



# Community Care (Direct Payments) Act 1996

## 1996 CHAPTER 30

An Act to enable local authorities responsible for community care services to make payments to persons in respect of their securing the provision of such services; and for connected purposes. [4th July 1996]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *England and Wales*

## **1 Direct payments**

### (1) Where—

- (a) an authority have decided under section 47 of the National Health Service and Community Care Act 1990 (assessment by local authorities of needs for community care services) that the needs of a person call for the provision of any community care services, and
- (b) the person is of a description which is specified for the purposes of this subsection by regulations made by the Secretary of State,

the authority may, if the person consents, make to him, in respect of his securing the provision of any of the services for which they have decided his needs call, a payment of such amount as, subject to subsections (2) and (3) below, they think fit.

### (2) If—

- (a) an authority pay under subsection (1) above at a rate below their estimate of the reasonable cost of securing the provision of the service concerned, and
- (b) the payee satisfies the authority that his means are insufficient for it to be reasonably practicable for him to make up the difference,

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the authority shall so adjust the payment to him under that subsection as to avoid there being a greater difference than that which appears to them to be reasonably practicable for him to make up.

- (3) In the case of a service which, apart from this Act, would be provided under section 117 of the Mental Health Act 1983 (after-care), an authority shall not pay under subsection (1) above at a rate below their estimate of the reasonable cost of securing the provision of the service.
- (4) A payment under subsection (1) above shall be subject to the condition that the person to whom it is made shall not secure the provision of the service to which it relates by a person who is of a description specified for the purposes of this subsection by regulations made by the Secretary of State.
- (5) The Secretary of State may by regulations provide that the power conferred by subsection (1) above shall not be exercisable in relation to the provision of residential accommodation for any person for a period in excess of such period as may be specified in the regulations.
- (6) If the authority by whom a payment under subsection (1) above is made are not satisfied, in relation to the whole or any part of the payment—
  - (a) that it has been used to secure the provision of the service to which it relates, or
  - (b) that the condition imposed by subsection (4) above, or any condition properly imposed by them, has been met in relation to its use,they may require the payment or, as the case may be, the part of the payment to be repaid.
- (7) Regulations under this section may—
  - (a) make different provision for different cases, and
  - (b) include such supplementary, incidental, consequential and transitional provisions and savings as the Secretary of State thinks fit.
- (8) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section, “community care services” has the same meaning as in section 46 of the National Health Service and Community Care Act 1990.

## **2 Relationship with other functions**

- (1) Except as provided by subsection (2) below, the fact that an authority make a payment under section 1(1) above shall not affect their functions with respect to the provision under the relevant community care enactment of the service to which the payment relates.
- (2) Where an authority make a payment under section 1(1) above, they shall not be under any obligation to the payee with respect to the provision under the relevant community care 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 met by virtue of the payee’s own arrangements.

- (3) In subsections (1) and (2) above, references to the relevant community care enactment, in relation to the provision of a service, are to the enactment under which the service would fall to be provided apart from this Act.

### 3 Consequential amendments

- (1) The Local Authority Social Services Act 1970 shall be amended as follows.
- (2) In section 7B(2) (persons entitled to use the procedure for complaining about the discharge of a local authority's social services functions) there shall be inserted at the end "or if he is in receipt of payment from the authority under the Community Care (Direct Payments) Act 1996".
- (3) In Schedule 1 (enactments conferring functions assigned to social services committee) at the end there shall be added—

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“Community Care (Direct Payments) Act 1996.	Functions in connection with the making of payments to persons in respect of their securing the provision of community care services.”
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### *Scotland*

### 4 Direct payments

The following sections shall be inserted after section 12A of the Social Work (Scotland) Act 1968—

#### **“12B Direct payments in respect of community care services**

- (1) Where, as respects a person in need—
- (a) a local authority have decided under section 12A of this Act that his needs call for the provision of any service which is a community care service within the meaning of section 5A of this Act, and
  - (b) the person is of a description which is specified for the purposes of this subsection by regulations,
- the authority may, if the person consents, make to him, in respect of his securing the provision of the service, a payment of such amount as, subject to subsection (2) below, they think fit.
- (2) If—
- (a) an authority pay under subsection (1) above at a rate below their estimate of the reasonable cost of securing the provision of the service concerned, and
  - (b) the person to whom the payment is made satisfies the authority that his means are insufficient for it to be reasonably practicable for him to make up the difference,
- the authority shall so adjust the payment to him under that subsection as to avoid there being a greater difference than that which appears to them to be reasonably practicable for him to make up.

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- (3) A payment under subsection (1) above shall be subject to the condition that the person to whom it is made shall not secure the provision of the service to which it relates by a person who is of a description specified for the purposes of this subsection by regulations.
- (4) Regulations may provide that the power conferred by subsection (1) above shall not be exercisable in relation to the provision of residential accommodation for any person for a period in excess of such period as may be specified in the regulations.
- (5) If the authority by whom a payment under subsection (1) above is made are not satisfied, in relation to the whole or any part of the payment—
  - (a) that it has been used to secure the provision of the service to which it relates, or
  - (b) that the condition imposed by subsection (3) above, or any condition properly imposed by them, has been met in relation to its use,
 they may require the payment or, as the case may be, the part of the payment to be repaid.
- (6) Regulations under this section shall be made by the Secretary of State and may—
  - (a) make different provision for different cases; and
  - (b) include such supplementary, incidental, consequential and transitional provisions and savings as the Secretary of State thinks fit.

### **12C Further provisions relating to direct payments**

- (1) Except as provided by subsection (2) below, the fact that a local authority make a payment under section 12B(1) of this Act shall not affect their functions with respect to the provision of the service to which the payment relates.
- (2) Subject to subsection (3) below, where an authority make a payment under section 12B(1) of this Act they shall not be under any obligation to the person to whom it is made with respect to the provision of the service to which it relates as long as they are satisfied that the need which calls for the provision of that service will be met by virtue of the person's own arrangements.
- (3) The fact that an authority make a payment under section 12B(1) of this Act shall not affect their functions under section 12 of this Act in relation to the provision, to the person to whom the payment is made, of assistance, in exceptional circumstances constituting an emergency, in cash in respect of the service to which the payment under section 12B(1) relates.”

## **5 Consequential amendment**

In section 13 of the Social Work (Scotland) Act 1968 (power of local authority to assist certain persons in disposal of produce of work), for the words “the last foregoing section” there shall be substituted the words “section 12 of this Act”.

*Northern Ireland*

**6 Corresponding provision: parliamentary procedure**

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is made only for purposes corresponding to the purposes of sections 1 and 2 above—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*General*

**7 Short title, commencement and extent**

- (1) This Act may be cited as the Community Care (Direct Payments) Act 1996.
- (2) This Act, except section 6, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different purposes.
- (3) The Secretary of State may by order made by statutory instrument provide that this Act shall have effect in its application to the Isles of Scilly with such modifications as are specified in the order.
- (4) Sections 1 to 3 above extend to England and Wales only.
- (5) Sections 4 and 5 above extend to Scotland only.
- (6) This Act, except this section and section 6, does not extend to Northern Ireland.