

2007 No. 458

SOCIAL WORK

**The Community Care (Direct Payments) (Scotland) Amendment
Regulations 2007**

Made - - - - - *10th October 2007*

Laid before the Scottish Parliament *15th October 2007*

Coming into force - - - *12th November 2007*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 12B(3), (4)(c) and (e) and (6)(za) of the Social Work (Scotland) Act 1968(a) and of all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Community Care (Direct Payments) (Scotland) Amendment Regulations 2007 and shall come into force on 12th November 2007.

Amendment of the Community Care (Direct Payments) (Scotland) Regulations 2003

2.—(1) The Community Care (Direct Payments) (Scotland) Regulations 2003(b) are amended in accordance with this regulation.

(2) In regulation 1(2) after the definition of “beneficiary” insert—

““civil partner” has the same meaning as in the Civil Partnership Act 2004(c);”.

(3) For regulation 4 (persons from whom services may not be secured by means of a direct payment) substitute—

“4.—(1) The descriptions of persons in paragraph (2) are specified for the purposes of subsection (3) of section 12B (persons from whom services may not be secured by means of a direct payment) of the Act, except to the extent that—

(a) in the case of a service mentioned in section 12B(1)(a)(i) of the Act (community care services), the local authority is satisfied that securing the service from such a person is necessary to meet the beneficiary’s need for that service; or

(b) in the case of a service mentioned in section 12B(1)(a)(ii) of the Act (services for children in need), other than a service provided under section 22(3)(b) of the Children (Scotland) Act 1995(d) which comprises giving assistance in cash, the

(a) 1968 c.49. Section 12B was inserted by the Community Care (Direct Payments) Act 1996 (c.30), section 4 and was amended by the Regulation of Care (Scotland) Act 2001 (asp 8), section 70, by the Community Care and Health (Scotland) Act 2002 (asp 5), section 7 and Schedule 2, paragraph 1 and by the Adult Support and Protection (Scotland) Act 2007 (asp 10), section 63. See section 90(1) for the meaning of “regulations”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2003/243 as amended by S.S.I. 2005/114.

(c) 2004 c.33.

(d) 1995 c.36.

local authority is satisfied that securing the service from such a person is necessary to safeguard or promote the welfare of the child in need.

- (2) The description of persons referred to in paragraph (1) are—
- (a) the beneficiary's—
 - (i) grandparent;
 - (ii) parent;
 - (iii) son or daughter;
 - (iv) brother or sister;
 - (v) half-brother or half-sister;
 - (vi) aunt or uncle;
 - (vii) nephew or niece; or
 - (viii) grandchildren;
 - (b) the spouse or civil partner of—
 - (i) the beneficiary; or
 - (ii) any person of a description specified in regulation 4(2)(a) or (e);
 - (c) a person who—
 - (i) is of the opposite sex to the beneficiary, or to any person of a description specified in regulation 4(2)(a) or (e); and
 - (ii) is not married to the beneficiary or to that person (as the case may be); but
 - (iii) lives as though he or she were the beneficiary's, or that person's, husband or wife (as the case may be);
 - (d) a person who—
 - (i) is of the same sex as the beneficiary, or of any person of a description specified in regulation 4(2)(a) or (e); and
 - (ii) who is not the civil partner of the beneficiary or that person (as the case may be); but
 - (iii) lives as though he or she were the beneficiary's, or that person's, civil partner (as the case may be);
 - (e) the beneficiary's aunt's or uncle's son or daughter;
 - (f) the stepparent, stepchild, stepbrother, stepsister, or step grandchild of—
 - (i) the beneficiary; or
 - (ii) any person of a description specified in regulation 4(2)(a) but not the beneficiary's grandparent's stepparent or the beneficiary's nephew's or niece's stepchild;
 - (g) the parent in law, son in law, daughter in law, brother in law or sister in law of—
 - (i) the beneficiary; or
 - (ii) any person of a description specified in regulation 4(2)(a).”.

S ROBISON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
10th October 2007

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 12B of the Social Work (Scotland) Act 1968 requires a local authority to make direct payments to persons in respect of securing the provision of certain services, where that person consents, or consent is given on their behalf.

These Regulations amend the Community Care (Direct Payments) (Scotland) Regulations 2003 (“the principal Regulations”). Regulation 2 amends regulation 4 of the principal Regulations, which specifies the persons (i.e. certain relatives) from whom services may not be obtained and funded by a direct payment.

These Regulations also amend regulation 4 to provide that local authorities can determine that services can be secured from such persons and paid for by direct payments in certain circumstances.

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