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STATUTORY INSTRUMENTS

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**2003 No. 762**

**SOCIAL SERVICES, ENGLAND**

**The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003**

<i>Made</i>	- - - -	<i>17th March 2003</i>
<i>Laid before Parliament</i>		<i>18th March 2003</i>
<i>Coming into force</i>	- -	<i>8th April 2003</i>

The Secretary of State for Health, in exercise of powers conferred by sections 57(1), (3), (6) and (7) and 64(6) and (8) of the Health and Social Care Act 2001<sup>(1)</sup> and sections 17A(1), (3), and (4) and 104(4) of the Children Act 1989<sup>(2)</sup> and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003 and shall come into force on 8th April 2003.

(2) In these Regulations—

“the 1983 Act” means the Mental Health Act 1983<sup>(3)</sup>;

“the 1984 Act” means the Mental Health (Scotland) Act 1984<sup>(4)</sup>;

“the 1989 Act” means the Children Act 1989;

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995<sup>(5)</sup>;

“the 2000 Act” means the Powers of Criminal Courts (Sentencing) Act 2000<sup>(6)</sup>;

“the 2001 Act” means the Health and Social Care Act 2001<sup>(7)</sup>;

“direct payment” has the meaning given in regulation 3;

“prescribed person” means a person who is a person of a prescribed description under regulation 2 or, as the case may be, 3;

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(1) 2001 c. 15.

(2) 1989 c. 41; section 17A was substituted by section 58 of the Health and Social Care Act 2001 (“the 2001 Act”).

(3) 1983 c. 30.

(4) 1984 c. 36.

(5) 1995 c. 46.

(6) 2000 c. 6.

(7) 2001 c. 15.

“relevant service” has the meaning given in regulation 4(2).

(3) These Regulations apply to England only.

### **Prescribed descriptions of persons—community care services and services for carers**

**2.—**(1) For the purposes of section 57(1) of the 2001 Act a person is of a prescribed description if—

- (a) he is a person who appears to the responsible authority<sup>(8)</sup> to be capable of managing a direct payment by himself or with such assistance as may be available to him; and
- (b) he is not a person to whom paragraph (2) applies.

(2) This paragraph applies to a person if—

- (a) he is required to submit to treatment for his mental condition or for his drug or alcohol dependency by virtue of a requirement of a community rehabilitation order within the meaning of section 41 of the 2000 Act or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- (b) he is subject to a drug treatment and testing order within the meaning of section 52 of the 2000 Act;
- (c) he is released on licence under section 37 of the Criminal Justice Act 1991<sup>(9)</sup> subject to a condition that he submit to treatment for his mental condition or for his drug or alcohol dependency;
- (d) he is placed under guardianship in pursuance of—
  - (i) an application made in accordance with section 7 of the 1983 Act; or
  - (ii) an order made under section 37 of that Act;
- (e) he is absent from hospital with leave given in accordance with section 17 of the 1983 Act;
- (f) he is subject to after-care under supervision within the meaning of section 25A of the 1983 Act<sup>(10)</sup>;
- (g) there is in force in respect of him a condition imposed in accordance with section 42(2) or 73(4) (including such a condition which has been varied in accordance with section 73(5) or 75(3)) of the 1983 Act;
- (h) there is in force in respect of him a supervision and treatment order within the meaning of Part 1 of Schedule 2 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991<sup>(11)</sup>;
- (i) he is a patient subject to after-care under a community care order under section 35A of the 1984 Act<sup>(12)</sup>;
- (j) he is a patient who is absent from hospital on leave under section 27 of the 1984 Act;
- (k) he is a person subject to a guardianship order within the meaning of section 57 of the Adults with Incapacity (Scotland) Act 2000<sup>(13)</sup> by reason of, or by reasons which include, incapacity through mental disorder;
- (l) he is a restricted patient within the meaning of section 63(1) of the 1984 Act who has been given a conditional discharge under section 64 or 68 of that Act;

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<sup>(8)</sup> See section 57(2) of the 2001 Act and section 17A of the Children Act 1989 (“the 1989 Act”) for the definition of “responsible authority”.

<sup>(9)</sup> 1991 c. 53.

<sup>(10)</sup> Section 25A was inserted by section 1(1) of the Mental Health (Patients in the Community) Act 1995 (c. 52) (“the 1995 Act”).

<sup>(11)</sup> 1991 c. 25.

<sup>(12)</sup> Section 35A was inserted by section 4 of the 1995 Act.

<sup>(13)</sup> 2000 asp4.

- (m) he is subject to an order of a court under sections 57(2)(a), (b), (c) or (d), 58 or 59 of the 1995 Act;
- (n) he is required to submit to treatment for his mental condition or his drug or alcohol dependency by virtue of a requirement of a probation order within the meaning of sections 228 to 230 of the 1995 Act or is subject to a drug treatment and testing order within the meaning of section 234B of that Act<sup>(14)</sup>;
- (o) he is released on licence under section 22 or 26 of the Prisons (Scotland) Act 1989<sup>(15)</sup> or under section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>(16)</sup> and is subject to a condition that he submits to treatment for his mental condition or for his drug or alcohol dependency.

### **Prescribed descriptions of persons—children’s services**

- 3. For the purposes of section 17A(1) of the 1989 Act, a person is of a prescribed description if—
  - (a) he is a person who appears to the responsible authority to be capable of managing a direct payment by himself or with such assistance as may be available to him; and
  - (b) he is not a person to whom paragraph (2) of regulation 2 applies.

### **Duty to make direct payments**

4.—(1) If the conditions in paragraph (3) are satisfied, a responsible authority must make in respect of a prescribed person who falls within subsection (2) of section 57 of the 2001 Act or subsection (2) of 17A of the 1989 Act such payments (direct payments) as are determined in accordance with regulation 5 in respect of his securing the provision of a relevant service.

- (2) In this regulation a relevant service means—
  - (a) a community care service within the meaning of section 46 of the National Health Service and Community Care Act 1990<sup>(17)</sup>; or
  - (b) a service under section 2 of the Carers and Disabled Children Act 2000<sup>(18)</sup>; or
  - (c) a service which they may provide in exercise of functions under section 17 of the 1989 Act (provision of services for children in need, their families and others).
- (3) The conditions referred to in paragraph (1) are that—
  - (a) the responsible authority are satisfied that the person’s needs for the relevant service can be met by securing the provision of it by means of a direct payment; and
  - (b) in the case of a relevant service mentioned in paragraph (2)(c), the responsible authority are satisfied that the welfare of the child in respect of whom the service is needed will be safeguarded and promoted by securing the provision of it by the means of the direct payment.

### **Amount and payment of direct payments**

5.—(1) Subject to paragraphs (3) and (4), a direct payment shall be made as a gross payment<sup>(19)</sup> unless the responsible authority decide it shall be made as a net payment<sup>(20)</sup>.

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<sup>(14)</sup> Section 234B was inserted by section 90 of the Crime and Disorder Act 1998 (c. 37).

<sup>(15)</sup> 1989 c. 45.

<sup>(16)</sup> 1993 c. 9.

<sup>(17)</sup> 1990 c. 19.

<sup>(18)</sup> 2000 c. 16.

<sup>(19)</sup> See section 57(4) of the 2001 Act for the definition of “gross payments”.

<sup>(20)</sup> See section 57(5) of the 2001 Act for the definition of “net payments”.

(2) For the purpose of making the payment referred to in paragraph (1), the responsible authority shall determine, having regard to the prescribed person's means, what amount or amounts (if any) it is reasonably practicable for him to pay towards securing the provision of the relevant service (whether by way of reimbursement as mentioned in section 57(4) of the 2001 Act or by way of a contribution as mentioned in section 57(5) of that Act)(21).

(3) Where the relevant service is one which, apart from these Regulations, would be provided under section 117 of the 1983 Act (after-care)—

- (a) the payment shall be made at the rate mentioned in subsection (4)(a) of section 57 of the 2001 Act; and
- (b) subsection (4)(b) of that section shall not apply.

(4) Where a direct payment is made to a person falling within section 17A(5) of the 1989 Act—

- (a) the payment shall be made at the rate mentioned in subsection (4)(a) of section 57 of the 2001 Act; and
- (b) subsection (4)(b) of that section shall not apply.

(5) A direct payment may be paid to—

- (a) the prescribed person who falls within section 57(2) of the 2001 Act or section 17A(2) of the 1989 Act (as the case may be), or
- (b) a person nominated by the prescribed person to receive the payment on his behalf.

#### **Conditions in respect of direct payments**

6.—(1) A direct payment shall be subject to the condition that the service in respect of which it is made shall not be secured from a person mentioned in paragraph (2) unless—

- (a) in the case of a service mentioned in regulation 4(2)(a) or (b), the responsible authority is satisfied that securing the service from such a person is necessary to meet satisfactorily the prescribed person's need for that service;
- (b) in the case of a service mentioned in regulation 4(2)(c), the responsible authority is satisfied that securing the service from such a person is necessary for promoting the welfare of the child in need.

(2) The persons specified for the purposes of paragraph (1) are—

- (a) the spouse of the prescribed person;
- (b) a person who lives with the prescribed person as if his spouse;
- (c) a person living in the same household as the prescribed person who is the prescribed person's—
  - (i) parent or parent-in-law;
  - (ii) son or daughter;
  - (iii) son-in-law or daughter-in-law;
  - (iv) stepson or stepdaughter;
  - (v) brother or sister;
  - (vi) aunt or uncle; or
  - (vii) grandparent;
- (d) the spouse of any person specified in sub-paragraph (c) who lives in the same household as the prescribed person; and

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(21) Subsection (3) of section 17A of the 1989 Act applies subsections (3) to (5) and (7) of the 2001 Act to regulations made under section 17A of the 1989 Act.

- (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse.
- (3) Paragraph (2)(c)(ii) and (iii) do not apply in the case of a person mentioned in section 17A(2)(c) of the 1989 Act.
- (4) A responsible authority may make a direct payment subject to such other conditions (if any) as they think fit.
- (5) The conditions referred to in paragraph (4) may, in particular, require that the payee—
  - (a) shall not secure the relevant service from a particular person; and
  - (b) shall provide such information to the responsible authority as they consider necessary in connection with the direct payment.

### **Maximum periods of residential accommodation which may be secured by means of a direct payment**

- 7.—(1) Subject to paragraph (2), a direct payment may not be made in respect of a person who falls within regulation 2(1) for the provision to him of residential accommodation of a period in excess of 4 weeks in any period of 12 months.
- (2) In calculating the period of 4 weeks mentioned in paragraph (1) a period in residential accommodation of less than 4 weeks shall be added to any succeeding period in residential accommodation where the two periods are separated by a period of less than 4 weeks but not otherwise.
- (3) A direct payment may not be made in respect a person who falls within regulation 3 for the provision of residential accommodation—
  - (a) for any single period in excess of 4 weeks, and
  - (b) for any period in excess of 120 days in any period of 12 months.

### **Displaced functions and obligations of the responsible authority**

- 8.—(1) Except as provided by paragraph (2), the fact that an authority make a direct payment shall not affect their functions with respect to the provision under the relevant enactment of the service to which the payment relates.
- (2) Where a responsible authority make a direct payment, they shall not be under any obligation with respect to the provision under the relevant enactment of the service to which the payment relates as long as they are satisfied that the need which calls for the provision of the service will be secured by the payee's own arrangements.
- (3) In paragraphs (1) and (2), references to the relevant enactment, in relation to the provision of a service, are to the enactment under which the service would fall to be provided apart from these Regulations.

### **Repayment of direct payments**

- 9.—(1) Where a responsible authority which has made a direct payment is satisfied, in relation to the whole or any part of the payment—
  - (a) that it has not been used to secure the provision of the service to which it relates; or
  - (b) that a condition imposed under regulation 6 has not been complied with;they may require the payment or, as the case may be, the part of the payment to be repaid.
- (2) Any sum falling to be repaid by virtue of paragraph (1) shall be recoverable as a debt due to the authority.

### Termination of direct payments

10.—(1) Subject to paragraph (3), a responsible authority shall terminate the making of direct payments to a person if—

- (a) he ceases to be a prescribed person; or
- (b) a condition mentioned in regulation 4(3) ceases to be met.

(2) A responsible authority may terminate the making of direct payments to a prescribed person if any condition imposed under regulation 6 or referred to in section 57(4)(b) of the 2001 Act is not complied with.

(3) Notwithstanding that the person in respect of whom direct payments are made ceases to be capable of managing such payments a responsible authority may continue to make such payments if—

- (a) the authority is reasonably satisfied that the person's incapability will be temporary;
- (b) another person is prepared to accept and manage such payments on the incapable person's behalf; and
- (c) the person with whom the arrangement for the provision of the relevant service has been made agrees to accept payment for the services from the person mentioned in subparagraph (b).

### Consequential amendments

11.—(1) In the enactments specified in column 1 of Schedule 1 to these Regulations, in the provisions specified in column 2 of that Schedule, after “Community Care (Direct Payments) Act 1996”, insert “or under regulations made under section 57 of the Health and Social Care Act 2001 (direct payments)”.

(2) In the enactments specified in column 1 of Schedule 2 to these Regulations, in the provisions specified in column 2 of that Schedule, after “Social Work (Scotland) Act 1968”, insert “or under regulations made under section 57 of the Health and Social Care Act 2001 (direct payments)”.

(3) In regulation 19 of the Tax Credits (Definition and Calculation of Income) Regulations 2002<sup>(22)</sup> in entry 14 in table 6, after “Health and Personal Social Services (Direct Payments) (Northern Ireland) Order”, add “or regulations made under section 57 of the Health and Social Care Act 2001 (direct payments).”

### Revocation

12.—(1) The Community Care (Direct Payments) Regulations 1997<sup>(23)</sup> and the Community Care (Direct Payments) Amendment Regulations 2000<sup>(24)</sup> are hereby revoked.

(2) Regulations 3 and 4 of the Carers (Services) and Direct Payments (Amendment) (England) Regulations 2001<sup>(25)</sup> are hereby revoked.

(3) The Disabled Children (Direct Payments) (England) Regulations 2001<sup>(26)</sup> are hereby revoked.

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<sup>(22)</sup> S.I.2002/2006.

<sup>(23)</sup> S.I. 1997/743.

<sup>(24)</sup> S.I. 2000/11.

<sup>(25)</sup> S.I. 2001/441.

<sup>(26)</sup> S.I. 2001/442.

Signed by authority of the Secretary of State

17th March 2003

*Jacqui Smith*  
Minister of State,  
Department of Health

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

## SCHEDULE 1

Regulation 11(1)

ENACTMENTS WHERE AFTER “COMMUNITY CARE (DIRECT PAYMENTS) ACT 1996”, THERE IS INSERTED “OR UNDER REGULATIONS MADE UNDER SECTION 57 OF THE HEALTH AND SOCIAL CARE ACT 2001”

<i>Title of Enactment</i>	<i>Provisions to be amended</i>
Civil Legal Aid (Assessment of Resources) Regulations 1989 <b>(27)</b>	Schedule 2, paragraph 6(2) and Schedule 3, paragraph 8(b)
Legal Advice and Assistance Regulations 1989 <b>(28)</b>	Schedule 2, paragraph 9A(2)
Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 <b>(29)</b>	Schedule 3, paragraph 6(2)
Community Legal Service (Financial) Regulations 2000 <b>(30)</b>	Regulations 19(b) and 33(b)
Criminal Defence Service (General) (No. 2) Regulations 2001 <b>(31)</b>	Schedule 1, paragraph 8(1)(d)

## SCHEDULE 2

Regulation 11(2)

ENACTMENTS WHERE AFTER “SOCIAL WORK (SCOTLAND) ACT 1968”, THERE IS INSERTED “OR UNDER REGULATIONS MADE UNDER SECTION 57 OF THE HEALTH AND SOCIAL CARE ACT 2001”

<i>Title of Enactment</i>	<i>Provisions to be amended</i>
Income Support (General) Regulations 1987 <b>(32)</b>	Schedule 9, paragraph 58
Housing Benefit (General) Regulations 1987 <b>(33)</b>	Schedule 4, paragraph 67
Family Credit (General) Regulations 1987 <b>(34)</b>	Schedule 2, paragraph 57
Disability Working Allowance (General) Regulations 1991 <b>(35)</b>	Schedule 3, paragraph 55
Council Tax Benefit (General) Regulations 1992 <b>(36)</b>	Schedule 4, paragraph 62

(27) S.I. 1989/338; relevant amending regulations are S.I. 1993/788, 1996/2309, 1997/753; see also S.I. 2000/774, article 5.

(28) S.I. 1989/340; relevant amending regulations are S.I. 1993/790 and 1997/751; see also S.I. 2000/774 article 5 and S.I. 2001/916, article 4 and schedule 2.

(29) S.I. 1989/344 relevant amending regulations are S.I. 1993/789 and 1997/752; see also S.I. 2000/774 article 5 and S.I. 2001/916, article 4 and schedule 2.

(30) S.I. 2000/516.

(31) S.I. 2001/1437.

(32) S.I. 1987/1967; relevant amending regulations are S.I. 1997/65.

(33) S.I. 1987/1971; relevant amending regulations are S.I. 1997/2863.

(34) S.I. 1987/1973; relevant amending regulations are S.I. 1997/65.

(35) S.I. 1991/2887; relevant amending regulations are S.I. 1997/65.

(36) S.I. 1992/1814; relevant amending regulations are S.I. 1997/65.

<i>Title of Enactment</i>	<i>Provisions to be amended</i>
Child Support (Maintenance Assessments and Special Cases) Regulations 1992(37)	Schedule 2, paragraph 48C
Jobseeker's Allowance Regulations 1996(38)	Schedule 7, paragraph 56
Housing Renewal Grants Regulations 1996(39)	Schedule 3, paragraph 59
Relocation Grants (Form of Application) Regulations 1997(40)	Schedule, paragraph 43A

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the making of direct payments in respect of a person securing the provision of certain social care services. Those services are services which would be provided under the community care enactments mentioned in section 46(3) of the National Health Service and Community Care Act 1990, to carers under section 2 of the Carers and Disabled Children Act 2000 or services under section 17 of the Children Act 1989 (provision of services for children in need, their families and others).

Regulations 2 and 3 prescribe the categories of persons who may receive direct payments. A person is of a prescribed category (for the purposes of section 57 of the Health and Social Care Act 2001 or section 17A of the Children Act 1989) if he appears to the responsible authority to be capable of managing a direct payment and he is not a person mentioned in paragraph (2) of regulation 2.

Regulation 4 sets out the circumstances where an authority must make a direct payment.

Regulation 5 provides that a direct payment shall be made either gross or net of such amount determined by the authority as being due by the person in respect of the service. It also provides that in certain cases a payment may only be made gross. It provides that a payment may be paid to the prescribed person or to such other person nominated by that person.

Regulation 6 specifies conditions which shall or which may be made in respect of direct payments. In particular it prohibits a direct payment from being used to secure a service from certain persons, except in specified circumstances.

Regulation 7 sets out the maximum periods of residential accommodation which may be secured by means of a direct payment.

Regulation 8 provides that where an authority makes a direct payment it retains the functions as respects the provision of the service. It also provides that an authority shall not be under any obligation with respect to the provision of the service provided they are satisfied that the needs of the person will be secured by his own arrangements.

Regulation 9 sets out the circumstances where an authority may require a direct payment to be repaid.

(37) S.I. [1992/1815](#); relevant amending regulations are S.I. [1996/3196](#). S.I. [1992/1815](#) was revoked with savings by S.I. [2001/155](#).

(38) S.I. [1996/207](#); relevant amending regulations are S.I. [1997/65](#).

(39) S.I. [1996/2890](#); relevant amending regulations are S.I. [1998/808](#).

(40) S.I. [1997/2847](#).

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Regulation 10 provides for the circumstances where an authority shall, or may, terminate direct payments.

Regulation 11 and the Schedules make amendments to various regulations pursuant to the enactment of these Regulations.

Regulation 12 revokes various regulations.

These regulations do not impose costs on business.