



Health and Social Care Act 2001

2001 CHAPTER 15

PART 4

SOCIAL CARE

Direct payments

57 Direct payments

- (1) Regulations may make provision for and in connection with requiring or authorising the responsible authority in the case of a person of a prescribed description who falls within subsection (2) to make, with that person's consent, such payments to him as they may determine in accordance with the regulations in respect of his securing the provision of the service mentioned in paragraph (a) or (b) of that subsection.
- (2) A person falls within this subsection if a local authority ("the responsible authority") have decided—
 - (a) under section 47 of the 1990 Act (assessment by local authorities of needs for community care services) that his needs call for the provision by them of a particular community care service (within the meaning of section 46 of that Act), or
 - (b) under section 2(1) of the Carers and Disabled Children Act 2000 (c. 16) (services for carers) to provide him with a particular service under that Act.
- (3) Regulations under this section may, in particular, make provision—
 - (a) specifying circumstances in which the responsible authority are not required or authorised to make any payments under the regulations to a person, whether those circumstances relate to the person in question or to the particular service mentioned in paragraph (a) or (b) of subsection (2);
 - (b) for any payments required or authorised by the regulations to be made to a person by the responsible authority ("direct payments") to be made to that person ("the payee") as gross payments or alternatively as net payments;

- (c) for the responsible authority to make for the purposes of subsection (4) or (5) such determination as to—
 - (i) the payee’s means, and
 - (ii) the amount (if any) which it would be reasonably practicable for him to pay to the authority by way of reimbursement or contribution, as may be prescribed;
 - (d) as to the conditions falling to be complied with by the payee which must or may be imposed by the responsible authority in relation to the direct payments (and any conditions which may not be so imposed);
 - (e) specifying circumstances in which the responsible authority—
 - (i) may or must terminate the making of direct payments,
 - (ii) may require repayment (whether by the payee or otherwise) of the whole or part of the direct payments;
 - (f) for any sum falling to be paid or repaid to the responsible authority by virtue of any condition or other requirement imposed in pursuance of the regulations to be recoverable as a debt due to the authority;
 - (g) displacing functions or obligations of the responsible authority with respect to the provision of the service mentioned in subsection (2)(a) or (b) only to such extent, and subject to such conditions, as may be prescribed;
 - (h) authorising direct payments to be made to any prescribed person on behalf of the payee.
- (4) For the purposes of subsection (3)(b) “gross payments” means payments—
- (a) which are made at such a rate as the authority estimate to be equivalent to the reasonable cost of securing the provision of the service concerned; but
 - (b) which may be made subject to the condition that the payee pays to the responsible authority, by way of reimbursement, an amount or amounts determined under the regulations.
- (5) For the purposes of subsection (3)(b) “net payments” means payments—
- (a) which are made on the basis that the payee will himself pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the service concerned; and
 - (b) which are accordingly made at such a rate below that mentioned in subsection (4)(a) as reflects any such contribution by the payee.
- (6) Regulations under this section shall provide that, where direct payments are made in respect of a service which, apart from the regulations, would be provided under section 117 of the Mental Health Act 1983 (c. 20) (after-care)—
- (a) the payments shall be made at the rate mentioned in subsection (4)(a); and
 - (b) subsection (4)(b) shall not apply.
- (7) Regulations made for the purposes of subsection (3)(a) may provide that direct payments shall not be made in respect of the provision of residential accommodation for any person for a period in excess of a prescribed period.
- (8) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

58 Direct payments in respect of children

For section 17A of the Children Act 1989 (c. 41) there shall be substituted—

“17A Direct payments

- (1) The Secretary of State may by regulations make provision for and in connection with requiring or authorising the responsible authority in the case of a person of a prescribed description who falls within subsection (2) to make, with that person’s consent, such payments to him as they may determine in accordance with the regulations in respect of his securing the provision of the service mentioned in that subsection.
- (2) A person falls within this subsection if he is—
 - (a) a person with parental responsibility for a disabled child,
 - (b) a disabled person with parental responsibility for a child, or
 - (c) a disabled child aged 16 or 17,and a local authority (“the responsible authority”) have decided for the purposes of section 17 that the child’s needs (or, if he is such a disabled child, his needs) call for the provision by them of a service in exercise of functions conferred on them under that section.
- (3) Subsections (3) to (5) and (7) of section 57 of the 2001 Act shall apply, with any necessary modifications, in relation to regulations under this section as they apply in relation to regulations under that section.
- (4) Regulations under this section shall provide that, where payments are made under the regulations to a person falling within subsection (5)—
 - (a) the payments shall be made at the rate mentioned in subsection (4)(a) of section 57 of the 2001 Act (as applied by subsection (3)); and
 - (b) subsection (4)(b) of that section shall not apply.
- (5) A person falls within this subsection if he is—
 - (a) a person falling within subsection (2)(a) or (b) and the child in question is aged 16 or 17, or
 - (b) a person who is in receipt of income support, working families’ tax credit or disabled person’s tax credit under Part 7 of the Social Security Contributions and Benefits Act 1992 (c. 4) or of an income-based jobseeker’s allowance.
- (6) In this section—

“the 2001 Act” means the Health and Social Care Act 2001;

“disabled” in relation to an adult has the same meaning as that given by section 17(11) in relation to a child;

“prescribed” means specified in or determined in accordance with regulations under this section (and has the same meaning in the provisions of the 2001 Act mentioned in subsection (3) as they apply by virtue of that subsection).”