

2015 No. 1840 (W. 268)

SOCIAL CARE, WALES

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

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

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

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

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Health and Social Services Group, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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Made 27 October 2015

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

Coming into force 6 April 2016

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

Title, commencement, application and interpretation

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

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

(3) In these Regulations—

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

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

- (a) accommodation in a care home within the meaning given by section 3 of the Care Standards Act 2000⁽²⁾ where the accommodation is in Wales or England;
- (b) accommodation in a care home service within the meaning given by paragraph 2 of Schedule 12 to the Public Services Reform (Scotland)

(1) 2014 anaw 4.

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

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

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

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

Choice of accommodation

2. Where—

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

the local authority must provide or arrange for the provision of the preferred accommodation in accordance with these Regulations.

Conditions for provision of preferred accommodation

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

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

(2) If the cost to the local authority of providing or arranging for the provision of the preferred

⁽¹⁾ 2010 asp 8.

⁽²⁾ S.I. 2003/431 (N.I. 9).

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

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

The additional cost condition

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

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

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

(3) The written agreement must include—

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

(4) The specified matters are—

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

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

- (a) a person other than the person for whom the accommodation is to be provided; or

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

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

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

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

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

Refusal to provide preferred accommodation

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

Mark Drakeford

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

(1) S.I. 2015/1844 (W. 272)