

Code of practice on the exercise of social services functions in relation to Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014

*This code of practice is issued under section 14 of the Social Services and Well-being (Wales) Act 2014 (the "Act"),*

*This code revokes the Part 4 and 5 code of practice (charging and financial assessment) issued in April 2020.*

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## 1. Introduction

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### Introduction

- 1.1 This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (the “Act”).
- 1.2 The Social Services and Well-being (Wales) Act 2014 is available at:  
<http://www.legislation.gov.uk/anaw/2014/4/enacted>
- 1.3 Local authorities, when exercising their social services functions, **must** act in accordance with the requirements contained in this code. Section 147 (Departure from requirements in codes) **does not** apply to any requirements contained in this code.
- 1.4 In this code a **requirement** is expressed as “must” or “must not”. **Guidance**, where local authorities have discretion, is expressed as “may” or “should/should not”.
- 1.5 This code should be read in conjunction with all relevant codes of practice issued under the Act. In particular those relating to care and support provision under Part 3 (Assessing the Needs of Individuals) and Part 4 (Meeting Needs). It must also be read in conjunction with the relevant regulations made under Part 4 (Meeting Needs) and Part 5 (Charging and Financial Assessment) of the Act which are referred within it.

## Advocacy

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- 1.6 The dedicated code of practice on advocacy under Part 10 of the Act sets out the functions when a local authority, in partnership with the individual, must reach a judgement on how advocacy could support the determination and delivery of an individual's personal outcomes; together with the circumstances when a local authority must arrange an independent professional advocate. Professionals and individuals must ensure that judgements about the needs for advocacy are integral to the relevant duties under this code.
- 1.7 An individual must feel that they are an equal partner in their relationship with professionals. It is open to any individual to invite someone of their choice to support them to participate fully and express their views, wishes and feelings. This support can be provided by someone's friends, family or wider support network

## 2. Purpose

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2.1 This code, and the regulations to which it refers, set out the requirements for local authorities in relation to:

- setting a contribution or reimbursement in connection with direct payments under sections 50-53 of the Act (Direct payments);
- the choice of accommodation for those in a care home, including payment of additional costs in certain circumstances, under section 57 of the Act (Cases where a person expresses preference for particular accommodation);
- charging and financial assessment under section 59 of the Act (Power to impose charges) on those who are to receive care and support, or in the case of carers support;
- the deferment of payments by those in a care home under section 68 of the Act (Deferred payment agreements);
- charging under 69 of the Act (Charging for preventative services and assistance) for the provision or arrangement of preventative services and assistance;
- the recovery of debts under section 70 of the Act (Recovery of charges, interest, etc) and the transfer of assets to avoid charges under section 72 of the Act (Transfer of assets to avoid charges); and
- reviews under section 73 (Reviews relating to charges) relating to charging determinations or charges made under the Act.

2.2 This code covers:

- designing a charging policy;
- common issues in relation to charging;
- charging for care and support in a care home;
- choice of accommodation when arranging care in a care home;
- making payments for additional costs for preferred accommodation;
- charging for care and support in the community;
- charging for support to carers.

2.3 This code must be read in conjunction with annexes A to F which provide further information and set out the detailed requirements in particular instances.

### 3. General

- 3.1 The Act provides for a single legal framework for charging for care and support, or in the case of a carer, charging for support. It provides a local authority with the discretion to charge in either case. It also provides authorities with the discretion to require payment of a contribution, or a reimbursement, towards the cost of securing care and support (or support to a carer) where a person receives direct payments to enable them to obtain this. Local authorities can exercise this discretion to charge, or to require a contribution or reimbursement, where they feel it is appropriate to do so and where they have established that the person required to pay any charge, contribution or reimbursement, has sufficient financial means to do so.
- 3.2 References in this code and its annexes to “care and support” should be construed to include reference to “support to carers”. References to “charging” should be construed to include reference to requiring payment of “contributions” or “reimbursements” in relation to the provision of direct payments.
- 3.3 Where a local authority provides or arranges care and support to meet a person’s needs, or support to meet a carer’s needs, under sections 35 to 45 of the Act (Meeting Needs) it has the discretion to charge for this, except where it is required by regulations not to charge a particular person or not to charge for a particular type of care and support. In addition, where a local authority provides direct payments to enable a person to obtain care and support, or a carer to obtain support, under sections 50 to 53 of the Act (Direct payments) it has the discretion to require payment of a contribution or a reimbursement in respect of such direct payments.
- 3.4 The charging and financial assessment framework introduced by the Act, the regulations and this code are intended to make charging, where it occurs, consistent, fair and clearly understood. The overarching principle is that people who are asked to pay a charge **must** only be required to pay what they can afford. People who require care and support will be entitled to financial support from their local authority in certain circumstances based on their financial means and some will be entitled to care and support at no charge. Local authorities **must** take into account, when deciding whether to charge and in setting the level of any charge, contribution or reimbursement they require to be paid or made, the principles upon which this framework is based. Local authorities **must**:
- ensure that people **are not** charged more than it is reasonably practicable for them to pay and **must not** be charged more than the cost to the authority of providing or arranging the care and support they are receiving or which they are to obtain themselves through direct payments;
  - be consistent, to remove variation in the way people are financially assessed and charged;
  - be clear and transparent, so people know what they will be charged;
  - promote well-being outcomes, social inclusion and support the vision of independence, voice and control;
  - support carers to look after their own health and well-being, and to care effectively and safely;
  - be person-focused, reflecting the variety of care and caring situations and the variety of options available to help meet people’s needs and well-being outcomes;

- apply charging equally so those with similar needs for care and support are treated the same and minimise anomalies between charging for different types of care and support;
- encourage and enable those who wish to stay in or take up employment, education or training, or plan for the future costs of meeting their needs, to do so;
- be sustainable for local authorities in the long-term.

3.5 Alongside this local authorities **must** ensure there is information and advice about their charging and charging policies available in appropriate formats, which take account of people's communication needs (in particular for those with a sensory impairment, learning disability or for whom English is not their first language). This is to ensure that individuals are able to understand why they are being charged and how such charges have been calculated. Local authorities **should** also make the person aware of the availability of independent financial information and advice.

3.6 Where people obtain care and support in addition to that provided by or arranged by a local authority exercising its duties or powers under the Act, then the financial assessment and charging requirements of the Act, this code and the Regulations to which it refers do not apply. In such circumstances it is a matter for the person concerned as to what other care and support, if any, they wish to receive and what arrangements there are in place for paying for this. Nothing in the Act, this code or those Regulations precludes a person from entering into such private arrangements should they choose to do so.

## 4. Designing a charging policy

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- 4.1 Save for the requirements of the Act, the Regulations and this code, where a local authority decides to use its discretion to charge for care and support it provides or arranges the design and content of its policy for that charging is a matter for that authority. In line with the requirements of the Act, the Regulations and this code, authorities need to decide which care and support, if any, they will make a charge for, the nature and level of any charges to be made and how these charges will be applied to particular care and support recipients. Within this framework authorities will also need to determine how their processes for undertaking the various stages of their charging procedure would operate and ensure that these are compliant with the requirements of the Act, the regulations and this code. In particular, authorities will need to decide what allowances, disregards or other aspects they wish to incorporate within the financial assessments they undertake beyond those required by legislation. It should be stressed that the Act, Regulations and this code do not make any presumption that local authorities will charge for care and support but enables them to exercise their discretion to impose a charge, and imposes requirements which local authorities **must** follow, should they wish to exercise this discretion.
- 4.2 The care and support policies of the Welsh Government aim to promote the independence and social inclusion of individuals. Authorities may wish to take a similar approach in designing any charging policy, taking into account the principles of the Social Model of Disability and the UN Convention on the Rights of Persons with Disabilities. Where authorities decide to charge, charging policies **should** be seen within this context and **should** equally seek to promote the independence and social inclusion of care and support recipients. Charging policies therefore **must** be fair and reasonable, taking due account of the costs to authorities of providing or arranging care and support, the impact of this on the provision of care and support overall, the financial means of recipients and the financial and other impacts on those having to pay charges. Policies therefore **must** strike an appropriate balance between ensuring that any contributions sought from individuals who are to receive care and support towards the cost of its provision are reasonable, while securing sufficient funds to help assist in the provision of such care and support. Where authorities design new policies, or significantly amend existing policies, they **must** consult those affected locally and take their views into account before deciding upon what policy, or what amendments to their policy, they should operate.
- 4.3 Where local authorities are designing policies for charging, they should consider whether to do this in conjunction with other local authorities. This would be particularly relevant for authorities within the same Local Health Board area, so as to create a consistency of practice across that region.

## 5. Common issues for charging

5.1 Local authorities have a duty to arrange care and support for those with eligible needs, and a power to meet non-eligible needs should it wish to do so. In all cases a local authority has the discretion under the Act to choose whether or not to charge for this under sections 50-53 (Direct payments) in relation to direct payments, under section 59 (Power to impose charges) in relation to care and support it provides or arranges, or under section 69 (Charging for preventative services and assistance) in relation to preventative services or assistance. Where a local authority decides to charge it **must** follow the requirements set out in the Care and Support (Charging) (Wales) Regulations 2015\* (the “Charging Regulations”) and the Care and Support (Financial Assessment) (Wales) Regulations 2015\* (the “Financial Assessment Regulations”) and this code. These Regulations set out the details of a local authority’s obligations when undertaking financial assessments and the requirements local authorities must follow in determining charges based upon such assessments.

\* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017, the Care and Support (Charging) (Wales) (Amendment) Regulations 2018, the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019, the Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020, the Care and Support (Charging) (Wales) (Amendment) Regulations 2021 and the Care and Support (Charging and Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022.

5.2 The detail of how the charging regime operates depends on whether someone is receiving care in a care home, or in their own home or in the community. However, they share common elements, which are set out in the following sections.

- Needs assessments / individual financial assessments

5.3 This code and its supporting annexes assume that the appropriate assessment of needs has been carried out and the local authority has chosen to charge in a particular case. It therefore provides detail on how to conduct the financial assessment of that person, where this is required, and what to take account of in setting that charge. In undertaking charging only the financial means of the person being assessed can be taken into account in the financial assessment of what they can afford to pay. Where this person holds income or capital as one of a couple, the starting presumption is that each person has an equal share of each. However, a local authority can assess the income or capital of a couple but only where this is financially more advantageous to the person being assessed. A local authority **must** only assess the financial means of couples in these circumstances.

5.4 For further advice on assessment of needs see the code on Parts 3 and 4 of the Act on assessment and meeting needs.

- People who lack capacity

5.5 Where a person lacks capacity they may still be assessed as being able to contribute towards the cost of their care and support. However, a local authority **must** put in place policies regarding how they communicate, how they carry out financial assessments and how they collect any charges from that person that take

into consideration the capacity of the person as well as any medical condition or impairment they might have. Local authorities **must** use their social work skills both to communicate with people and also to design a system that works with, and for, very vulnerable people. In such circumstances local authorities **must** consult with and engage with family members where this is required. Where possible, local authorities should work with someone who has the legal authority to make financial decisions on behalf of a person who lacks capacity. If there is no such person, then an approach to the Court of Protection may be required.

- Children

5.6 The Act prevents local authorities from charging a child for the care and support they receive, or for support provided to a child who is a carer. While the Act allows authorities to charge a parent or guardian for this, the Regulations and code preclude this. This is on the grounds that this provision was included in the Act to “future proof” it and not by a desire to introduce such charging at this time. Local authorities **must not** therefore charge for care and support to a child, or for support to a child who is a carer, provided under Part 4 of the Act (Meeting Needs), nor must authorities seek payment of a contribution or a reimbursement towards such costs when direct payments are being made to secure such care and support.

- Prisoners

5.7 The charging framework also applies to people who are detained in the secure estate. Whilst detainees have restricted access to paid employment and welfare benefits (and earnings are disregarded for the purposes of financial assessments), any capital assets, savings, income and pensions will need to be considered when undertaking a financial assessment as with any other person in receipt of care and support.

- Welfare Benefits Advice

5.8 Authorities **should** provide appropriate welfare benefits advice to those to receive care and support to aid them in their understanding as to the benefits to which they may be entitled. This **should** normally be provided by means of a personal discussion with the person in their own home by appropriately skilled staff with, if the person requests one, their representative. This assistance **should** include advice about entitlement to benefits, help with completion of benefit claims and follow-up action, if the person wishes. In many cases it may be both convenient for individuals and cost-effective to provide combined financial assessments and benefits advice discussions. However, people may prefer to obtain assistance from an independent source and should be offered this choice, where possible.

- Capital limit

5.9 The financial limit, known as the “capital limit”, exists for the purposes of the financial assessment and sets out at what point a person is entitled to access local authority financial support to meet their eligible needs. Full details of it are set out in Annex A on the treatment of capital, and a local authority **must** follow that Annex in undertaking a financial assessment and applying the capital limit.

5.10 The level of the capital limit is set in the Charging Regulations and this level may change from time to time. Those with capital assets at or below this limit can seek means-tested financial support from their local authority. This means that the local authority will undertake a financial assessment of the person’s means and may

make a charge for the care and support they are or will be receiving based on what the person can afford to pay towards the cost of providing or arranging this. When undertaking the financial assessment capital at or below the capital limit **must** be disregarded in the assessment of what a person can afford to pay. Where a person's capital is at or below the capital limit they **must not** be required to contribute to the cost of their care and support from their capital.

5.11 A person with more in capital than the capital limit can ask their local authority to arrange their care and support for them if they choose under section 35(4)(b)(ii) (Duty to meet care and support needs of an adult) of the Act. However, people in this position will be required to pay the full cost of their care and support in residential care, or the full cost up to the weekly maximum charge in relation to non-residential care and support, until such time as the value of their capital is at or below the level of the capital limit. It should be noted that a different capital limit may apply in relation to residential care and support and non-residential care and support.

- Care and support for which a charge cannot be made

5.12 A local authority **must not** charge for certain types of care and support which must be arranged free of charge. These are:

- care and support provided as reablement arranged under Part 2 (General Functions) or Part 4 (Meeting needs) of the Act, or reablement arranged as direct payments under sections 50 or 52 (Direct payments) of the Act, to a person for up to 6 weeks to enable them to maintain or regain their ability to live independently at home. (In providing reablement or direct payments to secure such provision local authorities **should** have regard as to whether to extend this period in individual cases where a person's needs are such that their outcomes would benefit from a longer period of free reablement support, such as those who may require rehabilitation for a longer period for a visual impairment);
  - care and support provided to those with Creutzfeldt-Jacob Disease;
  - after-care services/support provided under section 117 of the Mental Health Act 1983;
  - assessment of needs, care planning, care plans, provision of statements of a charge and undertaking a review of a determination of a charge or a charge itself, **must** not be charged for since these processes do not constitute the provision of care and support. This includes the provision of information and advice;
  - transport to a day service where the transport is provided as part of meeting a person's needs;
  - independent professional advocacy where a local authority has arranged for the provision of this in accordance with the code of practice on advocacy under Part 10 (Complaints, Representatives and Advocacy Services) of the Act where a person can only overcome the barrier(s) to participate fully in the assessment, care and support planning, review and safeguarding processes with assistance from an appropriate individual and no such individual was available. Such processes, as set out in the code relating to Part 10, encompass the full range of relevant functions under the Act.
- Carrying out a financial assessment

5.13. Where a local authority has decided to charge for the provision or arrangement of care and support under Part 5 (Charging and Financial Assessment) of the Act, or requires payment of a contribution or reimbursement for care and support which a

person is to obtain through direct payments under Part 4 (Meeting Needs) of the Act, except where a flat rate charge is to be applied (see later in this chapter) it **must** carry out a financial assessment and determine what the person can afford to reasonably pay. Once complete, it **must** provide a written statement of the charge, contribution or reimbursement it is to set to the person. This could be provided alongside a person's care and support plan or separately.

5.14 The Financial Assessment Regulations set out the requirements of a financial assessment, determining a charge and providing a statement of this charge. Regulation 3 (Information to be provided by a local authority) set out the information that **must** be provided to the person to be assessed and includes:

- information upon the care and support which is the subject of the assessment;
- details of its charging policy for care and support or for the provision of direct payments, as appropriate;
- details of its financial assessment process;
- details of any information or documentation it requires in order to complete the assessment and the time scale to provide this with details of any home visiting facility the authority provides in order to obtain this;
- information about the right of the person to appoint a third party to act on their behalf for all or part of the assessment with details of organisations within its area that provide this type of support;
- the fact that it will provide the person with a statement of any charge, contribution or reimbursement on completion of the assessment; and
- the contact details of those in an authority who can be contacted if the person requires more information.

5.15 In carrying out the financial assessment the local authority **must** follow the requirements within the Financial Assessment Regulations and this code. A local authority **must** reassess a person's ability to meet the cost of any charges, contribution or reimbursement should their financial circumstances change. This is likely to occur at least on an annual basis as a result of revisions to levels of welfare benefits and state pensions, but may occur more frequently according to individual circumstances. However, this **must** take place if there is a change in circumstance or at the request of the person.

5.16. Requirements about the treatment of capital in a financial assessment are set out in detail in Part 4 (Treatment and calculation of capital) of the Financial Assessment Regulations and Annex A of this code (Treatment of Capital). The person's capital is taken into account in the assessment unless it is subject to one of the disregards set out in the Regulations and described in Annex A. The main examples of capital considered are the value of property and savings a person holds.

5.17 Requirements about the treatment of income in a financial assessment are set out in detail in Part 3 (Treatment and calculation of income) of the Financial Assessment Regulations and Annex B of this code (Treatment of Income). In assessing what a person can afford to pay, a local authority **must** take into account their income. However, to help encourage people to remain in or take up employment, with the benefits this has for a person's well-being, earnings from employment **must** be disregarded when working out how much the person can pay. While in the main income is treated the same whether a person is in a care home or in receipt of care and support in the community (whether receiving this arranged or provided by a local authority or via direct payments), there are some differences between the two as to how income is treated. Full details of this are set

out in Part 3 of the Regulations and Annex B of this code.

- No requirement for a financial assessment

5.18. In some circumstances a local authority is **not** required to undertake a financial assessment. The circumstances where this applies are included in regulation 7 (Circumstances in which there is no duty to carry out a financial assessment) of the Financial Assessment Regulations. They include situations where:

- (a) the local authority charges a flat rate charge for particular care and support (including for preventative services and assistance) and as such, carrying out a financial assessment would be disproportionate to the charge levied;
- (b) the person declines to provide information and/or documentation reasonably required to undertake the assessment, or only provides partial information. In that case the authority can determine whether to charge, and the level of that charge, on the basis of available information / documentation if it considers that it has sufficient information to do so;
- (c) the person is receiving care and support for which no charge can be made.

5.19 Ways a local authority may be satisfied that a person is able to afford any charges due where no or partial information is provided include:

- (a) property clearly worth more than the capital limit, where it can be established they are the sole owner or it is clear what their share of the property is; or
- (b) savings, where they can be established, are clearly worth more than the capital limit.

- Determination of a charge

5.20 In determining the amount of a charge, contribution or reimbursement, a local authority **must** following the requirements of the Charging Regulations. These set out:

- the persons who may not be charged;
- services for which a charge may not be made;
- the maximum weekly charge for non-residential care and support (see later in this chapter);
- the capital limit (referred to at paragraph 5.9 to 5.11); and
- the minimum income amount for a person provided with non-residential care and support and for a person in receipt of care and support in a care home.

5.21 A local authority **must** make a determination as soon as it has sufficient information and documentation to do so. Once a determination has been made under regulation 14 (Statement of determination) of the Charging Regulations a local authority **must** provide a statement to the person who has been financially assessed setting out the charge, contribution or reimbursement to be made. This statement **must** explain how the assessment has been carried out, what the charge, contribution or reimbursement will be and how often it will be made, and if there is any fluctuation in these amounts, the reason for this. The local authority **must** ensure that this is provided in a format to meet the communication needs of the person.

5.22 Once a statement has been issued a local authority may then require the person to pay a charge, contribution or reimbursement for the care and support which is the subject of this from the date that care and support was first provided. A local authority **must** provide a statement as soon as a determination is made. Authorities **must not** delay either undertaking a determination, or issuing a statement, where they are in a position to do so.

## 6. Flat rate charges

- 6.1 Local authorities can make a flat rate charge for low level, low cost care and support, or set a flat rate contribution or reimbursement for direct payments for such care and support. Flat rate charges would typically be for that care and support that substitutes for ordinary living, such as meals or laundry. While potentially being care and support provided regularly, in some cases it might be the only care and support a person receives. Local authorities can also charge flat rate charges under section 69 (Charging for preventative services and assistance) of the Act for preventative services or assistance it provides or arranges. Flat rate charges made **must not** exceed the cost incurred in arranging or providing for the care and support, preventative service or assistance to which they relate.
- 6.2 Where it does make a flat rate charge in these circumstances, or sets a flat rate contribution or reimbursement, a local authority is **not** under a duty to undertake a financial assessment in relation to the care and support, or the preventative services or assistance, to which this relates. This is to prevent a disproportionate situation where a person is required to provide financial information on their means, or an authority is required to undertake a financial assessment, for what would be a relatively low level charge. As a result, a local authority **must** consider both the level of the flat rate amount it proposes to charge, and its potential financial effect on the person required to pay this.
- 6.3 However, it is **not** acceptable for local authorities to set flat rate charges for all care and support as a way of potentially avoiding the duties placed upon them by the Act and the Regulations. This is on the basis that a flat rate charge for such other forms of care and support would not adequately take account of the cost of this being provided, the financial means of a care and support recipient to meet such a charge and the principle that a person should not ordinarily pay more than the maximum weekly charge prescribed by the Charging Regulations for all of the non-residential care and support they receive (see later in this chapter).
- 6.4 Particular care needs to be taken to avoid an adverse impact on a person's income where they are receiving a number of flat rate charges. In such circumstances local authorities **must** take account of these flat rate charges to avoid a situation where the accumulative effect of these, and charges or payments made under Parts 4 or 5 of the Act for care and support, makes these unaffordable for the individual. While the Regulations remove the obligation to carry out a financial assessment, where concerns arise authorities **must** offer the person the opportunity to have a financial assessment undertaken should they have any reason to believe that the accumulative effect of flat rate charges is or may be unaffordable.
- 6.5 In deciding whether to levy flat rate charges in accordance with section 69 of the Act for preventative services or assistance, local authorities **must** consider the balance between collecting income to help provide such care and support on a sustainable basis, and the effect making such charges may have on the take up of them. Local authorities should avoid a situation where the flat rate charges they set, and the level of these, result in a low take up of preventative services and assistance which results in more people than might otherwise be the case developing care and support needs, either at an earlier point or at a higher level of need, so as to prevent local authorities from adequately discharging their well-being duties under Part 2 (General Functions) of the Act.

- 6.6 Where local authorities choose to use their discretion to levy a flat rate charge for preventative services or assistance which are provided by the third sector on their behalf, they will need to agree with those providers how such charges are to be collected.

## 7. Maximum weekly charge

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- 7.1 In determining the amount of a charge under section 59 of the Act, or of a contribution or reimbursement under sections 50-53 of the Act in connection with direct payments, local authorities **must not** charge a person in receipt of non-residential care and support more than a weekly maximum charge for all of the non-residential care and support they receive.
- 7.2 This requirement was introduced in 2011 by Ministers to bring about more consistency across Wales in respect of such charges. Hence the Charging Regulations maintain this requirement and set the level of the maximum charge to which authorities **must** adhere. Local authorities **are not** at liberty to charge a non-residential care and support recipient more than this maximum charge in a week irrespective of the size and cost of the non-residential care package they have. This applies equally where a person receives dual services; ie care and support provided or arranged by their local authority and care and support provided through direct payments. The total of any charge made, or amount required, for both of these must not exceed the weekly maximum charge or weekly maximum amount in connection with direct payments. However, the maximum weekly charge and maximum weekly amount do not include the level of any flat rate charges which a person is liable to as outlined at paragraphs 6.1 to 6.6.
- 7.3 It is open to authorities to operate a lower maximum weekly charge than set in the Charging Regulations if they wish. The maximum weekly charge set in the Regulations will be kept under review and may, from time to time, be revised.

## 8. Deprivation of assets and debts

- 8.1 People with care and support needs are generally free to spend their income and use their capital assets as they see fit, including making gifts to friends and family. This is important for promoting their well-being and enabling them to live independent lives. However, while this is the case it should not be done deliberately to avoid charges all together or to reduce their liability for charges due to reduced financial means.
- 8.2 There are cases where a person may have tried to deliberately avoid paying for care and support through depriving themselves of assets – either capital or income. Where a local authority believes it has evidence to support this it can, if it deems appropriate, seek to recover costs under section 72 (Transfer of assets to avoid charges) of the Act. In such cases the local authority may either charge the person as if they were still in possession of the asset, or if the asset has been transferred to someone else, seek to recover the lost income from charges or from lost contributions or reimbursements where direct payments have been made from that person.
- 8.3 However, the local authority **cannot** recover more than the person gained from the transfer and **must** apply the Financial Assessment and Charging Regulations in calculating the charge which would have been levied. In addition, local authorities **must not** automatically assume that deprivation of an asset has occurred in a particular case and **must** treat each case where they have concerns on its merits.
- 8.4 Where a person has accrued a debt, the local authority may use its powers under section 70 (Recovery of charges, interest, etc) of the Act to recover that debt. In deciding how to proceed the local authority **must** consider the circumstances of the case before deciding a course of action. For example, a local authority should consider whether this was a deliberate avoidance of payment or due to circumstances beyond the person's control.
- 8.5 Ultimately, the local authority may institute court proceedings to recover the debt. However, they **must** only use this power after other reasonable alternatives for recovering the debt have been exhausted with the person owing the debt.
- 8.6 More information on deprivation of assets and upon debits is in Annex F of this code.

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## 9. Charging for care and support in a care home

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- 9.1 This part of the code must be read in conjunction with the Financial Assessment and Charging Regulations and Annexes A and B on the treatment of capital and income respectively in relation to care homes.
- 9.2 Where a local authority has decided to charge for the provision or arrangement of accommodation in a care home and is undertaking a financial assessment, it **must** support the person to identify options of how best to pay any charge. This may include offering the person a deferred payment agreement against the value of a property taken into account in the financial assessment. Such cases are described in more detail in Annex D on deferred payments agreements.
- 9.3 Where a person is a short-term resident (ie a stay not exceeding eight weeks) in a care home and a local authority uses its discretion to charge for this, it **must** undertake any financial assessment of a person's means to do this as if the person were receiving non-residential care and support, or receiving direct payments for non-residential care and support. For example, such a person could be receiving respite care on a short term basis. Should a stay be longer than eight weeks but not a permanent stay (such as where a person is awaiting a permanent stay in another care home), a local authority will need to consider whether to continue to charge on this basis or whether to commence charging as if the person were receiving residential care.
- 9.4 People in a care home with capital at or below the capital limit will contribute most of their income, excluding their earnings, towards the cost of their care and support. However, a local authority **must** leave the person with a specified amount of their own income so that the person has money to spend on personal items such as clothes and other items that are not part of their care and support. This is known as the minimum income amount (MIA). This is in addition to any income the person receives from earnings. Local authorities have discretion to apply a higher MIA in individual cases, for example where the person needs to contribute towards the cost of maintaining their former home. The Charging Regulations set the level of the MIA which authorities **must** allow residents to retain. This level may change from time to time.

## 10. Choice of accommodation

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- 10.1 This part of the code must be read in conjunction with the current guidance on procedures when discharging patients from hospital to a care setting, where that is occurring.
- 10.2 Other than where a person is a short-term resident (ie less than 8 weeks), where a person's needs are to be met by provision of accommodation in a care home, the local authority **must** provide for the person's preferred choice of accommodation, subject to certain conditions. Determining the appropriate type of accommodation should be made with the person as part of the care and support planning process, therefore this choice only applies between providers of the same type.
- 10.3 In this situation the local authority **must** ensure that the person has a genuine choice and **must** ensure that more than one option is available within its usual commissioning rate for a care home of the type a person has been assessed as requiring. However, a person must also be able to choose alternative options, including a more expensive home. Where a home costs a local authority more than it would usually pay, a person **must** be able to be placed there if certain conditions are met and where a third party (or in certain circumstances the resident) is willing and able to pay the additional cost. However, an additional cost payment **must** always be optional and never as a result of a shortfall in the funding a local authority is providing to a care home to meet a person's assessed care needs. Local authorities **must** follow the Care and Support (Choice of Accommodation) (Wales) Regulations 2015\* in connection with this type of arrangement and Annex C on choice of accommodation and additional cost payments.

\* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018.

## 11. Charging for care and support in the community including a person's own home

- 11.1 This part of the code must be read in conjunction with the Financial Assessment and Charging Regulations and Annexes A and B on the treatment of capital and income respectively in relation to non-residential care and support.
- 11.2 These charging arrangements cover meeting care and support needs outside of a care home, either in a person's own home or in the community. The intention of the Regulations and this code is to support local authorities, where they have decided to charge for the care and support a person is to receive, to assess what that person can afford to contribute towards the cost of this provision.
- 11.3 Because a person who receives care and support outside a care home will need to pay their daily living costs such as rent, food and utilities, the charging framework seeks to ensure they have enough money to meet these costs. As a result after charging local authorities **must** leave a person who is being charged with a minimum income amount (MIA), equivalent to a "basic entitlement" plus a buffer of 35% of that amount. Regulation 12 and 27 (Minimum income amount for a person being provided with non-residential care and support) of the Charging Regulations define "basic entitlement", set out the application of this and what to take into account in each person's case. In addition, to assist with disability-related expenditure, those being charged **must** also be left with an additional 10% of their "basic entitlement" towards the cost of this. The level of these allowances may change from time to time.
- 11.4 Additionally, the financial assessment of their capital **must** exclude the value of the property which they occupy as their main or only home. Beyond this, how capital is treated in a financial assessment is the same as for residential care. However, local authorities have flexibility within this framework to take account of local circumstances and promote independence and integration. For example, they may choose to disregard additional sources of income, set a lower weekly maximum charge than that required, or charge a person a percentage of their disposable income. That said, this **should not** lead to two people with similar needs, and receiving similar types of non-residential care and support, being charged differently.
- 11.5 The level of the capital limit applicable in charging for non-residential care and support may be different, however, to that used in charging for residential care and support.

## 12. Charging for support to adult carers

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- 12.1 Where an adult carer has eligible support needs of their own, the local authority has a duty, or in some cases a power, to arrange support to meet their needs. Where a local authority is meeting the needs of an adult carer by arranging or providing support directly to them, or providing direct payments to enable them to obtain this support, it has the discretion to charge the adult carer for these.
- 12.2 However, a local authority **must not** charge an adult carer for care and support provided directly to the person for whom they care. In addition, local authorities **are not** required to charge an adult carer for support and indeed in many cases it would be a false economy to do so. When deciding whether to charge, and in determining what an appropriate charge is, a local authority **must** consider how it wishes to express the way it values carers within its local community as partners in care, and recognise the significant contribution carers make. Carers help to maintain the health and well-being of the person for whom they care, support this person's independence and enable them to stay in their own homes for longer. In many cases, carers voluntarily meet eligible needs that the local authority would otherwise be required to meet.
- 12.3 Local authorities **must** consider carefully the likely impact of any charges on adult carers, particularly in terms of their willingness and ability to continue their caring responsibilities. It may be that there are circumstances where a nominal charge may be appropriate, for example to provide support which is subsidised but for which the carer may still pay a small charge. Ultimately, a local authority **must** ensure that any charges do not negatively impact on a carer's ability to look after their own health and well-being and to care effectively and safely for the cared for person.
- 12.4 Where a local authority takes the decision to charge an adult carer it **must** assess such charges in accordance with the requirements for charging for care and support, or where an adult carer receives direct payments, in accordance with the requirements for considering a contribution or reimbursement for such payments. In doing so, it is required to carry out a financial assessment to ensure that any charges, contributions or reimbursements are affordable. However, it may be more likely in the case of an adult carer where low level support tends to be required, that the local authority will agree to charge a flat rate charge where a financial assessment would not be required and would in any event, be disproportionate as against the level of the charge made.
- 12.5 In considering whether to charge or to seek a contribution or reimbursement from adult carers, local authorities **must** consider both the level of the charge, contribution or reimbursement it proposes to require and the impact this will have on the carer's ability to undertake their caring role.

## Annex A – Treatment of Capital

### This annex covers:

- The treatment of capital when conducting a financial assessment.

### General

- 1.1 This annex of the code applies where a local authority has decided to use its discretion under section 59 (Power to impose a charge) of the Social Services and Well-being (Wales) Act 2014 (“the Act”) to charge a person for the care and support it is providing or arranging, or under section 50 (Direct payments to meet an adult’s needs) or section 52 (Direct payments to meet a carer’s needs) of the Act when setting a contribution or reimbursement in connection with direct payments. As a result it has a duty under sections 50, 52 and 63 (Duty to carry out a financial assessment) of the Act to undertake a financial assessment of the person’s means. It **must** therefore undertake such an assessment and in doing so, it **must** assess the income and capital of the person.
- 1.2 This annex covers the treatment of capital and should be read in conjunction with Annex B on the treatment of income. The detail of the forms of capital which local authorities **must** take account of in the financial assessment, and how these should be treated in the assessment, are set out in the Care and Support (Financial Assessment) (Wales) Regulations 2015\* (the “Regulations”). Local authorities must follow the requirements of the Regulations and this annex with regard to capital when undertaking a financial assessment. They apply equally to where an assessment is being made to consider a charge for care and support provided by, or arranged by, a local authority and where a contribution or reimbursement is being considered in relation to the making of direct payments to enable a person to secure the provision of such care and support.

\* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017, the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019 and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022.

- 1.3 The treatment of capital is broadly the same when undertaking a financial assessment involving all types of care and support. However, there are some differences in how capital is treated when undertaking a financial assessment for those in a care home and those in receipt of other forms of care and support. The following sections set out the common issues applicable to both and then any particular issues unique to each.

### Common issues

- 2.1. The following section sets out the issues common in the treatment of capital in a financial assessment.
- 2.2. Only the capital of the person being assessed can be taken into account in the financial assessment of what they can afford to pay. Where this person holds capital as one of a couple, the starting presumption is that each person has an equal share of that capital. However, a local authority can assess the capital of a couple but only where this is financially more advantageous to the person being

assessed. A local authority **must** only assess the capital of couples in these circumstances.

- Defining capital

2.3. Capital in general refers to financial resources held by a person which are available for use and tend to be from sources that are considered more durable than income in the sense that they can generate a return. In most cases capital will involve financial resources held by a person in the form of savings, investments and property.

2.4 It is not possible to provide a definitive list of all forms of capital but the following list gives examples of capital. This list is intended as a guide and is not exhaustive:

- (a) Buildings;
- (b) Land;
- (c) National Savings Certificates and Ulster Savings Certificates;
- (d) Premium Bonds;
- (e) Stocks and shares;
- (f) Capital held by the Court of Protection or a Deputy appointed by that Court;
- (g) Any savings held in:
  - (i) Building society accounts;
  - (ii) Bank current accounts, deposit accounts or special investment accounts. This includes savings held in the National Savings Bank and Trustee Savings Bank;
  - (iii) SAYE schemes;
  - (iv) Unit Trusts;
  - (v) Co-operatives share accounts;
  - (vi) Cash;
- (h) Trust funds.

2.5 A person **must not** be charged twice on the same resources. Resources should only be treated as income or capital but not both. If a person has saved money from their income, such savings should normally be treated as capital and not assessed as both income and capital in the same period. Therefore in the period when such resources are received as income, they should be disregarded as capital.

- Cases where it is not clear whether a payment is capital or income

2.6 In assessing a person's financial means it may not be immediately clear whether a resource is capital or income, particularly where a person is due to receive planned payments. In order to guide a local authority's decision, in general a planned payment of capital is one which is:

- (a) not in respect of a specified period; and
- (b) not intended to form part of a series of payments.

- Who owns the capital

2.7 A capital asset is normally defined as belonging to the person in whose name it is held, the legal owner. However in some cases this may be disputed and/or beneficial ownership argued. Beneficial ownership is where a person enjoys the benefits of ownership, even though the title of the asset is held by someone else, or where they directly or indirectly have the power to vote or influence a transaction regarding a particular asset. In most cases the person will be both the legal and beneficial owner.

- 2.8 Where ownership is disputed, a local authority **must** seek written evidence to prove where the ownership lies where it is being taken into account in a financial assessment. If a person states they are holding capital for someone else, the local authority **must** obtain evidence of the arrangement, the origin of the capital and intentions for its future use.
- 2.9 Where a person has joint beneficial ownership of capital, except where there is evidence that the person owns an unequal share, the total value should be divided equally between the joint owners and the person should be treated as owning an equal share. Once the person is in sole possession of their actual share, they can be treated as owning that actual amount.
- 2.10 In some cases a person may be the legal owner of a property but not the beneficial owner of a property. In other words, they have no rights to the proceeds of any sale. In such circumstances the property **should** not be taken into account.
- Calculating the value of capital
- 2.11 A local authority **must** work out what value a capital asset has in order to take account of it in the financial assessment. Other than National Savings Certificates, valuation **must** be the current market or surrender value of the capital asset, e.g. with property whichever is higher of market or surrender value minus:
- (a) 10% of the value if there will be any actual expenses involved in selling the asset. This must be expenses connected with the actual sale and not simply the realisation of the asset. For example the costs to withdraw funds from a bank account are not expenses of sale, but legal fees to sell a property would be; and
  - (b) any outstanding debts secured on the asset, for example a mortgage.
- 2.12. A capital asset may have a current market value, for example stocks or shares, or a surrender value, for example premium bonds. The current market value will be the price a willing buyer would pay to a willing seller. The way the market value is obtained will depend on the type of asset held.
- 2.13 If the person and the officer undertaking the financial assessment both agree that, after deducting any debts or expenses connected to a person's capital that the total estimated value of this is more than the capital limit (see paragraph 2.21) so that they are liable for the full cost of their care and support, then it is not necessary to obtain a precise valuation of this. If there are any disputes, however, as to whether this occurs a precise valuation should be obtained. In following this a local authority should bear in mind how close the total value of a person's capital is to the capital limit when deciding whether or not to obtain a precise valuation.
- 2.14 Where a precise valuation is required, a professional valuer **must** be asked to provide a current market valuation. If an asset is subsequently sold, the capital value to be taken into account in a financial assessment is the actual amount realised from the sale, minus any actual expenses of the sale, not any previous valuation.
- 2.15 Where a property is being taken into account in a financial assessment and the value of this is disputed, the aim should be to resolve this as quickly as possible. Local authorities should try to obtain an independent valuation of the person's beneficial share of the property within the 12-week disregard period (see paragraphs 3.10 to 3.11) where a person has entered a care home on a

permanent basis. This will enable local authorities to work out what charges a person should pay, or determine whether they are liable to meet the full costs of their care, before this disregard ends.

2.16 The value of National Savings Certificates, Ulster Savings Certificates and Premium Bonds are assessed in the same way as other capital assets. A valuation for savings certificates can be obtained by contacting the NS&I helpline. An alternative method of obtaining the value of National Savings Certificates is to use the NS&I online calculator. To enable an accurate value for the savings certificates the person must provide details of the:

- certificate issue number(s);
  - purchase price; and
  - date of purchase.
- 
- Assets held abroad

2.17 Where capital is held abroad, and all of it can be transferred to the UK, its value in the other country **must** be obtained and taken into account less any appropriate deductions for debts or expenses connected to it. Where capital is held jointly, it should be treated the same as if it were held jointly within the UK.

2.18 Where the capital cannot be wholly transferred to the UK due to the rules of that country, for example currency restrictions, the local authority **must** require evidence confirming this fact. Examples of acceptable evidence could include documentation from a bank, government official or solicitor in either this country or the country where the capital is held.

2.19 Where some restriction is in place, a local authority **must** seek evidence showing what the asset is, what its value is and to understand the nature and terms of the restriction so that should this change, the amount can be taken into account. It should also take into account the value that a willing buyer would pay in the UK for those assets, but be aware that it may be less than the market or surrender value in the foreign country.

- Capital which cannot be immediately realised

2.20 Capital which cannot be immediately realised due to notice periods, for example National Savings Bank investment accounts or Premium Bonds, **must** be taken into account in the normal way at its face value. This will be the value at the time of the financial assessment. It may need to be confirmed and adjusted when the capital is realised. If the person chooses not to release the capital, the value at the time of assessment should be used and it should be reassessed at intervals in the normal way.

- Capital limit

2.21 The capital limit sets the total value of a person's capital which determines whether they are:

- liable to meet the full cost of their care and support in a care home;
- required to pay the weekly maximum charge, contribution or reimbursement (see the main body of the code for a definition of this) applicable if they receive care and support in their own home or in the community, subject to the weekly cost of their care and support being at or above the level of the weekly maximum charge.

2.22 Where capital is taken into account in a financial assessment, a local authority **must** apply the capital limit. The capital limit is set in regulations 11 (Relevant capital limit) and 26 (Relevant capital limit – direct payments) of the Care and Support (Charging) (Wales) Regulations 2015\*.

\* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017, the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

2.23 Where capital is taken into account in a financial assessment, any capital which a person holds at or below the capital limit **must** be disregarded in the assessment. Any capital a person holds at or below the capital limit cannot be used to pay for their assessed care and support, and should be retained by the person to use as they wish.

- Notional capital

2.24 In some circumstances a person may be treated as possessing capital even where they do not actually possess it. This is called notional capital.

2.25 Notional capital may be capital which:

- (a) would be available to the person if they applied for it;
- (b) is paid to a third party in respect of the person;
- (c) the person has deprived themselves of in order to reduce the amount of a charge, contribution or reimbursement, or remove the need for this, that they have to pay for their care and support.

2.26 A person's capital should therefore be the total of both actual and notional capital. However, if a person has actual capital above the capital limit, it may not be necessary to consider notional capital.

2.27 Where a person has been assessed as having notional capital, the value of this **must** be reduced over time. The rule is that the value of notional capital **should** be reduced weekly by the difference between the weekly rate the person is paying for their care and support and the weekly rate they would have paid if notional capital did not apply.

- Capital disregarded

2.28 The treatment of capital that **must** be taken into account in a financial assessment is set out in Part 4 (Treatment and calculation of capital) and Schedule 2 (Capital to be disregarded) of the Regulations. The Regulations set out the following capital that **must** be disregarded where capital is taken into account:

- (a) Property in specified circumstances (see paragraph 3.1);
- (b) The surrender value of any:
  - (i) Life insurance policy;
  - (ii) Annuity.
- (c) Payments of training bonuses of up to £200;
- (d) Payments in kind from a charity;
- (e) Any personal possessions such as paintings or antiques, unless they were purchased with the intention of reducing capital in order to avoid charges for care and support;

- (f) Any capital which is to be treated as income or student loans;
- (g) Any payment that may be derived from:
  - (i) The Macfarlane Trust;
  - (ii) The Macfarlane (Special Payments) Trust;
  - (iii) The Macfarlane (Special Payment) (No 2) Trust;
  - (iv) The Caxton Foundation;
  - (v) The Fund (payments to non-haemophiliacs infected with HIV);
  - (vi) The Eileen Trust;
  - (vii) The MFET Trust;
  - (viii) The Independent Living Fund (2006);
  - (ix) The Welsh Independent Living Grant;
  - (x) The Skipton Fund;
  - (xi) The London Bombings Relief Charitable Fund;
  - (xii) An approved blood scheme, that is a scheme established or approved by the Secretary of State, or a trust established with funds provided by the Secretary of State, to provide compensation in respect of a person having been infected from contaminated blood products;
  - (xiii) The Scottish Infected Blood Support Scheme established under section 28 of the Smoking, Health and Social Care (Scotland) Act 2005 and administered by the Common Services Agency (constituted by section 10 of the National Health Service (Scotland) Act 1978);
  - (xiv) The Wales Infected Blood Support Scheme established under sections 1 to 3 of the National Health Service (Wales) Act 2006 and administered by the Velindre NHS Trust;
  - (xv) The Northern Ireland Infected Blood Support Scheme administered by the Regional Business Services Organisation established under section 14 of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
  - (xvi) The London Emergencies Trust;
  - (xvii) The We Love Manchester Emergency Fund;
  - (xviii) Any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled people whose disabilities were caused by their mother during their pregnancy taking a preparation containing the drug known as "Thalidomide", which is approved by the Secretary of State (the Thalidomide Trust);
  - (xix) The Historical Institutional Abuse (Northern Ireland) Act 2019;
  - (xx) The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021;
  - (xxi) The Victims' Payment Regulations 2020 ;
  - (xxii) Any payments made under the payment scheme for former British child migrants established by the Secretary of State
- (h) The value of funds held in trust or administered by a court which derive from a payment for personal injury to the person. For example, the vaccine damage and criminal injuries compensation funds;
  - (i) The value of a right to receive:
    - (i) Income under an annuity;
    - (ii) Outstanding instalments under an agreement to repay a capital sum;
    - (iii) Payment under a trust where the funds derive from a personal injury;
    - (iv) Income under a life interest or a life-rent;
    - (v) Income (including earnings) payable in a country outside the UK which cannot be transferred to the UK;
    - (vi) An occupational pension;
    - (vii) Any rent (however that this does not necessarily mean the income is disregarded. See Annex B on the treatment of income).
- (j) Capital derived from an award of damages for personal injury which is

- administered by a court or which can only be disposed of by a court order or direction;
- (k) The value of the right to receive any income under an annuity purchased pursuant to any agreement or court order to make payments in consequence of personal injury or from funds derived from a payment in consequence of a personal injury and any surrender value of such an annuity;
  - (l) Periodic payments in consequence of personal injury pursuant to a court order or agreement to the extent that they are not a payment of income and are treated as income (and disregarded in the calculation of income);
  - (m) Any Social Fund payment;
  - (n) Refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home;
  - (o) Any capital resources which the person has no rights to as yet, but which will come into his possession at a later date, for example on reaching a certain age;
  - (p) Payments from the Department for Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement;
  - (q) The amount of any bank charges or commission paid to convert capital from foreign currency to sterling;
  - (r) Payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit);
  - (s) Community charge rebate/council tax reduction scheme payments;
  - (t) Money deposited with a Housing Association as a condition of occupying a dwelling;
  - (u) Any Child Support Maintenance Payment;
  - (v) The value of any ex-gratia payments made on or after 1st February 2001 by the Secretary of State in consequence of a person's, or person's spouse or civil partner's, imprisonment or internment by the Japanese during the Second World War;
  - (w) Any payment made by a local authority under the Adoption and Children Act 2002 (under section 2(b)(b) or 3 of this act);
  - (x) The value of any ex-gratia payments from the Skipton Fund made by the Secretary of State for Health to people infected with Hepatitis C as a result of NHS treatment with blood or blood products;
  - (y) Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at the time of death of the victim);
  - (z) Any payments under Section 2, 3 or 7 of the Age-Related Payments Act 2004 or Age Related Payments Regulations 2005 (SI No 1983);
  - (aa) Any payments made under section 63(6)(b) of the Health Services and Public Health Act 1968 to a person to meet childcare costs where he or she is undertaking instruction connected with the health service by virtue of arrangements made under that section;
  - (ab) Any payment made in accordance with regulations under Section 14F of the Children Act 1989 to a resident who is a prospective special guardian or special guardian, whether income or capital.

- Treatment of investment bonds

2.29 The treatment of investment bonds in a financial assessment is complex due to the differing products available and their differing arrangements and purposes. For this reason local authorities **should** seek their own advice on the appropriateness of taking the capital into account from a particular product in an assessment.

2.30 In general, capital involving investment bonds could be taken into account in a

financial assessment. Actual payments of capital by periodic instalments, with or without insurance, should be treated as income (see Annex B on treatment of income). This is provided that any payments are outstanding on the first day a person becomes liable to pay for their care and support and the aggregate of the outstanding instalment, and any other capital sum not disregarded in the financial assessment, does not exceed the capital limit (see paragraphs 2.21 to 2.23).

2.31 Where an investment bond includes one or more elements of life insurance that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights should be disregarded as a capital asset where investment bonds are taken into account in the financial assessment.

- Capital treated as income

2.32 If a person is entitled to capital which is payable by instalments the following capital payments should be treated as income in a financial assessment (see Annex B on treatment of income):

- (a) Any payment made under an annuity;
- (b) Capital paid by instalment where the total of:
  - (i) the instalments outstanding at the time the person first becomes liable to pay for their care and support; and
  - (ii) the amount of other capital held by the person is over the capital limit (see paragraphs 2.21 to 2.23). If it is at or under the capital limit, each instalment should be treated as capital.

- Income treated as capital

2.33 The following types of income should be treated as capital when taken into account in a financial assessment:

- (a) Any refund of income tax charged on profits of a business or earnings of an employed earner;
- (b) Any holiday pay payable by an employer more than 4 weeks after the termination or interruption of employment;
- (c) Income derived from a capital asset. For example, building society interest or dividends from shares. This should be treated as capital from the date it is normally due to be paid to the person;
- (d) Any advance of earnings or loan made to an employed earner by the employer if the person is still in work. This is as the payment does not form part of the employee's regular income and could have to be repaid;
- (e) Any bounty payment paid at intervals of at least one year from employment as:
  - (i) A part time firefighter;
  - (ii) An auxiliary coastguard;
  - (iii) A part time lifeboat crew member;
  - (iv) A member of the territorial or reserve forces.
- (f) Charitable and voluntary payments which are not made regularly, nor due to be made regularly, apart from payments from AIDS trusts. Payments will include those made by a third party to the person to help them meet arrears of charges for residential accommodation;
- (g) Any payment of arrears of contributions by a local authority to a custodian towards the cost of accommodation and maintenance of a child.

- Capital available on application

2.34 In some instances a person may need to apply for access to capital assets but has

not yet done so. In such circumstances this capital should be treated as already belonging to the person (see paragraph 2.24 to 2.27 on notional capital) except in the following instances:

- (a) Capital held in a discretionary trust;
- (b) Capital held in a trust derived from a payment in consequence of a personal injury;
- (c) Capital derived from an award of damages for personal injury which is administered by a court;
- (d) Any loan which could be raised against a capital asset which is disregarded; for example their home.

2.35 In terms of determining whether capital assets already belong to a person a local authority should distinguish between:

- (a) Capital already owned by the person but which in order to access they must make an application. For example:
  - (i) Money held by the person's solicitor;
  - (ii) Premium Bonds;
  - (iii) National Savings Certificates;
  - (iv) Money held by the Registrar of a County Court which will be released on application; and
- (b) Capital not owned by the person that will become theirs on application; for example an unclaimed Premium Bond win. This should be treated as notional capital.

2.36 Where a local authority treats capital available on application as notional capital they should do so only from the date at which it could be acquired by the person.

### Property disregards

3.1 In the following circumstances the value of the person's main or only home **must** be disregarded where capital is taken account of in a financial assessment:

- (a) Where the person is receiving non-residential care and support at home or in the community;
- (b) Where the person is temporarily receiving care and support in a care home and they:
  - (i) intend to return to that property and that property is still available to them; or
  - (ii) are taking reasonable steps to dispose of the property in order to acquire another more suitable property to which to return.
- (c) Where the person is receiving care and support in a care home and no longer occupies their main and only home, but it is occupied in part or whole as their main or only home by any of the people listed below, its value **must** be disregarded in a financial assessment where capital is taken into account. This only applies where that property has been continuously occupied since before the person went into a care home:
  - (i) the person's partner, former partner or civil partner, except where they are estranged or divorced;
  - (ii) a lone parent with a dependent child who is the person's estranged or divorced partner;
  - (iii) a relative (as defined in paragraph 3.2 below) of the person or member of the person's family (as defined in paragraph 3.3) who is:
    - (1) Aged 60 or over, or
    - (2) Is a child of the resident aged under 18, or

(3) Is incapacitated.

3.2 For the purposes of this disregard a relative is defined as including any of the following:

- (a) Parent (including an adoptive parent);
- (b) Parent-in-law;
- (c) Son (including an adoptive son);
- (d) Son-in-law;
- (e) Daughter (including an adoptive daughter);
- (f) Daughter-in-law;
- (g) Step-parent;
- (h) Step-son;
- (i) Step-daughter;
- (j) Brother;
- (k) Sister;
- (l) Grandparent;
- (m) Grandchild;
- (n) Uncle;
- (o) Aunt;
- (p) Nephew;
- (q) Niece;
- (r) The spouse, civil partner or unmarried partner of (a) to (k) inclusive.

3.3 A member of the person's "family" is defined as someone who is living with the qualifying relative as part of an unmarried couple, married to or in a civil partnership.

3.4 For the purposes of this disregard the meaning of "incapacitated" is not closely defined. However, it will be reasonable to conclude that a relative is incapacitated if either of the following conditions apply:

- (a) the relative is receiving one (or more) of the following welfare benefits: incapacity benefit, severe disablement allowance, disability living allowance, personal independence payments, armed forces independence payments, attendance allowance, constant attendance allowance, or a similar benefit; or
- (b) the relative does not receive any disability related benefit but their degree of incapacity is equivalent to that required to qualify for such a benefit. Medical or other evidence may be needed on this before a decision is reached on whether to apply this.

3.5 For the purpose of this property disregard, the meaning of "occupy" is not closely defined. In most cases it will be obvious whether or not the property is occupied by a qualifying relative as their main or only home. However, there will be some cases where this may not be clear and the local authority should undertake a factual inquiry weighing up all relevant factors in order to reach a decision. An emotional attachment to the property alone is not sufficient for the disregard to apply.

3.6 Circumstances where it may be unclear might include where a qualifying relative has to live elsewhere for a particular reason; for example for the purposes of their employment or due to them serving a prison sentence. Whilst they live elsewhere in order to undertake their employment, or serve their sentence, the property remains their main or only home. It would not be reasonable to regard their temporary accommodation as the person's main or only home as they may well intend to return to the property in question in the future. Essentially in such

circumstances the qualifying relative is occupying the property but is not physically present.

- Discretionary disregard

3.7 A local authority may also use its discretion to apply a property disregard in relation to those in residential care in other circumstances. However, the local authority will need to balance this discretion with ensuring a person's assets are not maintained at public expense. An example where it may be appropriate to apply a discretionary disregard is where it is the sole residence of someone who has given up their own home in order to become a carer for the person who is now in a care home, or who is perhaps a companion of the person.

3.8 A property may be disregarded when a qualifying relative moves into the property after the resident enters a care home. Where this happens the local authority will need to consider all the relevant factors in deciding whether the property should be disregarded. Factors such as the timing and purpose of the move may be relevant to establishing if the property is the relative's main or only home. The purpose of the disregard in these circumstances is to safeguard certain categories of people from the risk of homelessness.

3.9 The local authority should consider if the principle reason for the move is that it is necessary to ensure the relative has somewhere to live as their main or only home. A disregard would not be appropriate, for example, where a person moves into a property solely to protect the family inheritance. Local authorities need to ensure that people are not financially supported at public expense inappropriately.

- 12-week property disregard

3.10 A key principle of the charging framework is not to require people to have to sell their home immediately upon entering a care home where the vast majority of their capital assets are tied up in their property. This is in order to allow them time to make decisions as to how to meet their care home costs. The Regulations, therefore, require that if property is taken into account in a financial assessment, the value of a person's main or only home **must** be disregarded for the first 12 weeks where the value of any of their other capital is below the capital limit. This disregard **must** be applied:

- (a) when they first enter a care home as a permanent resident (or subsequently enter after a stay of less than 12 weeks so that they would receive the balance of the 12 weeks as a further disregard);
- (b) when a property disregard based on a qualifying relative unexpectedly ends because the qualifying relative has died or moved into a care home.

3.11 In addition, a local authority has discretion to choose to apply the 12-week disregard when there is a sudden and unexpected change in the person's financial circumstances. In deciding whether to do so, the local authority will want to consider the individual circumstances of the case. Such circumstances might include a fall in share prices or an unanticipated debt.

- 26-week disregard

3.12 Where capital is taken into account in a financial assessment the following capital assets **must** be disregarded for at least 26 weeks. However, a local authority may choose to apply the disregard for longer where it considers this appropriate. For example, where a person is taking legal steps to occupy premises as their home, but the legal processes take more than 26 weeks to complete.

- (a) Assets of any business owned or part-owned by the person in which they were a self-employed worker and has stopped work due to some medical condition or impairment but intends to take up work again when they are fit to do so. Where the person is in a care home, this should apply from the date they first took up residence;
  - (b) Money acquired specifically for repairs to, or replacement of, the person's home or personal possessions provided it is used for that purpose. This should apply from the date the funds were received;
  - (c) Premises which the person intends to occupy as their home where they have started legal proceedings to obtain possession. This should be from the date legal advice was first sought or proceedings first commenced;
  - (d) Premises which the person intends to occupy as their home where essential repairs or alterations are required. This should apply from the date the person takes action to effect the repairs;
  - (e) Capital received from the sale of a former home where the capital is to be used by the person to buy another home. This should apply from the date of completion of the sale;
  - (f) Money deposited with a Housing Association which is to be used by the person to purchase another home. This should apply from the date on which the money was deposited;
  - (g) Grant made under a Housing Act which is to be used by the person to purchase a home or pay for repairs to make the home habitable. This should apply from the date the grant is received.
- 52-week disregard

3.13 The following payments of capital **must** be disregarded for a maximum of 52 weeks from the date they are received where capital is taken into account in a financial assessment:

- (a) The balance of any arrears of, or any compensation due, to non-payment of:
  - (i) Mobility supplement;
  - (ii) Attendance Allowance;
  - (iii) Constant Attendance Allowance;
  - (iv) Disability Living Allowance / Personal Independence Payment;
  - (v) Exceptionally Severe Disablement Allowance;
  - (vi) Severe Disablement Occupational Allowance;
  - (vii) Armed forces service pension based on need for attendance;
  - (viii) Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance;
  - (ix) Income Support/Pension Credit;
  - (x) Minimum Income Guarantee;
  - (xi) Working Tax Credit;
  - (xii) Child Tax Credit;
  - (xiii) Housing Benefit;
  - (xiv) Universal Credit;
  - (xv) Special payments to pre-1973 war widows.
- (b) Payments or refunds for:
  - (i) NHS glasses, dental treatment or patient's travelling expenses;
  - (ii) Cash equivalent of free milk and vitamins;
  - (iii) Expenses in connection with prison visits.
- (c) Personal Injury Payments.

3.14. Local authorities **must** also disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of vCJD to:

- (a) A member of the victim's family for two years from the date of death of the victim (or from the date of payment from the trust if later); or
- (b) A dependent child or young person until they turn 18.

## Annex B – Treatment of Income

### This annex covers:

- The treatment of income when conducting a financial assessment. This is divided into:
- Care homes;
- All other care and support.

### General

1.1. This annex of the code applies where a local authority has decided to use its discretion under section 59 (Power to impose a charge) of the Social Services and Well-being (Wales) Act 2014 (the “Act”) to charge a person for the care and support it is providing or arranging, or under section 50 (Direct payments to meet an adult’s needs) or section 52 (Direct payments to meet a carer’s needs) of the Act when setting a contribution or reimbursement in connection with direct payments. As a result it has a duty under sections 50, 52 and 63 (Duty to carry out a financial assessment) of the Act to undertake a financial assessment of the person’s means. It **must** therefore undertake such an assessment and in doing so, it **must** assess the income and capital of the person.

1.2 This annex covers the treatment of income and should be read in conjunction with the Annex A on the treatment of capital. The detail of the forms of income which local authorities **must** take account of in a financial assessment, and how these should be treated in the assessment, are set out in the Care and Support (Financial Assessment) (Wales) Regulations 2015\* (the “Regulations”). Local authorities **must** follow the requirements of the Regulations and this annex in respect of a person’s income when undertaking a financial assessment. They apply equally to where an assessment is being undertaken to consider a charge for care and support provided by, or arranged by, a local authority and where a contribution or reimbursement is being considered for the provision of direct payments to enable the recipient to secure their own care and support.

\* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017 and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019 and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022.

1.3 There are differences in the way in which income is treated when undertaking a financial assessment for those in a care home and those in receipt of other forms of care and support. The following sections set out the common issues applicable and any particular issues unique to each.

### Common issues

2.1. The following section sets out the issues common in the treatment of income in a financial assessment.

2.2. Only the income of the person being assessed can be taken into account in the

financial assessment of what they can afford to pay. Where this person receives income as one of a couple, the starting presumption is that each person has an equal share of that income. The exception to this is where a person is in receipt of a welfare benefit awarded on the basis of the resources of both members of the couple. In that situation it may be difficult to determine each partner's share of this payment. Where this is the case, local authorities **should** undertake a financial assessment on the basis of the couple's joint income and apply the appropriate couple's rate of the basic weekly entitlement in the calculation of the minimum income amount. Where the income of a couple does not consist of welfare benefits awarded on the basis of the resources of both members of the couple, a local authority may charge on the basis of an assessment of the joint income of the couple. This is only where the couple agree to declare their joint resources and the result of the assessment is financially more advantageous to the person being assessed. A local authority **must** only assess the income of couples in these circumstances.

2.3. Income taken account of **must** be net of any tax or National Insurance contributions.

2.4. Where local authorities decide to exercise their discretion to charge, income **should** always be taken into account unless it is disregarded under the Regulations. Income that is disregarded will either be:

- (a) Partially disregarded; or
- (b) Fully disregarded.

- Earnings

2.5 In all cases earnings as an employed earner or self-employed earner, as defined in regulation 14 (Earnings to be disregarded) of the Regulations, **must** be fully disregarded where income is taken into account.

2.6 Earnings in relation to an employed earner consist of any remuneration or profit from employment. This will include:

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to the person on account of the termination of their employment by reason of redundancy;
- (c) any payments in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;
- (d) any holiday pay except any payable more than four weeks after the termination or interruption of employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the person's employer in respect of any expenses not wholly, exclusively and necessarily incurred in the performance of the duties of employment. This includes any payment made by the person's employer in respect of travelling expenses incurred by the person between their home and the place of employment and expenses incurred by the person under arrangements made for the care of a member of the person's family owing to the person's absence from home;
- (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 (remedies and compensation for unfair dismissal);
- (h) any such sum as is referred to in section 112 of the Social Security

Contributions and Benefits Act 1992 (certain sums to be earnings for social security purposes);

- (i) any statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, or a corresponding payment under any enactment having effect in Northern Ireland;
- (j) any remuneration paid by or on behalf of an employer to the person who for the time being is on maternity leave, paternity leave or adoption leave or is absent from work because of illness;
- (k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001.

2.7 Earnings in relation to an employed earner do not include:

- (a) any payment in kind, with the exception of any non-cash voucher which has been taken into account in the calculation of the person's earnings (as referred to above);
- (b) any payment made by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
- (c) any occupational/personal pension.

2.8. Earnings in the case of employment as a self-employed earner mean the gross receipts of the employment. This includes any allowance paid under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990 to the person for the purpose of assisting the person in carrying on his business.

2.9 Earnings in the case of employment as a self-employed earner do not include:

- (a) any payment to the person by way of a charge for board and lodging accommodation provided by the person;
- (b) any sports award.

2.10 Earnings also include any payment provided to people in the secure estate to encourage and reward their constructive participation in the regime of the establishment in which they are detained. This may include payment for working, education or participation in other related activities.

- Welfare benefits

2.11 Local authorities are able to take most welfare benefits people receive into account in a financial assessment. Those they **must** disregard are detailed in the Regulations but are highlighted below for ease of reference. However, local authorities **must** ensure that in addition to the minimum guaranteed income (details of which are set out later in this annex) people retain enough of their benefits to pay for things to meet their needs which are not being met by the local authority.

2.12 Any income from the following welfare benefits and sources **must** be fully disregarded:

- (a) Direct Payments;
- (b) The mobility component of Disability Living Allowance;
- (c) The mobility component of Personal Independence Payments;
- (d) Working Tax Credit.

2.13 Any income from the following benefits **should** be taken fully or partially into account when considering what a person can afford to pay towards the cost of their care and support:

- (a) Attendance Allowance, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance;
- (b) Bereavement Allowance;
- (c) Carers Allowance;
- (d) Disability Living Allowance (Care component);
- (e) Employment and Support Allowance or the benefits this replaces such as Severe Disablement Allowance and Incapacity Benefit;
- (f) Income Support;
- (g) Industrial Injuries Disablement Benefit or equivalent benefits;
- (h) Jobseeker's Allowance;
- (i) Maternity Allowance;
- (j) Pension Credit;
- (k) Personal Independence Payment (Daily Living component);
- (l) State Pension;
- (m) Universal Credit\*.

\* The components which make up a person's Universal Credit payment should be treated in the same manner as the benefits it is replacing. Those are Jobseeker's Allowance, Employment and Support Allowance, Income Support, Child Tax Credits, Working Tax Credits and Housing Benefit. To do that local authorities will need to obtain a copy of the person's Universal Credit payment statement which should provide a breakdown of their entitlement.

2.14 Where any welfare benefit payment has been reduced (other than a reduction because of voluntary unemployment), for example because of an earlier overpayment, any amount taken into account should be the gross amount of the benefit before reduction.

- Annuity, pension and investment bonds income

2.15 An annuity is a type of pension product that provides a regular income for a number of years in return for an investment. Such products are usually purchased at retirement in order to provide a regular income. While the capital is disregarded, any income from an annuity **may** be taken fully into account except where it is:

- (a) purchased with a loan secured on the person's main or only home; or
- (b) a gallantry award such as the Victoria Cross Annuity or George Cross Annuity.

2.16 For those who have purchased an annuity with a loan secured on their main or only home, this is known as a 'home income plan'. Under these schemes, a person has purchased the annuity against the value of their home, similar to a Deferred Payment Agreement.

2.17 Where a person is in a care home and paying half of the value of their occupational pension, personal pension or retirement annuity to their spouse or civil partner the local authority **must** disregard 50% of its value where it takes an annuity into account.

2.18 In order to qualify for the disregard, one of the annuitants must still be occupying the property as their main or only home. This may happen where a couple has

jointly purchased an annuity and only one of them has moved into a care home. If this is not the case, the disregard need not be applied.

2.19 Where the disregard is applied, only the following aspects may be disregarded:

- (a) the net weekly interest on the loan where income tax is deductible from the interest; or
- (b) the gross weekly interest on the loan in any other case.

2.20 Before applying the disregard, the following conditions **must** be met:

- (a) The loan must have been made as part of a scheme that required that at least 90% of that loan be used to purchase the annuity;
- (b) The annuity ends with the life of the person who obtained the loan, or where there are two or more annuitants (including the person who obtained the loan), with the life of the last surviving annuitant;
- (c) The person who obtained the loan or one of the other annuitants is liable to pay the interest on the loan;
- (d) The person who obtained the loan (or each of the annuitant where there are more than one) must have reached the age of 65 at the time the loan was made;
- (e) The loan was secured on a property in Great Britain and the person who obtained the loan (or one of the other annuitants) owns an estate or interest in that property; and
- (f) The person who obtained the loan or one of the other annuitant occupies the property as their main or only home at the time the interest is paid.

2.21 Where the person is using part of the income to repay the loan, the amount paid as interest **must** be disregarded. If the payments the person makes on the loan are interest only and the person qualifies for tax relief on the interest they pay, disregard the net interest. Otherwise, disregard the gross interest.

2.22 Reforms to defined contribution pensions came into effect from April 2015. The aim of the reforms was to provide people with much greater flexibility in how they fund later life. This has led to changes in how people use the money in their pension fund. The rules for how to assess pension income for the purposes of charging are:

- (a) If a person has removed the funds and placed them in another product or savings account, they should be treated according to the rules for that product;
- (b) If a person is only drawing a minimal income, then a local authority can apply notional income rather than drawn income, according to the maximum income that could be drawn under an annuity product. If applying maximum notional income, the actual income **must** be disregarded to avoid double counting;
- (c) If a person is drawing down an income that is higher than the maximum available under an annuity product, the actual income that is being drawn down **should** be taken into account.

2.23 Treatment of investment bonds in a financial assessment is complex due to the differing products available and their differing arrangements and purposes. For this reason local authorities should seek their own advice on the appropriateness of taking the income into account from a particular product in an assessment.

2.24 In general, income from investment bonds (with or without life assurance) could be

taken into account in a financial assessment. Actual payments of capital by periodic instalments, with or without insurance, are treated as income and taken into account. This is provided that any payments are outstanding on the first day a person becomes liable to pay for their care and support and the aggregate of the outstanding instalment, and any other capital sum not disregarded in the financial assessment, does not exceed the financial limit (see Annex A on treatment of capital).

- Mortgage protection insurance policies

2.25 Any income from an insurance policy can be taken into account. However, this does not apply in the case of mortgage protection policies. This is where a policy is taken out to insure against the risk of not being able to make repayments on a loan or to protect the premiums payable on an endowment policy where the policy is held as a security for a loan. The income from these policies **must** be disregarded where the loan is specifically intended to support the person to acquire or retain an interest in their main or only home, or to support them to make repairs or improvements to their main or only home, and the income is being used to meet the repayments on the loan.

2.26 The amount of income from a mortgage protection insurance policy that **must** be disregarded in these circumstances is the weekly sum of:

- (a) The amount which covers the interest on the loan; plus
- (b) The amount of the repayment which reduced the capital outstanding; plus
- (c) The amount of the premium due on the policy.

2.27 It should be remembered that any Income Support or Pension Credit payments a person receives may have been adjusted to take account of the income from such a policy so that where these are taken account of, this **should** include any such adjustment.

- Other income that must be fully disregarded

2.28 Any income from the following sources **must** be fully disregarded in a financial assessment:

- (a) Armed Forces Independence Payments and Mobility Supplement;
- (b) Child Support Maintenance Payments and Child Benefit;
- (c) Child Tax Credit;
- (d) Council Tax Reduction Schemes where this involves a payment to the person;
- (e) Disability Living Allowance (Mobility Component) and Mobility Supplement;
- (f) Christmas bonus;
- (g) Dependency increases paid with certain benefits;
- (h) Discretionary Trust;
- (i) Gallantry Awards;
- (j) Guardian's Allowance;
- (k) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme;
- (l) Income frozen abroad;
- (m) Income in kind;
- (n) Pensioners' Christmas payments;
- (o) Personal Independence Payment (Mobility Component) and Mobility Supplement;
- (p) Personal injury trust, including those administered by a Court;

- (q) Resettlement benefit;
- (r) Savings credit disregard;
- (s) Social Fund payments (including winter fuel payments);
- (t) War widows and widowers special payments;
- (u) Any payments received as a holder of the Victoria Cross, George Cross or equivalent;
- (v) Any grants or loans paid for the purposes of education;
- (w) Payments made in relation to training for employment;
- (x) Any payment from the:
  - (i) Macfarlane Trust;
  - (ii) Macfarlane (Special Payments) Trust;
  - (iii) Macfarlane (Special Payment) (No 2) Trust;
  - (iv) Caxton Foundation;
  - (v) The Fund (payments to non-haemophiliacs infected with HIV);
  - (vi) Eileen Trust;
  - (vii) MFET Limited;
  - (viii) Independent Living Fund (2006);
  - (ix) Any amount paid under or by the Welsh Independent Living Grant;
  - (x) Skipton Fund;
  - (xi) London Bombings Relief Charitable Fund;
  - (xii) War Disablement Pension;
  - (xiii) An approved blood scheme, that is a scheme established or approved by the Secretary of State, or a trust established with funds provided by the Secretary of State, to provide compensation in respect of a person having been infected from contaminated blood products
  - (xiv) The Scottish Infected Blood Support Scheme established under section 28 of the Smoking, Health and Social Care (Scotland) Act 2005 and administered by the Common Services Agency (constituted by section 10 of the National Health Service (Scotland) Act 1978);
  - (xv) The Wales Infected Blood Support Scheme established under sections 1 to 3 of the National Health Service (Wales) Act 2006 and administered by the Velindre NHS Trust;
  - (xvi) The Northern Ireland Infected Blood Support Scheme administered by the Regional Business Services Organisation established under section 14 of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- (xvii) The London Emergencies Trust;
- (xviii) The We Love Manchester Emergency Fund.
- (xix) The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021;
- (xx) The Victims Payment Regulations 2020

- Charitable and voluntary payments

2.29 Charitable payments are not necessarily made by a recognised charity, but could come from charitable motives. The individual circumstances of the payment will need to be taken into account before making a decision on whether to disregard such payments. In general a charitable or voluntary payment which is not made regularly is treated as capital.

2.30 Charitable and voluntary payments that are made regularly **must** be fully disregarded.

- Partially disregard income

2.31 The following income **must** be partially disregarded:

- (a) The first £10 per week of War Widows and War Widowers pension, survivors Guaranteed Income Payments from the Armed Forces Compensation Scheme, Civilian War Injury pension and payments to victims of National Socialist persecution (paid under German or Austrian law);
  - (b) A savings disregard based on qualifying income. Where a person is in receipt of qualifying income of less than a set amount per week there will be no savings disregard but where a person is in receipt of qualifying income between particular levels a set saving disregard **must** apply. The levels of the qualifying income and of the saving disregard are set out in Part 1 of Schedule 1 (Sums to be disregarded in the calculation of income) of the Regulations.
- Notional income

2.32 In some circumstances a person may be treated as having income that they do not actually have. This is known as notional income. This might include, for example, income that would be available on application but has not been applied for, income that is due but has not been received, or income that the person has deliberately deprived themselves of for the purpose of reducing the amount they are liable to pay for their care and support. In all cases where a local authority plans to take notional income into account it **must** satisfy itself that the income would or should have been available to the person.

2.33 Notional income should also be applied where a person who has reached retirement age and has a personal pension plan but has not purchased an annuity or arranged to draw down the equivalent maximum annuity income that would be available from the plan. In this circumstance notional income **should** be applied. Estimates of the notional income in this case can be received from the pension provider or from estimates provided by the UK Government Actuary's Department.

2.34 Where notional income is included in a financial assessment, it **must** be treated the same way as actual income. Therefore any income that would usually be disregarded should continue to be so.

2.35 Notional income should be calculated from the date it could be expected to be acquired if an application had been made. In doing so, a local authority **must** assume the application was made when it first became aware of the possibility and take account of any time limits which may limit the period of arrears.

2.36 However, there are some exemptions and the following sources of income **must not** be treated as notional income:

- (a) Income payable under a discretionary trust;
- (b) Income payable under a trust derived from a payment made as a result of a personal injury where the income would be available but has not yet been applied for;
- (c) Income from capital resulting from an award of damages for personal injury that is administered by a court;
- (d) Occupational pension which is not being paid because:
  - (i) The trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources; or
  - (ii) The trustees or managers of the scheme have insufficient resources available to them to meet the scheme's liabilities in full.
- (e) Working Tax Credit.

- Disability-related expenditure

2.37 Where disability-related benefits are taken into account, the local authority **should** make an assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority.

2.38 In relation to charging for non-residential care and support local authorities **must** include in their minimum income amount for the person being charged (see paragraph 4.2 and 4.3) at least 10% of their “basic entitlement” to a relevant welfare benefit as an allowance for disability related expenditure. Exact details of this are set out in regulations 12 and 27 (Minimum income amount for a person with needs for non-residential care and support) of the Care and Support (Charging) (Wales) Regulations 2015 (the “Charging Regulations”). Local authorities have the discretion to provide for more than this level should they choose, such as operating a higher disability expenditure disregard based on particular items of expenditure a person may have or based on particular expenditure required to meet their needs as identified in a person’s care and support plan.

2.39 When considering what disability-related expenditure to include in any higher disregard that local authorities may operate, authorities may wish to consider the following list of examples. This list is not intended to be exhaustive but to illustrate the types of expenditure that authorities may wish to include. In addition, local authorities have the discretion to provide for a disability related expenditure disregard when undertaking a financial assessment in relation to charging for residential care and support. In considering this list, therefore, authorities may also wish to consider whether to operate any of these in relation to charging for residential care, particularly where such items are not covered within a person’s agreed package of residential care:

- (a) Payment for any community alarm system;
- (b) Costs of any privately arranged care services required, including respite care;
- (c) Costs of any specialist items needed to meet the person’s medical condition or disability needs, for example:
  - i. Privately arranged day or night care;
  - ii. specialist washing powders or laundry requirements;
  - iii. additional costs of special dietary needs due to a medical condition or disability (the person may be asked for permission to approach their GP in cases of doubt);
  - iv. special clothing or footwear, for example, where this needs to be specially made; or additional wear and tear to clothing and footwear caused by a medical condition or disability;
  - v. additional costs of bedding, for example, because of incontinence;
  - vi. any additional heating costs, or metered costs of water, due to a medical condition or disability;
  - vii. reasonable costs of any privately arranged basic garden maintenance, cleaning, or domestic help, if necessitated by the individual’s medical condition or disability;
  - viii. purchase, maintenance, and repair of disability-related equipment, including equipment or transport needed to enter or remain in work, where necessitated by the person’s medical condition or disability. This may include IT costs and reasonable hire costs of equipment if due to waiting for supply of replacement equipment;
  - ix. personal assistance costs, including any household or other necessary costs associated with their employment;
  - x. internet access, for example those with a visual impairment to aid their

communication;

- xi. transport costs necessitated by a medical condition or disability over and above the mobility component of Disability Related Allowance or Personal Independent Payments, where these are received and available for these costs. In some cases it may be reasonable for an authority not to take account of claimed transport costs if, for example, a suitable, cheaper form of transport is available, such as authority provided transport to a day centre but has not been used.

2.40 In considering the above, it may be reasonable for a local authority not to allow for items where a reasonable alternative is available at a lesser cost. For example, an authority might adopt a policy not to allow for the private purchase cost of continence pads, where these are available from the NHS at no charge.

## Care homes

3.1 The following sections only apply to financial assessments in relation to those who are receiving care and support in a care home.

- Minimum income amount (MIA)

3.2 When undertaking a financial assessment a local authority **must** leave the person with a minimum amount of income (MIA). The amount of this is set out in regulations 13 and 28 (Minimum income amount where a person is provided with accommodation in a care home) of the Charging Regulations. Anything above this may be taken into account in determining charges in accordance with the requirements of those Regulations and this code of practice.

3.3 The MIA is not a benefit but the amount of a person's own income that they **must** be left with after charges have been deducted. Where a person has no income, the local authority is not responsible for providing one. However, the local authority **should** support the person to access any relevant welfare benefits to which they may be entitled or any independent advocacy available to help them access such benefits.

3.4 The purpose of the MIA is to ensure that a person has a certain amount of money left after contributing to the costs of their care and support to spend as they wish. It **must not** be used to cover any aspect of their care and support that has been provided or arranged by the local authority, or is to be provided through direct payments, to meet a person's eligible needs. This amount is for the person to spend as they wish and local authorities **must not** put pressure on a person to spend their MIA in a particular way.

3.5 There may be some circumstances where it would not be appropriate for the local authority to leave a person only with their MIA. For example:

- (a) Where a person has a dependent child the local authority **should** consider the needs of the child in determining how much income a person should be left with after charges. This applies whether the child is living with the person or not;
- b) Where a person is paying half their occupational or personal pension or retirement annuity to a spouse or civil partner who is not living in the same care home, the local authority **must** disregard this money. This does not automatically apply to unmarried couples although the local authority may wish to exercise its discretion in individual cases to do so;
- (c) Where a person is temporarily in a care home and is a member of a couple

(whether married or unmarried) the local authority **must** disregard any Income Support or Pension Credit awarded to pay for home commitments and should consider the needs of the person at home in setting the MIA. It should also consider disregarding other costs related to maintain the couple's home (see below);

- (d) Where a person's property has been disregarded the local authority **must** consider whether the MIA is sufficient to enable the person to meet any resultant costs. For example, allowances should be considered for fixed payments (like mortgages, rent and council tax), building insurance, utility costs (including basic heating during the winter) and reasonable property maintenance costs;
- (e) Where a person is funding their own residential care and has a deferred payment agreement in place (see Annex D on Deferred Payment Agreements), the local authority **must** ensure the person retains sufficient resources to maintain and insure the property in line with the appropriate minimum guarantee used in those agreements.

### Non-residential care and support

4.1 The following sections only apply to financial assessments in relation to those who are receiving non-residential care and support.

- Minimum income amount

4.2 Local authorities **must** ensure that a person's income is not reduced below a specified level after charges have been deducted for non-residential care and support. This is referred to as the minimum income amount (MIA) and **must** be at least the equivalent of the value of their "basic entitlement" to a relevant welfare benefit plus a minimum "buffer" of 35% of this. Exact details of this are set out in regulations 12 and 27 (Minimum income amount for a person with needs for non-residential care and support) of the Charging Regulations. As indicated in paragraph 2.38 this MIA **must** also include at least a further 10% of a person's "basic entitlement" to a relevant welfare benefit to allow for disability related expenditure. These amounts of the MIA are minimum requirements and local authorities have discretion to set higher levels of either the "buffer", the disability related allowance, or both if they wish.

4.3 The purpose of the MIA is to promote independence and social inclusion and ensure that people have sufficient funds after charging has occurred to meet the costs of basic needs aside from their care and support, such as food, utility costs or insurance.

## Annex C – Choice of Accommodation and Additional Costs

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### This annex covers:

- Choice of accommodation when arranging care and support in a care home
- An additional cost for preferred accommodation in a particular care home

### General

1.1 A person's ability to make an informed choice as to how their needs will be met is a key element of the care and support system. This must extend to where the care and support assessment process has determined that a person's needs are best met by them living in a specific type of accommodation for more than a short-term period (ie more than 8 weeks).

1.2. The care and support assessment process will have determined what type of accommodation will best meet the person's needs. Where this is a care home, subject to certain conditions the person will have a right to choose their preferred accommodation (such as the particular accommodation they wish to live in or the location of the accommodation they would like). The Care and Support (Choice of Accommodation) (Wales) Regulations 2015\* (the "Regulations") made under section 57 (Cases where a person expresses preference for particular accommodation) of the Social Services and Well-being (Wales) Act 2014 (the "Act") and this Annex **must** be applied in meeting that preference. In doing so, local authorities **must** have regard to the following principles:

- good communication of clear information and advice to those requiring accommodation in a care home on a temporary or permanent basis so as to enable them to make well informed decisions over the choice of their home should they wish to do so;
- a consistent approach to ensure genuine choice;
- clear and transparent arrangements for meeting choice where it is expressed and any additional cost that may arise from a particular choice being expressed;
- clear understanding of potential consequences should payment of an additional cost fail, with clear exit strategies; and
- ensuring that any choice expressed which is met is suitable to meet the person's identified care and support needs.

\* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017 and the Regulation and Inspection of Social Care Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018.

1.3. Local authorities **must** remember that the Act, the Regulations and this code of practice apply equally to those entering residential care for the first time, those who have already been placed by a local authority and those who have been self-funding their own residential care but who because of diminishing financial resources subsequently need local authority support.

### Choice of Accommodation

- 2.1. Where a local authority is to meet a person's care and support needs under sections 35 to 38 (Meeting care and support needs of adults and children) of the Act, and that person's needs have been assessed as requiring accommodation in a care home on a temporary or permanent basis, the person **must** have the right to express a preference for a care home of their choosing provided that:
- the care home is suitable to meet the person's assessed needs;
  - to do so would not cost the local authority more than the amount it would usually expect to pay for accommodation of that type;
  - a place in the care home is available; and
  - the provider of the care home is willing to enter into a contract with the local authority to provide the accommodation on the local authority's terms and conditions.
- 2.2. This choice **must not** be limited to those care homes or individual providers with which the local authority already contracts or operates, or those that are within that local authority's geographical boundary. It must be a genuine choice for the person across the appropriate care home accommodation available.
- 2.3. If a person chooses to be placed in a care home that is outside the local authority's area, the local authority **must** still arrange for their preferred accommodation provided that the conditions listed above in 2.1 are met. In connection with this local authorities **must** follow the regulations and code of practice on ordinary residence issued in connection with section 194 (Ordinary residence) of the Act.

### Suitability of Accommodation

- 3.1. In exercising choice, a local authority **must** ensure the care home accommodation for which a person expresses a preference is suitable to meet their assessed needs and identified well-being outcomes established as part of the care and support assessment process. In doing this authorities **must** take account of any specific impairment or sensory needs a person has, so as to ensure the chosen accommodation has appropriate facilities or specialist services to meet these.
- 3.2. As part of the care and support assessment process, people are able to express a preference about the type of accommodation in which their needs are best met. This process considers both the person's needs and preferences. Once the type of accommodation is agreed as that in a care home the choice of accommodation is between different care homes and different locations, not different types of residential settings. A person cannot exercise the right to a choice of accommodation by choosing another type of accommodation where the care and support assessment has identified that their assessed needs are best met in a care home of a particular type.

### Cost

- 4.1. Where a local authority is arranging for a person's needs to be met by the provision of accommodation in a care home of a particular type, whether or not a person has expressed a choice over this, it **must** take into consideration circumstances where the cost to the local authority of doing this may need to be adjusted to ensure that needs are met. For example, a person may have specific dietary requirements or sensory requirements that can only be met in specific care homes. In all cases the local authority **must** have regard to the actual cost of good quality care in meeting a person's needs to ensure that the care home placement

can genuinely meet their assessed needs. As such a local authority **must** not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect the actual needs of the person being placed.

- 4.2. A person **must not** be asked to pay an additional cost towards the cost of providing the type of accommodation in a care home to meet their assessed needs. To ensure they have a genuine choice over this a local authority **must** have more than one option available for a person to choose from within its standard amount for residential care. Where no suitable accommodation is available at its standard amount to meet a person's assessed needs in full, the local authority **must** arrange a placement in a suitable more expensive setting and adjust its funding accordingly to ensure that needs are met. In such circumstances, the local authority **must not** ask the person being placed or a third party to pay the additional cost. Only where a person has chosen a care home that is genuinely more expensive than a local authority would usually pay for a care home placement of that type or, where a person has requested services or facilities that do not form part of their assessed needs, can an additional cost be sought (see "additional cost" below).

### Availability

- 5.1. In general, a local authority **must** avoid a person being forced to wait for assessed needs to be met. However, in some cases a short wait may be unavoidable, particularly when a person has chosen a particular care home that is suitable but not immediately available. This may include putting in place temporary arrangements, taking into account the person's preferences and needs, and securing their agreement to these, including placing the person on the waiting list for their preferred choice of care home. It should be remembered, however, that such arrangements can be unsettling for the person and **must** be avoided wherever possible.
- 5.2. In such cases, the local authority **must** ensure that in the interim appropriate care and support is provided and should set out how long the interim arrangement may last. In establishing any interim arrangements, the local authority **must** provide the person with clear information in writing on the detail of the arrangements as part of their care and support plan. As a minimum this should include the likely duration of the arrangement and information on the operation of the waiting list for their preferred care home, alongside any other information that may be relevant. If any interim arrangements exceed 12 weeks, the person **must** be reassessed to ensure that both the interim arrangement and the preferred option are still able to meet the person's needs and that remains their choice.
- 5.3. Where a place subsequently becomes available at a person's chosen care home they **must** be offered this without delay where it is still appropriate to meet their needs. In some cases a person may decide that they wish to remain in the interim setting, even if their preferred accommodation subsequently becomes available. If the care home where they are staying temporarily is able to accommodate the arrangement on a permanent basis this **should** be arranged and the person removed from its waiting list. Before doing so, the local authority **must** make clear the financial implications associated with the person being placed in the accommodation on a permanent basis, including any additional cost associated with the permanent placement.

### Choice that cannot be met and refusal of arrangements

- 6.1. Whilst a local authority **must** do everything it can to meet a person's choice for a particular care home, inevitably there will be some instances where a choice cannot be met, for example if the provider does not have capacity to accommodate the person. In such cases, a local authority **must** in accordance with regulation 5 (Refusal to provide preferred accommodation) of the Regulations set out in writing that it is unable to meet that choice and provide its reason(s) for this. It **must also** offer suitable alternatives to the person so that they can decide which suitable care home they should be placed in instead.
- 6.2. A local authority **must** do everything it can to take into account a person's circumstances and preferences when arranging their care home placement. However, in all but a very small number of cases, such as where a person is being placed under guardianship under Section 7 of the Mental Health Act 1983, a person has a right to refuse to enter a care home whether that is on an interim or permanent basis. Where a person unreasonably refuses the arrangements, a local authority is entitled to consider that it has fulfilled its statutory duty to meet needs and may then inform the person in writing that, as a result, they need to make their own arrangements. This should be a step of last resort and local authorities **must** consider the risks posed by such an approach, for both the authority itself and the person concerned. Should the person contact the local authority again at a later date, the local authority **must** reassess their needs as necessary and consider how best these are met.

### Contractual terms and conditions

- 7.1. In placing a person in a care home of their choice, a local authority **must not** stipulate strict or unreasonable conditions in contractual arrangements with the care home as a means to avoid or deter the arrangement and avoid meeting the person's choice of accommodation. This includes where the local authority may need to enter into a contract with a provider that it does not currently have an arrangement with. Where this occurs, it should ensure that the contractual conditions are broadly the same as those it would negotiate with any other provider whilst taking account of the individual circumstances.

### An Additional Cost

- 8.1 In some cases, a person may choose a care home that is more expensive than the local authority would usually expect to incur for the provision of the accommodation of that type for that person. Where the person has chosen a care home that is more expensive an arrangement will need to be made as to how the difference in cost will be met. This is known as an "additional cost" and is the difference between the amount a local authority would usually pay for care home accommodation of that type for the person and the actual cost of the chosen care home. In such cases, the local authority **must** arrange for the person to be placed in their chosen accommodation, **provided** a third party, or in certain circumstances the person in need of accommodation, is willing and able to meet the additional cost. If this is not the case, then under regulation 3 (Conditions for provision of preferred accommodation) of the Regulations a local authority is able to refuse to provide the chosen accommodation.
- 8.2 Where a person is placed in a more expensive care home solely because the local authority has been unable to make arrangements at its usual cost for such accommodation, the local authority **must** meet the difference in cost itself. The person would then contribute towards this according to the outcome of their

financial assessment. The additional cost arrangement must **not** apply in such circumstances.

- 8.3. Where a person has chosen accommodation that is more expensive, the local authority **must** ensure that the person understands the full implications of this choice, remembering that people often enter residential care at a point of crisis. This understanding **must** extend to the fact that a third party, or in certain circumstances the person needing accommodation (see paragraph 8.20), will need to meet the additional cost of that accommodation for the full duration of the person's stay and that should the additional cost not be met, the person may need to move to an alternative care home.
- 8.4. The local authority **must** ensure that the person paying the additional cost is willing and able to meet this for the likely duration of the arrangement, recognising this may be for some time into the future. To confirm this it would be good practice for a local authority to ask the person who is to pay the additional cost to provide proof of their financial means to do this, such as evidence of their salary or savings.
- 8.5 A local authority **must** ensure the person paying the additional cost enters into a written agreement with it, agreeing to meet that cost. The agreement **must**, as a minimum, include the information required in the regulation 4 (The additional cost condition) of the Regulations. This will include information such as the amount to be paid, the frequency of payments, the effect of an increase in the amount of the payments and the consequences of non-payment.
- 8.6. Before entering into the agreement, the local authority **must** provide the person paying the additional cost with access to sufficient information and advice to ensure they understand the terms and conditions, including that the person may want to consider obtaining independent financial information and advice. Further detail on each of these points is set out below.
- The amount to be paid
- 8.7. The amount of the additional cost should be the difference between the actual cost of the preferred accommodation and the amount the local authority would usually pay to meet the person's assessed needs by the provision of accommodation in a care home of the same type. When considering the cost of care in its area, the local authority is likely to have identified a range of costs which apply to different circumstances and settings. For the purposes of agreeing an additional cost the local authority must consider what it would have paid for accommodation of the same type as that chosen at the time it is needed. It should not automatically default to the cheapest rate or to any other arbitrary figure.
- Frequency of payments
- 8.8 In agreeing any additional cost arrangement, the local authority **must** clearly set out how often such payments need to be made, e.g. on a weekly or monthly basis and to whom payments are made.
- Responsibility for additional cost payments and payment arrangements
- 8.9 A local authority is responsible for the full cost of any residential placement it makes. Consequently, when entering into a contract with a care home that is more expensive than the amount the local authority would usually pay for a placement at a home of this type, it is responsible for the total cost of that placement including the additional cost. This means that if there is a breakdown in the arrangements

for meeting the additional cost, for instance if the person making the payment ceases to make these, then the local authority is liable for the full cost of the more expensive accommodation until it makes alternative arrangements for the additional cost incurred in the future to be met, or make alternative arrangements to meet the person's accommodation needs.

8.10 In securing the funds needed to meet the total cost of the more expensive accommodation, including the additional cost payment, a local authority has two options, except where a placement is being funded by a deferred payment agreement (in which case see Annex D on deferred payment agreements). In choosing which option to take a local authority will need to consider the individual circumstances of the case, and should be able to assure itself of the security of the arrangements. Whichever option it chooses, the local authority remains responsible for the total amount. The options are:

- agree with the person paying the additional cost, and the provider of the accommodation, that payment of this will be made directly to the provider by that person with the local authority paying the remainder separately. The person whose needs are being met should be informed of this arrangement; or
- the person paying the additional cost pays this to the local authority. The local authority then pays the full amount for the accommodation to the provider.

8.11 In deciding which option to put in place for the payment of additional costs, local authorities will need to consider the practical implications for them of operating each and their ability under each to ensure payments are made. Given that authorities are ultimately liable for the full cost of any placement made in a more expensive care home, it would be good practice to monitor the payment of additional costs to ensure this is occurring and is being met at the correct level.

- Provisions for reviewing the agreement

8.12 As with any financial arrangement, an agreement to pay an additional cost must be reviewed. A local authority **must** set out in writing details of how the arrangement will be reviewed, what may trigger a review and circumstances when any party can request a review.

8.13 Local authorities **must** also consider how often it may be appropriate to review the arrangement. In doing so they should bear in mind how often they review other financial arrangements, such as deferred payment agreements. Reviews must take place at least annually and in line with wider reviews of the financial assessment.

- Consequences of ceasing to pay an additional cost

8.14 The local authority **must** make clear in writing to the person paying the additional cost the consequences should there be a breakdown in the arrangement or any default in paying the additional cost in line with the requirements of the written agreement. This **must** include stating that the local authority may seek to recover any outstanding debt from the person responsible for paying the additional cost and that if payments do not continue, and it cannot make an alternative arrangement for payment of the additional cost to be made, it may have to make arrangements to meet the person's needs in alternative accommodation. As with any change of circumstance, a local authority **must** undertake a new needs assessment before considering this course of action, including consideration of the

impact on the person's well-being that a change in accommodation may have.

- Cost increases

8.15 The level of the additional cost will need to be reviewed from time to time, for example in response to any changes in: the needs of the person whose needs are being met; in the level of the local authority's commissioning of the person's placement; in provider costs. However, these changes may not occur together and a local authority **must** set out in writing in its agreement with the person to meet the additional cost how these changes will be dealt with.

8.16 The local authority **must** also clearly set out in writing in its agreement with the person its approach to how any increased costs may be shared. This **must** include details of how agreement will be reached on the sharing of any cost increases. This **must** also state that there is no guarantee that these increased costs will automatically be shared evenly should the provider's costs rise more quickly than the amount the local authority would have increased its funding for the care home placement.

8.17 A local authority may wish to negotiate any future cost increases with the provider at the time of entering into a contract. This can help provide clarity to individuals and providers and help ensure additional cost remains affordable.

8.18. The local authority **must** also make clear that where the person whose needs are being met has a change in circumstances that requires a new financial assessment, and this results in a change in the level of contribution the person makes, this may not necessarily reduce the need for an additional cost to be met.

- Consequences of changes in circumstances of the person paying the additional cost

8.19 The person paying the additional cost could see an unexpected change in their financial circumstances that will impact upon their ability to continue to make payments. Where a person is unable to continue paying the additional cost, the local authority may seek to recover any outstanding debt and is able to make alternative arrangements to meet a person's needs, subject to a needs assessment. The local authority **must** set out in writing in its agreement with the person paying the additional cost how it will respond to such a change and what the responsibilities of the person are in terms of informing the local authority of any change in their circumstances.

- "First party" additional cost

8.20. The person whose needs are to be met by accommodation in a care home may themselves choose to pay an additional cost but only in the following circumstances:

- where they are subject to a 12-week property disregard (Annex A on the treatment of capital); or
- where they have a deferred payment agreement in place with the local authority. Where this is the case, the terms of the agreement should reflect this arrangement (see Annex D on deferred payment agreements).

## Self-funders who ask the local authority to arrange their care

- 9.1 Section 35 (Duty to meet care and support needs of an adult) of the Act enables a person who can afford to pay, in full, for their own care and support to ask the local authority to arrange this on their behalf. Where this occurs the same principles on them being able to express a preference for their accommodation in a care home **must** apply. More information on this is contained in the code of practice on Part 4 of the Act (Meeting Needs).

### Information and advice

- 10.1 Under section 17 (Provision of information, advice and assistance) of the Act a local authority **must** establish and maintain a service for providing people in its area with information and advice in relation to care and support. This **must** include information and advice about the different care providers available in the local area to enable choice, as well as information and advice to help people to understand care charges, different ways to pay and money management. Local authorities **should** also have a role in facilitating access to financial information and advice provided independent of the local authority, including regulated information and advice where appropriate, to support people in making informed financial decisions. This may be particularly appropriate when a person is considering paying an additional cost to help them understand what they would be paying the additional cost for and come to a judgment about whether it would represent good value for money for them.

## Annex D – Deferred Payment Agreements

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### This annex covers:

- What are deferred payment agreements;
- Who to offer a deferred payment to;
- Provision of information and advice before entering into a deferred payment agreement;
- How much can be deferred and security for the agreement;
- Interest rate for the required amount and administrative costs;
- Making the agreement, responsibilities while the agreement is in place and termination of the agreement.

### Definitions

#### 1.1 Definitions used in this annex are:

- “The Act” – means the Social Services and Well-being (Wales) Act 2014;
- “Care costs” – all costs charged for a person’s care home placement, including any additional cost due;
- “Required amount” – the amount of the care costs that the adult is required (or is going to be required) to pay under section 59 (Power to impose a charge) of the Act and any amount the adult is required to pay under section 57 (Cases where a person expresses a preference for particular accommodation) of the Act;
- “Additional cost” – are payments due under the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 in connection with agreeing to a person’s request to be provided with more expensive accommodation than a local authority would usually provide;
- “The Regulations” – mean the Care and Support (Deferred Payment) (Wales) Regulations 2015.

### Introduction

2.1 By entering into a deferred payment agreement a person, whose property is taken into account in their financial assessment, can defer or delay paying some or all of their care costs until a later date so as to not be required to sell their property immediately upon entering a care home. Deferring payment of these costs can help a person to delay the need to sell their home at a time that can be challenging (or even a crisis point) for them and their family as they make the transition into residential care.

2.2 A deferred payment agreement can provide additional flexibility for when and how a person pays their care costs. It should be stressed that payment is deferred and not written off – the care costs must still be repaid by the person (or a third party on their behalf) at a later date.

2.3 Local authorities **must** offer a deferred payment agreement to those persons entering or in a care home who meet certain criteria governing eligibility. Local authorities will need to ensure that adequate security is in place for the amount being deferred, so they can be confident that the required amount (ie the amount deferred) will be repaid in the future.

2.4 A deferred payment agreement can last for the whole period of a person’s stay in

a care home, or for as long as they wish. This will provide them with time and flexibility to sell their property when they choose to do so and it is up to the individual to make that decision. Further details on deferred payment agreements are set out in the sections below.

### Who to offer deferred payments to

3.1 Deferred payment agreements are designed to avoid those persons who will be required to sell their home to pay their care costs from having to do this immediately and being able to do this at a time that suits them. Local authorities **must** offer a deferred payment agreement to people entering or in residential care who meet the eligibility criteria set out in regulation 3 (Local authority required to enter into a deferred payment agreement) of the Regulations. In essence this is:

- (a) a person whose needs are to be met by the provision of care and support in a care home, whether this is being provided by a local authority using its duty to meet needs under section 35, or its powers to meet needs under section 36(1), both under Part 4 (Meeting Needs) of the Act;
- (b) the person is or will be required to pay a charge for this under section 59 (Power to impose charges) of the Act; and
- (c) the local authority has carried out a financial assessment under section 63 (Duty to carry out financial assessment) of the Act.

3.2 This requirement to offer a deferred payment agreement to those in this position **does not** apply unless the conditions listed in the Regulations are met. These include where:

- (a) the local authority is satisfied the person has an interest in a property which the person occupies as their home, or which they used to occupy as their home;
- (b) the value of this interest has not been disregarded for the purposes of calculating the amount of the person's capital in accordance with Part 4 (Treatment and calculation of capital) of the Care and Support (Financial Assessment) (Wales) Regulations 2015\* (the Financial Assessment Regulations) and that the person's capital, not including the value of this interest, does not exceed the capital limit as set out in regulation 11 (capital limit) of the Care and Support (Charging) (Wales) Regulations 2015\* (the Charging Regulations);
- (c) the person's weekly assessed income (as calculated under the Charging Regulations) is insufficient to meet the full care costs for their residential accommodation in a care home;
- (d) the person is in agreement with all of the terms and conditions included in the deferred payment agreement offered;
- (e) the local authority has obtained consent from any other person who it considers has an interest over the property and which it considers may prevent it from realising the sale of the property or recovering any deferred amount;
- (f) the local authority is able to create a charge over the property which the person has an interest in and that it takes priority over and ranking before any other interest or charge on the property.

\* These regulations have subsequently been amended by the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017, the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

## Ability to refuse a deferred payment agreement

- 4.1 While a local authority **must** offer a deferred payment agreement to a person who meets the eligibility criteria set out above, there will be situations in which a local authority may refuse a request for a deferred payment agreement where these are not met. This would occur, for example, where:
- (a) a local authority is unable to secure the consent of another person with an interest in the property to placing a charge on it, or where it cannot obtain a priority or ranking first charge on the property;
  - (b) a person's capital, other than the value of the property, is above the capital limit, or where their weekly assessed income is sufficient to meet their care costs, so that they are able to afford the full cost of the residential accommodation without the need for an agreement;
  - (c) a person does not agree to the terms and conditions of the deferred payment agreement. This might be, for example, failing to meet a condition that the person insures and maintains the property in good order.
- 4.2 In any circumstance where any of the eligibility criteria for a deferred payment is not met, a local authority **should** consider the nature of the non-compliance with this criteria and whether in any event to exercise discretion to offer a deferred payment agreement. For example, a person's property may be uninsurable for some reason but has a high land value, in which case the local authority may choose to accept a priority charge against this land as security for the agreement instead.

## Circumstances in which local authorities may stop deferring care costs

- 5.1 There are also circumstances where a local authority may refuse to defer any further care costs for a person who has an active deferred payment agreement in place. This refusal may be permanent or temporary depending upon whether the reason for it is a permanent or temporary change in the person's circumstances. Local authorities **cannot** demand repayment of the whole required amount deferred in these circumstances and repayment of that amount is still subject to the usual terms of termination, as set out later in paragraph 12.1 to 12.9.
- 5.2 The local authority **must** provide advance notice that further deferred payments will cease and **must** provide the person with an indication of how their care costs will need to be met in future. Depending on their financial circumstances, the person may be required to meet all or part of their care costs from their weekly assessed income where this is more than the appropriate minimum guarantee set out in regulation 6 (Adult's contribution) of the Regulations, or from any capital assets (not including the value of the property which is the subject of the agreement) they hold above the level of the capital limit. Local authorities exercising these powers to cease a deferred payment agreement must consider their decision to do so in the light of the person's financial circumstances and their overarching duties to meet a person's needs under Part 4 of the Act (Meetings needs).
- 5.3 Other circumstances in which a local authority may refuse to defer any further care costs include:
- (a) when a person's total capital (including the value of the remaining equity in their property once the required amount deferred is taken into account) falls to the level of the capital limit so that the person becomes eligible for local

- authority support in paying for their care costs;
- (b) when the person's weekly assessed income (as calculated under the Charging Regulations) becomes sufficient to meet the full care costs for their residential accommodation in a care home;
- (c) where a person no longer has need for care in a care home;
- (d) if a person breaches certain predefined terms or conditions of their agreement (which must be clearly set out in the agreement) and the local authority's attempts to resolve the breach are unsuccessful (and the agreement specifies that the authority will stop deferring any further care costs in such a case); or
- (e) if, under the Financial Assessment Regulations the value of the property subsequently becomes disregarded for any reason and the person consequently qualifies for local authority support in paying their care costs, including but not limited to:
  - where a spouse or dependent relative (as defined in the Financial Assessment Regulations) has moved into the property after the agreement has been made;
  - where a relative who was living in the property at the time of the agreement subsequently becomes a dependent relative (as defined in Financial Assessment Regulations).

## Information and advice

- 6.1 Under section 17 (Provision of information, advice and assistance) of the Act local authorities **must** provide information and advice to people about care and support. This extends to information and advice in relation to the availability of deferred payment agreements. In order to be able to make well-informed choices, it is essential that people access appropriate information and advice before entering into a deferred payment agreement. It is also important that people are kept informed about their agreement throughout its duration and that they receive appropriate information upon it at its eventual termination.
- 6.2 Deferred payment agreements are often considered at a time that can be stressful for a person and their family. People may need additional support during this period, and the local authority **should** take a role in providing this together with providing information and advice that is clear and easy to understand.
- 6.3 If a local authority identifies a person who may benefit from or be eligible for a deferred payment agreement, or a person approaches them for information about them, the local authority **must** make this information available to them and explain how deferred payment agreements operate. This explanation should, at a minimum:
- set out the criteria governing eligibility for an agreement;
  - detail the requirements that must be adhered to for the duration of the agreement;
  - set out clearly which care costs would be deferred and make clear that they must still be repaid at a later date, for example through the sale of their property (including following the death of the person);
  - explain the security that a local authority is prepared to accept (see the section entitled 'Obtaining Security' below);
  - explain that the total amount they can defer will be governed by the level of their care costs and the value of the property the person has an interest in used for the deferred payment agreement;
  - explain the implications that a deferred payment agreement may have on a

person's income, their entitlement to any welfare benefit and the application of the charging regime;

- provide an overview of potential advantages and disadvantages of entering into a deferred payment agreement and explain what other options may be available to a person as a way of paying their care costs;
- explain the 12-week property disregard (as set out in the Financial Assessment Regulations), which could afford those eligible for a deferred payment additional time to consider other options for paying their care costs;
- explain the circumstances where the local authority may cease to defer further care costs (such as described in paragraphs 12.1 to 12.9);
- explain whether interest would be charged on the deferred amount (ie the required amount) and if so, the level of this;
- explain whether administrative costs would be charged for establishing and maintaining the agreement and if so, the level of these;
- explain how an agreement can be terminated and what happens on termination of the agreement, including how the required amount due for repayment is to be repaid and the options for so doing;
- explain what happens if the required amount due is not repaid in full in the manner or time a local authority specifies; and
- suggest that people may want to consider taking independent financial advice prior to entering into a deferred payment agreement.

6.4 Local authorities **must** provide information in a suitable format to match the communication needs of the person. This may be in the form of a standardised information sheet with additional information, where appropriate, to cater for a person's individual circumstances.

6.5 Local authorities **should** advise people that where they have a property they have an interest in, they will need to consider how they plan to use, maintain and insure their property if they take out a deferred payment agreement; that is whether they wish to rent it out, prepare it for sale, or leave it vacant for a period. The local authority should advise if it intends to place conditions on how the property is maintained or used whilst any agreement is in place.

### How much can be deferred

7.1 In principle a person should be able to defer all their care costs, subject to any contribution their financial assessment has determined they are required to pay towards this cost from their assessed income. Regulation 5 (Required amount) of the Regulations set out that a deferment can be for:

- (a) 100% of the care costs due from the person, less any amount they are required to pay towards these costs by regulation 6 (Adult's contribution) of the Regulations;
- (b) such lesser amount as the person requests, less any amount they are required to pay under regulation 6 of the Regulations;
- (c) the amount at (a) or (b) less any amount as the local authority agrees not to defer.

7.2 The local authority will need to consider whether a person can provide adequate security for the amount of the deferment agreed (ie the required amount) (see next section entitled 'Obtaining Security').

7.3 If the person has expressed a preference for a care home that costs more than the local authority's usual rate for the type of care home they require, it may charge the person in certain circumstances, or a third party, an additional cost payment

for the additional cost involved (see the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 and Annex C of this code - Choice of Accommodation and Additional Costs). Where this occurs and the person requests that the additional cost forms part of the amount to be deferred (ie to be included in the required amount), the local authority **should** also consider whether the total amount being requested as a deferred payment agreement is appropriate for the value of the security to be used for the agreement.

- 7.4 Where a person intends to secure their deferred payment agreement against their interest in a property, local authorities **must** obtain a valuation of that property. Reasonable property valuation costs can be passed onto a person as part of the administrative costs local authorities can charge for putting an agreement in place, should they wish to do so. People may request an independent assessment of the property's value (in addition to the local authority's valuation). If an independent assessment finds a substantially differing value to the local authority's valuation, the local authority and person should discuss and agree an appropriate valuation prior to proceeding with the agreement.

### Contributing to care costs from other sources

- 8.1 The share of their care costs that a person defers will depend on their income and whether they are required to contribute towards these costs from this.
- 8.2 Local authorities may require a contribution towards the care costs from a person's weekly assessed income (as calculated under the Charging Regulations), where it is above the level of the appropriate minimum guarantee as set out in regulation 6 (Adult's contribution) of the Regulations.
- 8.3 A person may choose to keep less of the appropriate minimum guarantee should they wish. This might be advantageous to the person as they would be contributing more towards their care costs from their income, and consequently reducing the amount they are deferring (and accruing less debt to their local authority overall). However, this **must** be entirely at the decision of the person and a local authority **must not** ask the person to retain less if they want to retain the full amount.
- 8.4 If a person decides to rent out their property during the course of their agreement, a local authority **should** permit the person to retain a percentage of any rental income they secure.
- 8.5 A person may also benefit from contributions to their care costs as a result of payments made by a third party, or from income not taken account of in a financial assessment should they wish to do so. Contributing to care costs from another source would be beneficial for a person as it would reduce the amount they are deferring (and hence reduce their overall required amount owed to the local authority). A local authority **must not** ask a person to contribute to their deferred payment from these sources.

### Obtaining security

- 9.1 In cases where an agreement is to be secured with property, local authorities **must** seek the owner's consent (and agreement) to a charge being placed on the property. In cases where there are more than one owner, the authority must seek such consent (and agreement) from all owners. All owners will then need to be signatories to the charge agreement and where there are co-owners, they will need to agree not to object to the sale of the property for the purpose of repaying

the required amount due to the local authority (following the same procedure as in the case where a person is the sole owner of a property).

- 9.2 The local authority **must** obtain similar consent to a charge being created against the property from any other person who has a beneficial interest in the property.

### Interest and administrative costs

- 10.1 Deferred payment agreements are intended to operate on a cost-neutral basis, with local authorities able to recover the costs associated with deferring a person's care costs by charging interest should they wish to do so. Local authorities can also recover the administrative costs associated with agreements, including legal and the ongoing operating costs of an agreement. Such costs can be passed on to the person and added to the total required amount deferred as they accrue, although a person may request to pay these separately if they choose. The agreement **must** make clear that all care costs deferred, alongside any interest and administrative costs incurred must be repaid in full by the person.
- 10.2 Local authorities may charge interest on any amount deferred, including any administrative costs deferred. This is to cover the cost of the agreement and the financial risks to local authorities associated with lending. Where local authorities charge interest this **must not** exceed the maximum amount specified in regulation 9 (Interest) of the Regulations.
- 10.3 The national maximum interest rate an authority can charge is 0.15% above the "relevant rate". The relevant rate will change every six months on 1st January and 1st July to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility. The market gilts rate is currently published in the "Economic and fiscal outlook", which is usually published twice-yearly on the Office of Budget Responsibility's website: <http://budgetresponsibility.org.uk/>. The market gilts rate is shown near the bottom of the table entitled "Determinants of the fiscal forecast" included in each published outlook. Local authorities **must** ensure that any changes to the national maximum rate are applied to any agreements they have entered into (unless they are already charging less than the national maximum). Individual agreements must also contain adequate terms and conditions to ensure that the interest rate within any given agreement does not exceed the nationally-set maximum.
- 10.4 Local authorities **must** inform a person before they enter into an agreement if interest will be charged, what interest rates are currently set at, and when interest rates are likely to change. This is to enable people to make well-informed decisions about whether a deferred payment agreement is the best way for them to meet their care costs.
- 10.5 The interest charged and added to the deferred amount will be compound and local authorities **should** ensure when making the agreement that people understand that interest will accrue on a compound basis.
- 10.6 Interest can accrue on the required amount deferred up to the point where this is repaid. Hence it could still be charged after a person has died up until the point at which the required amount is repaid in full to the local authority. If for some reason the local authority cannot recover the required amount it is owed in a deferred payment agreement, and seeks to pursue this through the courts, the local authority **may** charge the County Court rate of interest in that instance.
- 10.7 Local authorities **must** set their administrative costs at a reasonable level and this

level **must** not be more than the actual costs incurred by the local authority. Relevant costs may include (but are not limited to) the costs incurred by a local authority whilst:

- registering a legal charge with the Land Registry against the title of the property, including Land Registry search charges and any identity checks required;
- undertaking relevant postage, printing and telecommunications;
- cost of time spent by those providing the agreement;
- cost of valuation and re-valuation of the property;
- costs for removal of charges against property;
- overheads, including where appropriate (shares of) payroll, audit, management costs, legal services.

10.8 Local authorities **should** maintain a publicly-available list of administrative costs that a person may be liable to pay. It is good practice to separate charges into a fixed set-up fee for deferred payment agreements, reflective of the costs incurred by the local authority in setting up and securing a typical deferred payment agreement, and other reasonable onetime fees during the course of the agreement (reflecting actual charges incurred in the course of the agreement).

## Making the agreement

11.1 Where a person chooses to enter into a deferred payment agreement, local authorities **should** aim to have the agreement finalised and in place by the end of the 12-week disregard period which is provided for in the Financial Assessment Regulations (where applicable), or within 12 weeks of the person approaching the local authority regarding an agreement in other circumstances.

11.2 Decisions on a person's care and support needs, the amount they intend to defer, the property as security they intend to use and the terms of the agreement **should** only be taken following discussion between the local authority and the person. Once agreement in principle has been reached between the local authority and the person, it is the local authority's responsibility to include the details agreed into a deferred payment agreement, taking the legal form of a contract between the local authority and the person.

11.3 The local authority **must** provide a hardcopy of the deferred payment agreement to the person, and they should be provided with reasonable time to read and consider the agreement, including time for the individual to query any clauses and discuss the agreement further with the local authority.

11.4 The agreement must clearly set out all terms, conditions and information necessary to enable the person to ascertain his or her rights and obligations under the agreement. These **must** as a minimum include:

- (a) terms to explain how the interest will be calculated and that it will be compounded if it is to be added to the required amount to be deferred;
- (b) information as to administrative costs the individual might be liable for;
- (c) terms to explain how the person may exercise his or her right to terminate the agreement, which should explain the process for and consequences of terminating the agreement and specify what notice should be given (see the section entitled 'terminating the agreement' below);
- (d) terms to explain the circumstances in which the local authority might refuse to defer further care costs;
- (e) that the local authority will secure their debt either by placing a legal (Land

Registry) charge against the property;

- (f) a term requiring the local authority to provide the person with a written statement every six months and within 28 days of request by the person, setting out how much the person owes to the authority and the cost to them of repaying the debt;
- (g) a term which explains the maximum amount which may be deferred and that this is likely to vary over time;
- (h) a term which requires the person to obtain the consent of the local authority for any person to occupy the property; and
- (i) an explanation that the local authority will stop deferring care costs if the person no longer receives care and support in a care home.

11.5 Local authorities should ensure at a minimum that people sign or clearly and verifiably affirm they have received adequate information on options for paying their care costs, that they understand how the agreement works and understand the agreement they are entering into; and that they have had the opportunity to ask questions about the agreement. A term reflecting this should be included in the agreement itself.

11.6 Local authorities **must** at a minimum provide people with six-monthly written updates of the amount of care costs deferred, of the interest and administrative costs accrued to date, of the total amount due and an estimate of the equity remaining in the home not covered by the required amount deferred. Local authorities **should** also provide the person with a statement on request within 28 days. Local authorities **may** provide updates on a more frequent basis at their discretion. The update should set out the required amount deferred during the previous period, alongside the total amount deferred to date, and should also include a projection of how quickly the required amount deferred would leave only the level of the capital limit equity in their property (at which point no further deferment against the value of the property could occur).

11.7 Local authorities **should** reassess the value of the chosen property used as security once the amount deferred exceeds 50% of the security (and periodically thereafter), and consider this amount against the level of the capital limit so as to ensure a person is left with at least the level of the capital limit equity in their property.

## Termination of agreement

12.1 A deferred payment agreement can be terminated in three ways:

- (a) at any time by the person by repaying the outstanding care costs (including any outstanding interest and administrative costs) due in full (this can happen during a person's lifetime or when the agreement is terminated through the agreement holder's death);
- (b) when the property is sold and the authority is repaid; or
- (c) when the person dies and the amount is repaid to the local authority from their estate.

12.2 On termination, the full required amount deferred due must be paid to the local authority.

12.3 If a person decides to sell their property, they should notify the local authority during the sale process. They will be required to pay the amount due to the local authority in full from the proceeds of the sale, and the local authority will be required to relinquish the charge on their property.

- 12.4 A person may decide to repay the amount due to the local authority from another source, or a third party may elect to repay the amount due on behalf of the person. In either case, the local authority should be notified of the person's/the third party's intention in writing, and the local authority **must** relinquish the charge on the property on receipt of the full amount due.
- 12.5 If the deferred payment is terminated due to the person's death, the amount due to the local authority must be either paid from the estate or paid by a third party. A person's family or a third party can settle the debt to the local authority by other means of repayment if they wish, so as to avoid selling the property against which the deferred payment agreement had been secured. Where they do, the local authority **must** accept an alternative means of payment in this case, provided this payment covers the full amount due to the local authority.
- 12.6 The executor of the will or Administrator of the Estate can decide how the amount due is to be paid; either from the person's estate or from a third party source.
- 12.7 A local authority **should** wait at least two weeks following the person's death before approaching the executor with a full breakdown of the total amount deferred (but a family member or the executor can approach the local authority to resolve the outstanding amount due prior to this point). Responsibility for arranging for repayment of the amount due (in the case of payment from the estate) falls to the executor of the will.
- 12.8 Interest will continue to accrue on the amount owed to the local authority after the person's death and until the amount due to the local authority is repaid in full. If terminated through a person's death, the amount owed to a local authority under a deferred payment agreement falls due 90 days after the person has died. After this 90 day period, if a local authority concludes active steps to repay the debt are not being taken, for example if the sale is not progressing and a local authority has actively sought to resolve the situation (or the local authority concludes the executor is wilfully obstructing sale of the property), the local authority may enter into legal proceedings to reclaim the amount due to it.
- 12.9 In whichever circumstance an agreement is terminated, the full amount due to the local authority must be repaid to cover all costs accrued under the agreement, and the person (and/or the third party where appropriate) must be provided with a full breakdown of how the amount due has been calculated. Once the amount has been paid, the local authority **should** provide the person or the appropriate third party with confirmation that the agreement has been concluded, and confirm (where appropriate) that the charge against the property has been removed.

## Annex E – Review of Charging Decisions and Determinations

### This annex covers:

- Reviews of a determination that a person is required to pay a charge for the care and support they receive, or of their liability as a transferee to pay an amount to a local authority where a transfer of assets has occurred to avoid charges;
- Reviews of the level of the charge or amount resulting from these.

### General

- 1.1 The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011 introduced the right for a person receiving non-residential care and support, or direct payments to secure the provision of such care and support, to request a review of a decision to impose a charge or require payment of a contribution or reimbursement for this. The principle was that where a person felt an inappropriate decision has been made, either in the level of the charge, reimbursement or contribution or in relation to the basis upon which the decision to impose this was made, the person should be able to request the local authority to review this in a consistent, clear manner. In line with the principles of dealing with a complaint, these Regulations specified that this initial review should involve the authority itself reassessing the decision made and deciding whether its original decision was correct, particularly where further information was now available.
- 1.2 The Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015 (the “Regulations”), made under the Social Services and Well-being (Wales) Act 2014 (the “Act”), replace the 2011 Regulations and introduce a similar review process in respect of determinations of a charge, contribution or reimbursement, and the level of these, with both non-residential and residential care and support. They also extend reviews to situations where a person has been deemed to be a liable transferee, having received an asset with the intention of avoiding or reducing charges for a person deemed to be liable for a charge. This process does not seek to replicate or replace the wider formal complaints procedure which local authorities are required to operate under Part 10 of the Act (Complaints, Representations and Advocacy Services). Instead, it is to establish a consistent review process for such decisions so that where a person wishes a determination in relation to charging, or the level of a charge, reviewed, they will be able to ask an authority to do this in a relatively straight forward way and in doing so, potentially obviate the need for a person to make a formal complaint to the authority.
- 1.3 It is hoped the vast majority of these requests would be satisfactorily resolved through the review process. Where, however, a person is still unhappy with an authority’s determination they will, as now, be able to make a formal complaint about this to an authority to be considered through its formal complaints procedure. This would be where they consider the authority has not made a properly considered decision in determining their review, e.g. not following its charging policy or not properly considering relevant information.
- 1.4 Local authorities **must** operate a review process as set out in the Regulations and this code to enable reviews to be sought of a determination of a charge, contribution or reimbursement, or the level of these, or where a person has been deemed to be a liable transferee.

- 1.5 In this annex future references to “charge” should be construed to include reference to a contribution or reimbursement set for direct payments provided to a person to secure care and support they require.

## Operation of the Review Process

- Making a request for a review

- 2.1 Regulation 3 (Persons who may request a review) of the Regulations sets out the persons who can request a review. These are:

- those upon whom a charge has been imposed for the care and support they will, or already, receive as described in section 60 of the Act (Persons upon whom charges may be imposed). Such persons will include adults whose needs are met under Part 4 of the Act (Meeting Needs), including where support is to be provided, or is already being provided, to meet an adult carer’s needs;
- those who are required to pay a contribution or make a reimbursement for the care and support they will, or already, secure through receipt of direct payments as described in section 50 to 53 of the Act (Direct payments). Such persons will include adults whose needs are met under Part 4 of the Act by the making of direct payments, including where support is provided, or is already being secured, by the receipt of direct payments to meet an adult carer’s needs;
- a liable transferee as defined in section 72 of the Act (Transfer of assets to avoid charges) who has received a transfer of an asset from a person whose needs have been or are being met by a local authority with the sole intention of avoiding charges for meeting that need.

- 2.2 Regulation 4 (Circumstances in which a review may be requested) of the Regulations sets out the circumstances where a review can be requested. These range from a local authority not having complied with any of the duties placed on it by relevant parts of the Act, the regulations and this code, to it not following its agreed charging policy, to it not taking into proper account relevant information connected with the determination of the charge made or the level of this. The circumstances also include certain factual disputes such as whether care and support, in respect of which a charge has been imposed, has in fact been provided or, in the case of a liable transferee, that the asset was not transferred with the intention of avoiding charges for care and support. Where a person’s financial circumstances change (such as where a change in their welfare benefits occur or where there is an annual change in the level of their benefits or state pension) it is envisaged that local authorities will re-assess the charge for which a person may be liable, or that the person may request this. Such circumstances **do not** give rise to a review request. Only where the person is unhappy with the outcome of a re-assessment are they able to seek a review under the circumstances set out in regulation 4.

- 2.3 Local authorities **must** have a review process in place which considers requests for a review from the individuals listed above in the circumstances listed in regulation 4. Authorities **must** consider requests for reviews made at any time after a local authority has made a determination to impose a charge, set the level of this or deem a person to be a liable transferee, and communicated that to the person to be charged.

- 2.4 A request **must** state which circumstance(s) in regulation 4 it is being made in accordance with and provide the reason(s) for the review being made. Local authorities **must** consider requests for a review made both in writing and orally;

see regulation 5 (Process for requesting a review) of the Regulations.

2.5 A request for a review can, in accordance with regulation 6 (Representatives) of the Regulations, be made by a representative on behalf of the person seeking the review, either for the whole of the review or for such part as the person wishes. This can be, for example, a friend or relative appointed by the person, or a formal advocate whom they wish to act for them. In either case the person **must** provide the local authority with their authorisation for this, either orally or in writing. Where the person does this orally, the local authority **must** provide a statement to the person and their representative confirming this appointment and the extent of the representative's involvement in the review, i.e. whole or part. A person appointing a representative for a review **must** be allowed to withdraw their consent for this at any time during the period of the review should they wish to do so. Notice of this **must** be able to be made either orally or in writing.

- Appointing a person to deal with a request for a review

2.6 Under regulation 7 (The appointed person) local authorities **must** appoint a suitably trained staff member to deal with a review request made but not to make the decision upon it (referred to for these purposes as the "appointed person"). The appointed person **must** be familiar with the requirements of the Act, Regulations and this code in relation to such reviews. It is good practice to include contact details for such staff in the section of a statement of a charge issued to a person in accordance with the Care and Support (Charging) (Wales) Regulations 2015 (the "Charging Regulations") so as to provide that person with this information, together with information on how to access this review process, should they subsequently wish to seek a review. It is also a requirement under regulation 10 (Acknowledgement of the request) of the Regulations for the appointed person's contact details to be included in an acknowledgement of a valid review request made.

- Withdrawing a request for a review

2.7 A person, or their representative, can withdraw a request for a review at any time while it is being considered, either orally or in writing, by informing the local authority's appointed person. Where this occurs the local authority **must** provide a statement to the person and any representative to confirm that the request has been withdrawn and that no further action on it will be taken as a result.

- Acceptance of a request for a review

2.8 Where a previous request for a review has been dealt with and a subsequent request is made by the same person in connection with the same circumstances, under regulation 9 (Acceptance of the request) of the Regulations an authority is under no duty to consider this if it believes that there has been no material change in any of the circumstances listed in regulation 4 of the Regulations that gave rise to the original request being made. Where this occurs an authority **must** send a statement to the person and any representative that the subsequent request will not be considered and provide its reason(s) for believing there has been no material change in any of the circumstances listed in regulation 4 that gave rise to the previous request and that no additional information or circumstances has been provided to justify a second review of the same circumstances.

2.9 Where a request for a review is from a person listed in regulation 3 of the Regulations (listed above in 2.1), or their representative, and relates to one or more of the circumstances listed in regulation 4 (outlined above in 2.2), a local

authority **must** consider this request in accordance with the requirements of the Act, the Regulations and this code.

- Acknowledgement of a request for review

2.10 A local authority **must** within 5 working days of receiving a valid request for a review (which complies with requirements of regulations 3, 4 and 5), send the person making the request, or their representative, a statement of acknowledgement confirming receipt of the request and which provides key information with regard to the review. That information is set out in regulation 10 (Acknowledgement of the request) of the Regulations and covers such information as confirmation of the basis of request, what further information or documentation the authority requires to process the review, that this can be provided by means of a visit to their home or other place if they wish, how the authority will process the review and, where they have not done so already, that person can appoint a representative if they wish.

2.11 If the person making the request for a review is a liable transferee, the acknowledgement **must** also indicate if the authority intends to request information or documentation from a person other than the person requesting the review and what information or documentation will be requested, if any. Where the local authority is requesting information or documentation from another person, it **must** send that person a statement requesting this which contains the information listed at regulation 10 (3) of the Regulations.

2.12 Where a local authority considers it can make a decision on a valid review requested on the basis of the information and documentation contained within it, and can make that decision within 5 working days, the requirements of 2.10 and 2.11 do not apply.

- Payment of the charge, reimbursement or contribution during the review

2.13 The acknowledgement to be issued under regulation 10 (as set out above at 2.10 and 2.11) **must** inform the person requesting the review, or their representative, that the charge which is the subject of the review (or the part of this which is the subject of the review) does not need to be paid during the period of the review, if the person wishes.

2.14 Where a person does not wish to pay a charge (or a part of this) during the period of the review, they or their representative must confirm this to the authority orally or in writing within 5 working days of receiving the acknowledgement of their request. Where this occurs a local authority **must not** collect the charge or relevant part of this during the period of the review. However, a person's liability for these payments remains. Consequently, the acknowledgement **must** also inform the person or their representative whether or not it is the authority's policy to recover such unpaid amounts once the review has been completed should it transpire that the person is liable for them.

2.15 In the case of those who pay a contribution for direct payments so that they would normally receive direct payments net of this deduction, for the review period an authority **must** pay the direct payments gross without this deduction should the recipient elect not to pay the contribution during the period of the review. This is so that these individuals are treated in a comparable way to those who receive their care and support direct from a local authority.

- Time limit for providing further information or documentation

- 2.16 If a local authority reasonably requires further information or documentation to process a review request, the person requesting the review or their representative must provide this within 15 working days of the date that the request for this was made in the acknowledgment outlined in 2.10 and 2.11 above. It would be good practice before the end of this period to remind a person or their representative of the timescale for submitting the information or documentation requested, where this was yet to be provided.
- 2.17 Under regulation 12 (Time limit for the provision of further information or documentation) within this timescale the person or their representative can ask, either orally or in writing, for an extension of time in which to provide the required information or documentation. For example, a person may have difficulty in obtaining certain documents required or in contacting certain individuals or organisations that hold such documents or information required. This equally applies where a local authority requests information or documentation from a third person in relation to a review involving a liable transferee. The request for the extension must, therefore, explain the reason(s) for this request.
- 2.18 Authorities **must** grant any reasonable request for such an extension and confirm to the person, or their representative, that this has been done and the revised time to submit the information or documentation. This confirmation **must** be in writing. If for any reason an authority does not grant a request for an extension, it **must** confirm this to the person, or their representative, and provide its reason(s) for not agreeing to this extension request.
- 2.19 In accordance with regulation 11 (Home visit) of the Regulations the person requesting the review, or their representative, may notify the appointed person orally or in writing that they intend to comply with any request for further information or documentation referred to at 2.16 above during a home visit. Where such notification is received, an authority **must** carry out a home visit for the purposes of obtaining this further information or documentation.
- 2.20 Under regulation 12 (Time limit for the provision of further information or documentation) of the Regulations should a local authority not receive the requested information or documentation to process the review, or any request to extend the time for submitting this, within the 15 working days allowed for submitting this, it may treat the request for the review as if it had been withdrawn. If this occurs the local authority **must** send a statement to the person who sought the review, or their representative, containing the information required in regulation 12 (6) of the Regulations to confirm this has been done and that the charge it related to is now payable, the amount(s) due and the date by which this must be paid. This statement **must** be in writing.
- 2.21 In the event that a local authority does not receive information or documentation from a third person in connection with a review involving a liable transferee within the 15 working days, or a request for an extension of time during this period, the local authority **must** send a statement to that third person, the person requesting the review and any representative. This **must** include the information required in regulation 13 (3) (Provision of information or documentation by a person other than the requester) of the Regulations, confirmation that the third party has failed to provide the information or documentation requested, that the authority will make a decision on the review on the basis of the information or documentation it has available and that the failure to provide the information or documentation requested may have an adverse impact upon the decision made. If the information or documentation is provided after the time limit for providing it has expired but

before a decision upon the review is made, a local authority may take that information or documentation into account when making the decision.

- Deciding a review

2.22 Under regulation 14 (Decision) of the Regulations as soon as possible, and in any event within 10 working days of receiving sufficient information or documentation to enable it to determine a review, the local authority **must** make a decision upon it and identify the action necessary to implement that decision. It **must** send a statement to the person who requested the review, and any representative, containing the information required in regulation 14 to confirm the decision, the reason(s) for that decision and whether the person's charge has been amended as a result. If the decision results in an amendment of the charge the authority **must** also send the person and any representative a statement of the amended charge issued to a person in accordance with regulation 14 (1) of the Charging Regulations.

2.23 Should a local authority only receive partial requested information or documentation to process the review (either within the 15 working days outlined above or within an extended period of time), a local authority **must** within 10 working days of the end of the later of these periods make a decision upon the review on the basis of the available information or documentation. It **must** also determine what action is necessary to implement that decision and send a statement to the person who requested the review, and any representative, containing the information required in regulation 14 of the Regulations to confirm the decision, the reason for that decision and whether the person's charge has been amended as a result. If the decision results in an amendment of the charge the authority **must** also send the person and any representative a statement of the amended charge issued to a person in accordance with regulation 14 (1) of the Charging Regulations.

2.24 Where an authority is unable to make a review decision within the 10 working days it **must** as soon as possible, but in any event within this period, provide the person who requested the review, or any representative, with a statement containing the information required under regulation 14 (3) of the Regulations to confirm this fact, the reason(s) for it and the date by which a decision will be made. It **must** also inform the person that if they wish, they can elect not to pay the charge which is the subject of the review while the review is being completed. The person, or any representative, may then do this if they wish by notifying the authority orally or in writing. A local authority **must** make it clear in this statement that charges that would have accrued during this extended period are not recoverable by the authority irrespective of the outcome of the review and local authorities **must not** seek to collect such amounts.

- Basis for a review decision

2.25 Local authorities **must** designate appropriate officers of the authority to make decisions on reviews. This could be an appropriate officer of a similar standing to the one who took the original decision which is the subject of the review, but who was not involved in the making of the original decision; or section head(s); or head of service(s); or a Director of Social Services. Whatever decision making process is used, local authorities **must** ensure that this is fair, open and impartial, supporting the principles of natural justice.

2.26 Regulation 14 (4) of the Regulations sets out the factors which those taking a decision on a review **must** take into account. This lists the relevant legislation to

consider, as well as the financial circumstances of the person who is the subject of the review and the circumstances that impact upon their ability to pay a charge.

2.27 In undertaking a decision on a review, as well as considering whether the person concerned has the financial means to pay a charge and the impact upon their independence of so doing, local authorities **must** take into account any wider “financial hardship” a person may have as a result of their impairment, medical condition or personal circumstances. This could be, for example, unpredicted household expense where the person needs to urgently spend to replace a loss, a sudden change in their income (such as being made redundant) or an unpredicted domestic crisis (such as someone being moved to a place of safety where they need to urgently buy clothing and household items).

- Payment of charges after review period

2.28 A local authority **may**, where the person who is the subject of the review has elected not to pay a charge during the review period, seek to recover any unpaid amounts following the completion of the review but it is **not** obliged to do so. The amount that can be recovered would be the amount of the charge the authority has decided is now correct as a result of the outcome of the review.

2.29 A local authority **must not** recover any amount that accrued from the time it extended the period on the review to the time the review was completed. Where an authority seeks to recover unpaid amounts it **must** have regard to the person’s financial circumstances and be satisfied that the recovery of this would not cause them undue financial hardship. If it considers this to be the case, then it **must** offer the person the option of repaying the amount in periodic instalments.

2.30 Regulation 15 (Payment of the charge during and after the review) of the Regulations sets out the detail of the payment of the charge, reimbursement or contribution during and after the review period, which local authorities **must** follow in this situation.

- Provision of statements and information

2.31 Where local authorities are required to provide a statement or information to a person seeking a review, or their representative, this **must** be provided in writing and in any format appropriate to meet the communication needs of the person and their representative.

## Annex F – Recovery of Debt and Deprivation of Assets

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Section 1 of this annex covers:

- The principles underpinning the approach to debt recovery;
- Options for debt recovery;
- Processes around debt recovery.

Section 2 of this annex covers:

- The deprivation of assets in order to avoid or reduce charges for care and support;
- Identifying possible deprivation;
- What happens where deprivation of assets has occurred;
- Recovering charges from a third party (a transferee).

### Section 1 - Recovery of Debt

#### General

- 1.1 This annex of the code applies where a person has accrued a debt in relation to charges made under section 59 (Power to impose charges) of the Social Services and Well-being (Wales) Act 2014 (“the Act”) for care and support arranged or provided for that person, or support provided where that person is a carer, by a local authority.
- 1.2 The general provisions governing a local authority’s recovery of a debt are set out in section 70 (Recovery of charges, interest etc) of the Act. In considering the recovery of debts local authorities must abide by the requirements of that section and of this annex to the code of practice.
- 1.3 Where a person accrues a debt the local authority **should take** all reasonable steps to ascertain the reason this has occurred and **must not** assume that the person is deliberately not meeting a charge imposed for care and support, or for support if a carer. A local authority **must** seek to establish the reason for a debt accruing and only where it is clear that it is as a result of a person’s deliberate non-payment **should** they consider debt recovery.
- 1.4 In dealing with debts local authorities **should** bear in mind that they are bound by the public law principle of acting reasonably at all times and **must** act not only in accordance with powers they have in relation to debts under the Act but also in accordance with the principles established in the human rights legislation. However, a local authority **must**, where it is clear non-payment is deliberate and it has decided to collect the debt which has accrued, pursue all other reasonable options to do this before using their debt recovery powers under section 70 (Recovery of charges, interest, etc.) of the Act, including taking court action if this is considered appropriate in the particular case.

#### Recovery of Debt

- 2.1 When designing its system for debt recovery, local authorities **should** be aware of the client group with which they are dealing. Unlike council tax or rent arrears debt, a local authority is not dealing with a potentially healthy general population but those with a physical or sensory impairment, or potentially older frail people. All debt recovery systems **must** therefore be designed with a full understanding of the

needs and characteristics of these clients given that financial assessment and charging processes can be confusing and complex. The recovery of debt from those in this situation is therefore a sensitive issue given their potential vulnerability and a local authority's ultimate responsibility to meet needs.

2.2 Local authorities **must** bear in mind that there are a number of genuine reasons why a debt may occur and they **must** consider each case on the merits of its specific circumstances before undertaking any form of formal debt recovery. Given this, local authorities **must** where a debt occurs:

- ensure the person concerned understands the nature of the debt which has occurred and the consequences of this;
- establish why the debt has occurred and whether this is a temporary situation which could be overcome or permanent which may not;
- decide on the basis of the circumstances of the case whether it is appropriate to recover the debt and if so, whether to recover all of the debt or a reasonable proportion;
- if a debt or part of a debt is to be recovered, consider and propose a method of doing so and if possible, agree this with the person including how this would operate. Where this occurs local authorities **must** ensure repayments are affordable for the individual and do not put the person at undue financial risk of not being able to afford other reasonable living costs.

2.3 Only where these are exhausted and a solution is not found and a local authority thinks it is appropriate to continue to recover a debt, **should** it consider formal debt recovery action under section 70 of the Act, including action through the courts where appropriate.

2.4 Before pursuing any debt recovery, either through a negotiated arrangement or formal action under the Act, a local authority **must** consider whether it is appropriate to recover the debt which has accrued, either in full or a proportion of it. For example, the expense in recovering a small debt, or a debt of a temporary nature, may be disproportionate to the amount that would be collected. It **should** also consider the impact on a person's financial position and/or well-being the recovery of debt may have, in line with a local authority's general duty to promote a person's well-being.

### Timing of debt recovery

3.1 The point at which a debt becomes due continues to be the date at which the amount imposed becomes due to the local authority. This means that, for example, if an invoice was issued giving 30 days to pay, the payment becomes due on day 30 and a debt accrues if this is not met.

3.2 For any debts that have accrued prior to the commencement of the Act the time period for recovering that debt will continue to be three years as set out under section 56 of the National Assistance Act 1948. For debts that occur after the commencement of the Act, the time period to recover these will now be six years from the date when the amount imposed became due to the local authority but was not paid. Where a debt takes time to be recovered, provided legal proceedings have commenced within this six year limitation period, recovery can continue. If it has not, and this period is reached, the debt **must** be written off.

### Options to recover debt

- 4.1 Where a debt is to be collected local authorities **should** explore the full range of options available to recover this. This is to ensure that the appropriate method is chosen without undue expense on the authority or undue impact on the person concerned. This is particularly important should a debt ultimately become subject to court proceedings as the court will want to consider what alternatives have been taken by the local authority to resolve the issue before court action was sought. If no effort has been made to reach an agreement first, not only may this result in an authority prematurely taking court action but may also be held by the court against the local authority when considering its judgement.
- 4.2 The greater the person's care needs, the more effort should be made to resolve the issue positively through the use of effective social work skills. Options may include negotiation, mediation and arbitration with court action only being taken as a last resort.
- 4.3 Local authorities **must** not send threatening letters demanding payment to those accruing debts and **should** always engage with those in this position to establish a dialogue. As a first step, a local authority **should** contact the person concerned to alert them to the situation, to ascertain why a debt has occurred and to establish whether the debt is to be met and if so, agree how this is to occur. This **should** be through personal contact with the person, which could be by telephone or by a visit, as an authority considers appropriate. Where this does not resolve the situation and the debt remains, a local authority **should** consider a number of alternative options to resolve the situation which include, but is not limited to, the following:
- Negotiating an agreement - an agreement on repayment of the debt could be negotiated by the local authority either directly with the person concerned or through a third party, such as an advocate to assist the person to understand the options available as regards repayment;
  - Mediation – an agreement on repayment could be reached through an independent third party who assists the local authority and the person concerned to reach agreement. This could be carried out by a professional mediation service, or a person or organisation not involved in the case, such as an independent social worker or a local voluntary organisation. In these circumstances the local authority and the person must ultimately agree the course of action and not the mediator;
  - Arbitration – a resolution could be reached which involves an independent arbitrator hearing both sides of the case and making a decision on behalf of the parties. If this option is chosen local authorities need to be aware that arbitration is usually binding on both sides and therefore, if it were not happy with an outcome it could not usually subsequently take a case to court.
- 4.4 In many cases the situation will be resolved through one of the above approaches or similar action, with an agreed repayment of the debt. Only where this does not occur **should** an authority consider whether to pursue recovery of the debt further.

### Recovering debt where a person has a legal interest in property

- 5.1 Where a debt has accrued in relation to a person who is in receipt of care and support in a care home, and a financial assessment has determined that they have an interest in an eligible property, they **must** be offered the choice of meeting this debt through a deferred payment agreement (DPA) where they are eligible for an agreement. The operation of DPAs, and eligibility for them, is set out in the Care and Support (Deferred Payment) (Wales) Regulations 2015 (the "Deferred

Payment Regulations”) and Annex D of this code. Where a person has accrued a debt and meets the eligibility criteria for a DPA, they **must** be offered the choice of entering into a DPA as a means of repaying this.

- 5.2 This option could be attractive to a person as it is a relatively simple way of meeting the debt without causing them immediate financial problems. It is also attractive as the interest rate that can be applied to a DPA is set by the Deferred Payment Regulations and is lower than the maximum amount a court can apply should an authority ultimately seek recovery of the debt through the courts. A local authority might also consider this option more viable as it will ensure the debt is secured, is at less risk of default and is likely to be quicker to secure than taking court action should that be ultimately required.

### Creation of a charge over an interest in property

- 6.1 Where a person who has accrued a debt under Part 5 of the Act has an interest in a property, and declines the option of a DPA, or does not meet the eligibility criteria for a DPA, a local authority can, if it considers it appropriate, create a charge over that property under section 71\* (Creation of a charge over an interest in land) of the Act to secure payment of the debt. Section 71 sets out the requirements where an authority wishes to pursue the recovery of a debt through this method and **must** be followed in all such circumstances.

\*When a local authority has a statutory charge created under section 71, it is registered in accordance with the Land Registration Rules 2003. The Land Registration Rules 2003 have been amended to refer to section 71 by the Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020.

### Recovery of a debt through the courts

- 7.1 Only where a local authority has exhausted all reasonable options to recover a debt which it considers appropriate to recover, should it consider taking action through the courts. Where such action is ultimately considered, the HM Courts and Tribunals Service has developed a number of leaflets to help guide those taking action through the court process. These can be found at:  
<http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

## Section 2 - Deprivation of Assets

### General

- 8.1 This section of the code applies where a local authority believes that a person has deliberately deprived themselves of assets to avoid or reduce charges made under section 59 (Power to impose charges) of the Act for care and support arranged or provided for that person, or support provided where that person is a carer, by a local authority.
- 8.2 The general provisions governing such circumstances are set out in section 70 (Recovery of charges, interest, etc) in relation to a person and section 72 (Transfer of assets to avoid charges) of the Act in relation to a third party (a transferee). In considering how to deal with such circumstances local authorities **must** abide by the requirements of these sections and of this annex of the code of practice.

8.3 For the purposes of this section of the code “assets” means capital and/or income.

### Identify possible deprivation

- 9.1 When undertaking or reviewing a financial assessment, or determining or reviewing a person’s charge a local authority may identify circumstances that suggest that a person may have deliberately deprived themselves of assets in order to reduce, or avoid, the financial contribution they are required to make towards the cost of their care and support.
- 9.2 Where a local authority believes that deprivation may have occurred it **should take** all reasonable steps to ascertain if this has occurred and if so, the reason for this. It **must not** assume that the person is deliberately depriving themselves of the relevant assets to reduce or avoid a charge which has been imposed for their care and support, or for support if a carer. A local authority **must** seek to establish the reason for the deprivation where it has occurred and only where it is clear that it is as a result of a person’s deliberate action should they consider further action.
- 9.3 In dealing with such cases local authorities **should** bear in mind that they are bound by the public law principle of acting reasonably at all times and **must** act not only in accordance with powers they have in relation to deprivation of assets in the Act but also in accordance with the principles established in the human rights legislation. Given this a local authority **must**, where it is clear deprivation has occurred and it has decided to collect the debt which results from this, pursue all other reasonable options to collect this before using their deprivation powers under sections 70 or section 72 of the Act, including taking court action if this is considered appropriate in the particular case.
- 9.4 Local authorities **should** be aware of the client group with which they are dealing. Unlike council tax or rent arrears debt, a local authority is not dealing with a potentially healthy general population but those with a physical or sensory impairment, or potentially older frail people. Hence in considering potential cases of deprivation local authorities should bear in mind the needs and characteristics of these clients given that financial assessment and charging processes can be confusing and complex. The recovery of a resultant debt from those in this situation is therefore a sensitive issue given their potential vulnerability and a local authority’s ultimate responsibility to meet needs.
- 9.5 Local authorities **must** bear in mind that there are a number of genuine reasons why apparent deprivation may have occurred and **must** consider each case on the merits of its specific circumstances before undertaking any form of formal debt recovery. Given this, local authorities **must** where it believes deprivation may have occurred follow a similar set of actions to those described in paragraph 2.2 in relation to debts, to alert the person to the fact that deprivation may have occurred, to establish what the deprivation has entailed, the reason for this and if possible where deprivation has occurred, to agree a solution.

### What is meant by deprivation of assets

- 10.1 Deprivation of assets has occurred where a person has intentionally deprived or decreased their overall assets in order to reduce or remove any charge impose for their care and support, or support if a carer. This means that they must have made a conscious decision to do this in the knowledge that to do so would have such an effect on their charge.

10.2 Where an asset has been used by a person to meet any debt that would otherwise remain, even if that is not immediately due, this **must not** be considered as deprivation but as a normal use of financial resources by a person to meet expenses.

### Has deprivation of capital occurred

11.1 It is up to the person to prove to the local authority that they no longer own a capital asset. If they are not able to, the local authority may assess them as if they still had the asset. For capital assets, acceptable evidence of their disposal would be:

- (a) A trust deed;
- (b) Deed of gift;
- (c) Receipts for expenditure;
- (d) Proof debts have been repaid.

11.2 A person can deprive themselves of capital in many ways, but common approaches may be:

- (a) A lump-sum payment to someone else, for example as a gift;
- (b) Substantial expenditure has been incurred suddenly and is out of character with previous spending;
- (c) The title deeds of a property have been transferred to another person;
- (d) Assets have been put in to a trust that cannot be revoked;
- (e) Assets have been converted into another form that would be subject to a disregard under a financial assessment, for example personal possessions;
- (f) Assets have been reduced by living extravagantly, for example buying an expensive sports car;
- (g) Assets have been used to purchase an investment bond with life insurance.

11.3 Apparent deprivation will not be deliberate in all cases. Questions of deprivation therefore should only be considered where the person ceases to possess assets that would have otherwise been taken into account for the purposes of a financial assessment or has turned the asset into one that is now disregarded in an assessment.

11.4 As there are many reasons for a person depriving themselves of an asset, a local authority **should** consider the following before deciding whether deprivation has deliberately occurred and whether, as a result, it wishes to pursue any resultant lost income:

- (a) Whether avoiding or reducing a charge was a significant motivation;
- (b) The timing of the disposal of the asset. At the point the capital was disposed of could the person have had a reasonable expectation of the need for care and support, even if at this point they were not yet receiving this; and
- (c) Would the person have had a reasonable expectation of needing to contribute towards the cost of this either now or at some future point.

11.5 It would be unreasonable to decide that deprivation had occurred where if at the time the disposal took place they were fit and healthy and could not have foreseen any need for care and support in the foreseeable future.

### Has deprivation of income occurred

- 12.1 It is also possible for a person to deliberately deprive themselves of income. For example, they could give away or sell the right to an income from an occupational pension.
- 12.2 It is up to the person to prove to the local authority that they no longer have the income. Where a local authority considers that a person may have deprived themselves of income, they may treat them as possessing notional income for the purposes of a financial assessment.
- 12.3 The local authority will need to determine whether deliberate deprivation of income has occurred and if so, what action to take as a result of this. In doing so it should consider:
- (a) Was it the person's income;
  - (b) What was the purpose of the disposal of the income;
  - (c) The timing of the disposal of the income. At the point the income was disposed of could the person have had a reasonable expectation of the need for care and support, either now or at some point in the future.
- 12.4 In some circumstances the income may have been converted into capital. The local authority should consider the level of the capital limit and whether the subsequent change made a material change to the charge which was imposed for the person's care and support, or support if a carer.

### Local authority investigations

- 13.1 In some cases a local authority may wish to conduct its own investigations into whether deprivation of assets has occurred rather than relying solely on the declaration of the person. There is separate guidance under the Regulation of Investigatory Powers Act 2000 which sets out the limits to a local authority's powers to investigate. Local authorities **must** have regard to that Act in any investigations it undertakes.

### What happens where deprivation of assets has occurred

- 14.1 If a local authority decides a person has deliberately deprived themselves of assets to avoid or reduce a charge for care and support, they will first need to decide whether to pursue this and treat the person as if they still had the asset for the purposes of their financial assessment.
- 14.2 If an authority decides to do so it **should** treat the asset as notional capital or notional income, as appropriate, in the person's financial assessment as if the deprivation had not occurred.
- 14.3 If the person in depriving themselves of an actual resource so as to reduce the remaining value of their capital or income, then for the purposes of the person's financial assessment they should be treated as notionally possessing the difference between the value of their current resources and the resources which they use to hold.

### Recovering charges from a third party (a transferee)

- 15.1 Where the person has transferred the asset to a third party (a transferee) to deliberately reduce or avoid a charge, the transferee is liable to pay the local

authority the difference between what it would have collected and what it did collect as a consequent of the transfer. However, the transferee is not liable to pay anything which exceeds the benefit they have received as a result of the transfer.

15.2 If the person has transferred assets to more than one transferee, each of those people is liable to pay the local authority the difference between what it would have collected and what it did collect in charges as a result of the transfer, in proportion to the amount they received.

15.3 As with any other debt, the local authority can ultimately use the courts to recover debts should they wish, but this **should only** be used after other avenues of securing the debt have been exhausted. When pursuing the recovery a local authority **should** do so in accordance with the first section of this annex on debt recovery.

### Other recovery routes

16.1 Local authorities may also want to consider other options that may be available to them in the recovery of debts. For example, Section 423 of the Insolvency Act 1986 provides additional routes to recover debts where a person may have transferred or sold their assets to a third party at a price that is lower than the market value. This is with the intention of putting those assets out of reach of, or prejudicing the interests of, someone who may wish to bring a claim against that person. In considering such options, a local authority **should** obtain its own legal advice.