



SCOTTISH EXECUTIVE

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Directors of Social Work

Copy to

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Dear Colleague

DEFERRED PAYMENTS AND OTHER FUNDING ARRANGEMENTS WHICH ALLOW CARE HOME RESIDENTS TO DELAY SELLING THEIR HOMES

1. This circular replaces guidance provided in [Circular CCD7/2002](#) on Deferred Payment Agreements and at Annex A:

- a) re-affirms the Scottish Executive's expectation that **all** local authorities will operate deferred payment schemes to provide eligible residents with the choice not to sell their homes upfront to pay for their care;
- b) clarifies the use by local authorities of charging orders under Section 23 of the Health and Social Services and Social Security Adjudication Act 1983 (HASSASSA) to recover charges for residential accommodation; and
- c) confirms the arrangements through which the Scottish Executive will monitor the uptake of deferred payments agreements (DPAs) and consider the need for additional statutory provisions in support of deferred payment schemes.

Background

2. Deferred payments were introduced in July 2002 under the [Community Care and Health \(Scotland\) Act 2002](#). They allow people to avoid selling their homes up-front to meet their care home fees by entering into a legal agreement to have part of their fees paid by their local authority and the balance settled from their estate.

3. £3.5 million per year has been built into local authority allocations since 2002 to meet the initial costs of DPAs.

Consultation

4. Paragraph 6 of Circular [CCD7/2002](#) made explicit the Scottish Executive's intention to monitor the operation of these arrangements to ensure that they provided the necessary choice for service users. Authorities were consulted on 22 June on the implementation and uptake of DPAs. Responses indicated that:

- local authorities have made very limited use of their powers to enter into DPAs;
- the majority of authorities could not provide clear evidence that eligible residents are routinely made aware of their option to enter into DPAs; and
- a small number of authorities do not currently offer residents the choice to delay selling their homes.

Deferred Payment Agreements under the [Community Care and Health \(Scotland\) Act 2002](#)

5. Authorities offered a number of reasons for the low uptake of DPAs including:

- the administrative and legal complexity of setting them up;
- the difficulties with the process of establishing residents' eligibility;
- concerns about the overall funding of the scheme; and
- the ultimate recovery of monies owed by residents.

In response to these concerns, I can confirm that the Deferred Payment Scheme is currently supported by Scottish Executive funding of £3.5 million per year. Annex A provides detailed guidance on the other issues raised.

6. Authorities are reminded that the Executive expect them routinely to inform eligible residents of their option to enter into a DPA to defer the payment of part of their care home fees until their death or until they choose to sell their homes. Paragraph 15 of Annex A makes plain that authorities should aim to provide such information in a standard form to anyone who may qualify for a DPA. Authorities are also reminded that, although they have discretion as to how they prioritise applicants for DPAs, the Scottish Executive expects them to use this discretion only where it is necessary to avoid overspending their allocated funding on such agreements.

Charging Orders under HASSASSA

7. A number of responses to the Scottish Executive consultation indicated that, rather than entering into DPAs, residents prefer authorities to apply charging orders (COs) on their properties under Section 23 of the Health and Social Services and Social Security Adjudication Act 1983 (HASSASSA). Authorities claim that this use of HASSASSA powers has the same practical effect as DPAs in allowing residents to delay selling their properties to pay for their care. However, authorities are reminded that HASSASSA provides for situations where residents are unwilling to pay their assessed contribution towards their care costs, either now or in the future, and where a debt

therefore arises or will arise. While the Executive accepts that some residents may choose to put themselves into such a situation, to achieve a practical outcome similar to a DPA, this does not remove the responsibility for authorities to inform them of the DPA option. The guidance on sections 21-24 of HASSASSA contained in circular SWSG 15/93 remains extant.

Guidance Summary

8. Annex A of this circular reminds authorities that:
- The Scottish Executive expects **all** eligible residents to be offered the choice to defer payment of part of their care home fees;
 - DPAs under the [Community Care and Health \(Scotland\) Act 2002](#) are the preferred method by which the Scottish Executive expects all local authorities to enable eligible residents to defer part of their contribution towards their care home fees;
 - The Scottish Executive expects **all** local authorities to provide information to any resident who may be eligible on the option to enter into DPAs under the Community Care and Health (Scotland) Act 2002; and
 - The Scottish Executive expects **all** local authorities to have legal and administrative procedures in place to enable them to enter into and maintain DPAs under the Community Care and Health (Scotland) Act 2002.

Monitoring

9. The Scottish Executive will continue to monitor the provision and take-up of DPAs through ongoing statistical returns and a planned survey of client choice. On the basis of this information, Ministers will consider the need for additional statutory provisions to ensure that residents have a genuine choice of a DPA.

Enquiries

10. All enquiries relating to this letter and attachments should be addressed to Anne Hampson (e-mail and telephone number as above).

Yours sincerely

MS JINNY HUTCHISON

DEFERRED PAYMENT OF CARE HOME FEES

Introduction

1. This guidance is issued under section 26 of the [Community Care and Health \(Scotland\) Act 2002](#) and replaces [Circular CCD7/2002](#). It reiterates the rules introduced from 1 July 2002, which extended choice by allowing residents to defer payment of part of their contribution to care home fees to avoid the need to sell their homes. The main principles are set out in section 6 of the Act <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20005--b.htm#6>, its Explanatory Notes <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/en2002/2002en05.htm> and the Community Care (Deferred Payments) (Scotland) Regulations 2002 (S.S.I. 2002/266). <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/ssi2002/20020266.htm>

2. Deferred payment agreements provide some re-assurance and peace of mind for people worried about losing their home to pay for their care home fees. They mean that instead of having to sell their home up-front to meet these costs, some care home residents can enter an agreement with their local authority to have part of their fees paid and the balance settled from their estate. A deferred payment agreement is a legal agreement between the local authority and the individual which defines the portion of a person's care home fees to be deferred and provides for the grant to the local authority of a standard security over the home to cover the deferred amount. £3.5 million per year has been built into local authority allocations since 2002 to meet the initial costs of deferred payments.

Definition of Home

3. For the purposes of the deferred payments scheme, a person's 'home' will be taken to mean any dwelling which he or she would otherwise normally occupy as his or her main residence.

Date of Introduction

4. Deferred payment agreements became possible from 1 July 2002. They coincided with the introduction of free personal and nursing care and the new rules for top-ups of care home fees.

A Discretionary Power

5. Local authorities have discretion as to how they prioritise applicants for deferred payments, but the Scottish Executive expects them to use this discretion only if necessary to avoid overspending their allocated funding on such agreements.

Monitoring

6. The 2002 Act enables Ministers to compel authorities to provide deferred payments. The Scottish Executive has monitored the provision and take-up of DPAs since July 2002 and will continue to do so through ongoing statistical returns and a planned survey of client choice. **On the basis of this information, Ministers will consider the need for additional statutory provisions to ensure that residents have a genuine choice of a DPA.**

7. In the interim, local authorities are reminded that:
- The Scottish Executive expects **all** eligible residents to be offered the choice to defer payment of part of their care home fees.
 - DPAs under the [Community Care and Health \(Scotland\) Act 2002](#) are the preferred method by which the Scottish Executive expects local authorities to enable eligible residents to defer part of their contribution towards their care home fees.
 - The Scottish Executive expects **all** local authorities to provide information to any resident who may be eligible on the option to enter into DPAs under the Community Care and Health (Scotland) Act 2002.
 - The Scottish Executive expects **all** local authorities to have legal and administrative procedures in place to enable them to enter into and maintain DPAs under the Community Care and Health (Scotland) Act 2002;

Eligibility for Deferred Payment Agreements

8. Eligibility is restricted to any person who:

a) has been assessed as needing a care home place;

b) has capital at or below the lower capital limit (currently £11,750) when his or her resources are assessed under the National Assistance (Assessment of Resources) Regulations 1992 (as amended), but excluding his or her home from that assessment;

c) would not normally have his or her home disregarded from such a financial assessment (such as the first 12 weeks of permanent residential care; residential care on a temporary basis; where the resident's home is occupied by his or her spouse or partner or a relative or family member who is aged 60 or over or is incapacitated; or where the authority uses its discretion to disregard the home while a former carer continues to live there: this restriction applies only to deferral of the relevant portion of 'normal' care costs.

d) does not wish to sell his or her home or is unable to sell it quickly enough to pay for his or her care home fees; and

e) can grant the authority a standard security against his or her home, to secure a reasonable estimate of the total amount which will be owed – i.e. the total of any deferred payments plus any subsequent interest payable.

9. It is for local authorities to decide how to prioritise applicants for deferred payments and they should publish clear guidelines as to how they will do so. There are two instances in particular where they will need to exercise caution. First, deferred payments may be agreed for a resident for whom there is an outstanding mortgage on his or her home only if the resident can continue to make the mortgage payments while at the same time make the assessed contribution to care costs. Secondly, in establishing deferred payment agreements, authorities may take into account the size of the weekly deferred contribution in each case. A high level of deferred contributions in one case may limit an authority's ability to enter into other agreements. However, as noted in paragraph 5, the

Scottish Executive expects authorities to use their discretion to prioritise applicants only if it is necessary to avoid overspending their allocated funding on DPA agreements.

10. The ability to make deferred payments should not disrupt existing good practice that local authorities have developed when supporting residents on admission to permanent care who may have very short-term difficulties in selling their homes to meet their fees. In these cases, a deferred payment agreement is not likely to be appropriate.

11. Similarly, deferred payments should not be used in cases where authorities use their discretion to disregard the home value, such as where a former carer continues to live there.

Charging Orders under HASSASSA

12. In response to the Scottish Executive consultation of 22 June on the uptake of deferred payment agreements, some authorities suggested that, rather than entering into DPAs, residents prefer authorities to apply charging orders (COs) on their properties under Section 23 of the Health and Social Services and Social Security Adjudication Act 1983 (HASSASSA). They claimed that the use of HASSASSA powers in this way has the same practical effect as DPAs in allowing residents to delay selling their properties to pay for their care. However, authorities are reminded that the HASSASSA powers are intended to provide for situations where residents are unwilling to pay their assessed contribution towards their care costs, either now or in the future, and where a debt therefore arises or will arise. While the Executive accepts that some residents may choose to put themselves into such a situation, to achieve a practical outcome similar to a DPA, this does not remove the responsibility for authorities to inform them of the DPA option. Circular SWSG 15/93 refers <http://www.scotland.gov.uk/library/swsg/index-f/c093.htm>.

13. Authorities should also note that it is possible in certain cases to switch from a charge placed under Section 23 of HASSASSA to a DPA under Section 6 of the [Community Care and Health \(Scotland\) Act 2002](#). An example of this is where a resident who entered permanent residential care had a charge placed on his or her property under HASSASSA but has now agreed that it is more appropriate to switch to a DPA under the Community Care and Health (Scotland) Act 2002. Such a switch should be made in a correct and open manner, with the full knowledge and agreement of the resident.

Eligibility for Local Authority Supported Residential Care

14. Section 12 of the Social Work (Scotland) Act 1968, as amended by section 3 of the Community Care and Health (Scotland) Act 2002 <http://www.scotlandlegislation.hmso.gov.uk/legislation/scotland/acts2002/20005--b.htm#3>, allows for an order to specify what should be disregarded by a local authority when it decides whether to provide a care home place. The Community Care (Disregard of Resources) (Scotland) Order 2002 (S.S.I. 2002/264) <http://www.scotlandlegislation.hmso.gov.uk/legislation/scotland/ssi2002/20020264.htm> enables local authorities to arrange accommodation for anyone entering a deferred payment agreement as well as people who are to take advantage of personal or nursing care payments.

Information for Residents

15. **Authorities should inform all expected or existing care home residents who are likely to become eligible for deferred payment agreements of their options and the implications of the scheme.** Authorities should aim to provide such information in a standard form which can be

provided to anyone who may qualify. Such residents should also be informed of the policy the authority is following if it prioritises between different applicants for deferred payments.

16. Residents in deferred payment agreements should receive regular updates as to the amount deferred. Authorities should aim to integrate this with their normal billing arrangements

Content of Agreement

17. A deferred payment agreement should cover:

- **Start Date of Agreement** - There may be practical reasons for the date the agreement take effect to be backdated, and the Act allows for this, but no backdating before the scheme's commencement date of 1 July 2002 is possible.
- **Termination of Agreement** - Section 6 of the Act provides that agreements will terminate by written notice from the resident if he or she decides to make a full repayment during his or her lifetime or 56 days after the date of the resident's death.
- **Interest** - Deferred payments will be interest-free until the agreement is terminated by the resident or 56 days after his or her death. As set in directions, http://www.show.scot.nhs.uk/sehd/mels/HDL2003_06.pdf, interest should then be charged at a 'reasonable' rate as determined by the local authority.
- **Amounts to be Deferred** – See below.
- **Standard Security on the Resident's Home** – The value of the resident's interest in this should be adequate to cover the authority's reasonable estimate of the total amount likely to become due over the lifetime of the agreement (taking into account the effect of any other standard securities on that home).

18. With reference to protecting the value of the standard security, authorities may also wish to include conditions in the agreement, covering the need for the resident's home to be insured and maintained. Authorities may also wish to consider stipulating in the agreement that the resident's home is not to be let out without their written permission. This would help to avoid the situation where a home could not be sold to reimburse the deferred payments, because a tenant was still entitled to remain there for an extended period.

Amounts to be Deferred

19. The scheme allows deferment of payments which would otherwise be attributable to the capital value of a person's home. Different rules are set out below to govern 'normal' payments (under section 87(3) of the Social Work (Scotland) 1968 Act) and 'top-up' payments (under section 4(1)(a) of the [Community Care and Health \(Scotland\) Act 2002](#)) to care home fees which are higher than the authority would normally expect to pay.

Portion of 'Normal' Payments to be Deferred

20. The amount to be deferred is that which would otherwise be attributable to the capital value of the person's home in the residential care financial assessment. Deferred payment agreements are not to enable a person to retain more of his or her income or capital than would usually be the case following a normal financial assessment.

21. The part of the 'normal' fees to be deferred is therefore the difference between:

a) what a resident has to contribute under the residential care financial assessment from income and assets including his or her home (taking account of any payments due for personal or nursing care); and

b) the amount he or she would have had to contribute under the residential care financial assessment if the home were disregarded (again taking account of payments for personal or nursing care).

Portion of 'Top-up' Payments to be Deferred

22. Local authorities have discretion whether to defer part or all of any top-up payment which a resident is to make under section 4 of the [Community Care and Health \(Scotland\) Act 2002](http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20005--b.htm#4) and the Community Care (Additional Payments) (Scotland) Regulations 2002 (S.S.I. 2002/265) <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/ssi2002/20020265.htm> .

23. As noted in [Circular CCD 6/2002](#) (guidance on topping-up arrangements), local authorities and residents will need to give careful consideration to the sustainability of the topping-up arrangement before including top-ups in a deferred payment agreement. The authority should be satisfied that the top-up payments are viable and can be recovered when the home is sold. It may be appropriate for the deferred payment agreement to set out what will happen if and when such top-up payments are no longer permitted because the resident's total capital approaches the value of the upper capital limit in the financial assessment.

Rent Income

24. Any income which a person receives from renting a home subject to a deferred payment agreement will be taken into account in the financial assessment.

Deferred Payments – Example

25. A single man of 80 is assessed as needing residential care without nursing. He owns his home, worth £50,000 and has no debts secured against it. He has no other capital or debts. He has a weekly income of £100 per week.

26. His local authority can normally expect to pay £300 per week for this type of care but he wants to take advantage of the topping-up arrangements and take up a place costing £350 per week. He also wishes to pay his contribution to the normal amount and the top-up through a deferred payment agreement.

27. Under the financial assessment, because he has capital over £19,000, he is eligible only for the personal care payment of £145 per week. He would therefore be liable to meet the remaining costs of £155 per week for the normal amount plus £50 for the top-up.

28. Applying the financial assessment again, but disregarding his home, he would be liable to pay £81.90 per week from his income (leaving him with the Personal Expenses Allowance of £18.10).

29. Subject to any need for prioritisation (see paragraphs 5 and 9) the local authority should therefore make a deferred payment of £73.10 (£155 minus £81.90) from his 'normal' contribution to care home fees and consider deferring up to £50 per week from his 'top-up'.
30. Annex C of Circular HDL (2003) 7 http://www.show.scot.nhs.uk/sehd/mels/HDL2003_07.pdf provides a further set of worked examples on the interaction and practical application of deferred payments with top ups, free personal and nursing care and the residential care charging rules.