchymyn Gwasanaethau Iechyd a Chymdeithasol Personol (Ansawdd, Gwella a Rheoleiddio) (Gogledd Iwerddon) 2003(2) pan fo'r llety yng Ngogledd Iwerddon;

ystyr "llety sy'n cael ei ffafrio" ("*preferred accommodation*") yw'r llety y mae person y mae'r llety i'w ddarparu iddo wedi mynegi ei fod yn ei ffafrio yn unol â rheoliad 2(b).

Act 2010(1) where the accommodation is in Scotland; or

- (c) accommodation in a residential care home within the meaning given by article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(2) where the accommodation is in Northern Ireland;

"preferred accommodation" ("*llety sy'n cael ei ffafrio*") means the accommodation for which a person for whom it is to be provided expresses a preference in accordance with regulation 2(b).

Y dewis o lety

2. Pan fo—

- (a) awdurdod lleol(3) yn mynd i ddiwallu anghenion o dan adrannau 35 i 38 o'r Ddeddf drwy ddarparu neu drefnu i ddarparu llety cartref gofal yn y Deyrnas Unedig;
- (b) y person y mae'r llety i'w ddarparu iddo wedi mynegi ei fod yn ffafrio cartref gofal penodol; ac
- (c) yr amodau yn rheoliad 3 wedi eu bodloni, rhaid i'r awdurdod lleol ddarparu neu drefnu i ddarparu'r llety sy'n cael ei ffafrio yn unol â'r Rheoliadau hyn.

Amodau ar gyfer darparu'r llety sy'n cael ei ffafrio

3.—(1) Rhaid i'r amodau a ganlyn fod wedi eu bodloni ar gyfer darparu llety sy'n cael ei ffafrio o dan reoliad 2—

- (a) bod y cynllun gofal a chymorth ar gyfer y person yn pennu y gellir diwallu anghenion y person drwy ddarparu llety cartref gofal;
- (b) bod y llety sy'n cael ei ffafrio yn addas ar gyfer anghenion y person;
- (c) bod y llety sy'n cael ei ffafrio ar gael; ac
- (d) os nad yr awdurdod lleol sy'n darparu'r llety sy'n cael ei ffafrio, bod darparwr y llety yn cytuno i ddarparu'r llety i'r person ar delerau'r awdurdod lleol.

Choice of accommodation

2. Where—

- (a) a local authority(3) is going to meet needs under sections 35 to 38 of the Act by providing or arranging for the provision of care home accommodation in the United Kingdom;
- (b) the person for whom the accommodation is to be provided expresses a preference for a particular care home; and
- (c) the conditions in regulation 3 are met, the local authority must provide or arrange for the provision of the preferred accommodation in accordance with these Regulations.

Conditions for provision of preferred accommodation

3.—(1) The following conditions must be met for the provision of preferred accommodation under regulation 2—

- (a) the care and support plan for the person specifies that the person's needs can be met by the provision of care home accommodation;
- (b) the preferred accommodation is suitable to the person's needs;
- (c) the preferred accommodation is available; and
- (d) where the preferred accommodation is not provided by the local authority, the provider of the accommodation agrees to provide the accommodation to the person on the local authority's terms.

(1) 2010 dsa 8.

(2) O.S. 2003/431 (G.I. 9).

(3) *Gweler* adran 197(1) o'r Ddeddf am ystyr "awdurdod lleol"; mae'r diffiniad wedi ei gyfyngu i awdurdodau lleol yng Nghymru.

(1) 2010 asp 8.

(2) S.I. 2003/431 (N.I. 9).

(3) *See* section 197(1) of the Act for the meaning of "local authority"; the definition is limited to local authorities in Wales.

(2) Os yw'r gost i'r awdurdod lleol am ddarparu neu drefnu i ddarparu'r llety sy'n cael ei ffafrio yn fwy na'r gost y byddai'r awdurdod lleol fel arfer yn disgwyl ei thynnu wrth ddarparu neu drefnu i ddarparu llety cartref gofal i ddiwallu anghenion y person o dan sylw, rhaid i'r amod cost ychwanegol yn rheoliad 4 hefyd gael ei fodloni⁽¹⁾.

Yr amod cost ychwanegol

4.—(1) Mae'r amod cost ychwanegol wedi ei fodloni—

- (a) os yw'r awdurdod lleol wedi ei fodloni bod y talwr yn alluog ac yn fodlon i dalu cost ychwanegol y llety sy'n cael ei ffafrio am y cyfnod y mae'r awdurdod lleol yn disgwyl diwallu anghenion y person drwy ddarparu neu drefnu i ddarparu'r llety hwnnw; a
- (b) bod y talwr yn ymuno gyda'r awdurdod lleol mewn cytundeb ysgrifenedig, lle y mae'r talwr yn cytuno i dalu'r gost ychwanegol.

(2) Rhaid i'r awdurdod lleol ddarparu i'r talwr fynediad at wybodaeth a chyngor digonol i alluogi'r talwr i ddeall telerau'r cytundeb ysgrifenedig arfaethedig cyn ymuno yn y cytundeb hwnnw.

(3) Rhaid i'r cytundeb ysgrifenedig gynnwys—

- (a) y gost ychwanegol;
- (b) y gost y byddai'r awdurdod lleol fel arfer yn disgwyl ei thynnu wrth ddarparu neu drefnu i ddarparu llety cartref gofal i ddiwallu anghenion y person o dan sylw;
- (c) amllder y taliadau;
- (d) manylion y person y mae'r taliadau i'w gwneud iddo;
- (e) darpariaeth ar gyfer adolygu'r cytundeb;
- (f) darpariaethau ynghylch y materion a bennir ym mharagraff (4).

(4) Y materion penodedig yw—

- (a) canlyniadau peidio â gwneud taliadau;
- (b) effaith codiadau mewn ffioedd a wneir gan ddarparwr y llety sy'n cael ei ffafrio; ac
- (c) effaith newidiadau yn amgylchiadau ariannol y talwr.

(5) At ddibenion y rheoliad hwn, ystyr “y talwr” (“*the payer*”) yw—

(2) If the cost to the local authority of providing or arranging for the provision of the preferred accommodation is greater than the cost that the local authority would usually expect to incur in providing or arranging the provision of care home accommodation to meet the needs of the person concerned, the additional cost condition in regulation 4 must also be met⁽¹⁾.

The additional cost condition

4.—(1) The additional cost condition is met if—

- (a) the local authority is satisfied that the payer is able and willing to pay the additional cost of the preferred accommodation for the period during which the local authority expects to meet the person's needs by providing or arranging for the provision of that accommodation; and
- (b) the payer enters into a written agreement with the local authority in which the payer agrees to pay the additional cost.

(2) The local authority must provide the payer with access to sufficient information and advice to enable the payer to understand the terms of the proposed written agreement before entering into it.

(3) The written agreement must include—

- (a) the additional cost;
- (b) the cost the local authority would usually expect to incur in providing or arranging the provision of care home accommodation to meet the needs of the person concerned;
- (c) the frequency of payments;
- (d) the details of the person to whom the payments are to be made;
- (e) provision for review of the agreement;
- (f) provisions about the matters specified in paragraph (4).

(4) The specified matters are—

- (a) the consequences of ceasing to make payments;
- (b) the effect of increases in charges made by the provider of the preferred accommodation; and
- (c) the effect of changes in the payer's financial circumstances.

(5) For the purposes of this regulation, “the payer” (“*y talwr*”) means—

(1) *Gweler* adran 57(3) o'r Ddeddf am ystyr “cost ychwanegol”.

(1) *See* section 57(3) of the Act for the meaning of “additional cost”.

- (a) person ac eithrio'r person y mae'r llety i'w ddarparu iddo; neu
- (b) mewn achos y mae paragraff (6) yn gymwys iddo, y person y mae'r llety i'w ddarparu iddo.

(6) Caiff yr awdurdod lleol beidio â chytuno gyda'r person y mae'r llety i'w ddarparu iddo i'r person hwnnw dalu'r gost ychwanegol oni fydd—

- (a) paragraff 2 o Atodlen 2 i Reoliadau Gofal a Chymorth (Asesiad Ariannol) (Cymru) 2015(1) (cyfalaf sydd i'w ddiystyru yn y 12 wythnos gyntaf) yn gymwys i'r person hwnnw; neu
- (b) y person a'r awdurdod lleol yn cytuno neu wedi cytuno i ymuno mewn cytundeb ar daliad gohiriedig yn unol ag adran 68 o'r Ddeddf.

(7) At ddibenion y rheoliad hwn, caiff y gost ychwanegol sydd i'w thalu gan y talwr fod yn llai na swm llawn y gost ychwanegol y cyfeirir ati yn adran 57(3) o'r Ddeddf, os yw'r awdurdod lleol yn cytuno y dylid talu swm llai.

Gwrthod darparu llety sy'n cael ei ffafrio

5. Pan fo awdurdod lleol yn gwrthod darparu neu drefnu i ddarparu llety sy'n cael ei ffafrio rhaid iddo ddarparu datganiad ysgrifenedig sy'n nodi pa un neu pa rai o'r amodau yn rheoliad 3(1) neu reoliad 4(1) nas bodlonwyd ac sy'n pennu'r rhesymau.

- (a) a person other than the person for whom the accommodation is to be provided; or
- (b) in a case to which paragraph (6) applies, the person for whom the accommodation is to be provided.

(6) The local authority may not agree with the person for whom the accommodation is to be provided for that person to pay the additional cost unless—

- (a) paragraph 2 of Schedule 2 to the Care and Support (Financial Assessment) (Wales) Regulations 2015(1) (capital to be disregarded in first 12 weeks) applies to that person; or
- (b) the person and the local authority agree or have agreed to enter into a deferred payment agreement in accordance with section 68 of the Act.

(7) For the purposes of this regulation, the additional cost that is to be paid by the payer may be less than the full amount of the additional cost referred to in section 57(3) of the Act, if the local authority agrees that a lesser amount should be paid.

Refusal to provide preferred accommodation

5. Where a local authority refuses to provide or arrange for the provision of preferred accommodation it must provide a statement in writing setting out which of the conditions in regulation 3(1) or regulation 4(1) is not met and specifying the reasons.

Mark Drakeford

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol,
un o Weinidogion Cymru
27 Hydref 2015

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Minister for Health and Social Services, one of the
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27 October 2015

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