
STATUTORY INSTRUMENTS

2010 No. 2862

**The Disabled People's Right to Control
(Pilot Scheme) (England) Regulations 2010**

Citation, commencement, duration and extent

1.—(1) These Regulations may be cited as the Disabled People's Right to Control (Pilot Scheme) (England) Regulations 2010.

(2) Subject to paragraph (3), these Regulations come into force on 13th December 2010.

(3) In relation to the pilot areas—

(a) referred to in regulation 3(b) and (k), these Regulations come into force on 1st March 2011; and

(b) referred to in regulation 3(c), (g), (i), (l) and (m), these Regulations come into force on 1st April 2011.

(4) These Regulations cease to be in force on 13th December 2012 ("the expiry date"), but this is subject to regulation 22 and to paragraph 11 of Schedule 2.

(5) These Regulations extend to England and Wales.

(6) These Regulations apply to England only.

Interpretation

2.—(1) In these Regulations—

"direct payment" is to be read in accordance with regulations 14 and 15;

"expiry date" has the meaning given by regulation 1(4);

"pilot area" means an area listed in regulation 3;

"principal local authority" means—

(a) a county council,

(b) the council of any district comprised in an area for which there is no county council,

(c) a London borough council,

(d) the Common Council of the City of London in its capacity as a local authority, or

(e) the Council of the Isles of Scilly;

"qualifying service" has the meaning given by regulation 4;

"relevant authority", in relation to a right to control service, means the relevant authority as defined in section 40 of the Welfare Reform Act 2009 that is responsible for providing or arranging the provision of the service;

"representative" has the meaning given by regulation 5(1);

"the responsible authority" is to be read in accordance with regulation 6(2)(b);

"right to control service" means—

(a) a qualifying service,

- (b) community care services,
- (c) financial assistance provided by the Independent Living Fund (2006) established by a deed dated 10th April 2006, or
- (d) grants under Chapter 1 of Part 1 of the Housing Grants, Construction and Regeneration Act 1996⁽¹⁾;

“support plan” means—

- (a) in relation to a qualifying service, a support plan developed in accordance with regulation 8 or 9, and
- (b) in relation to a right to control service which is not a qualifying service, a support plan developed in relation to that right to control service;

“surrogate” has the meaning given by regulation 5⁽²⁾.

(2) In these Regulations, references to a person lacking capacity are to be read in accordance with the Mental Capacity Act 2005⁽²⁾.

(3) Where any provision of these Regulations requires a relevant authority to inform a person in writing of any matter, that requirement is to be read as including a requirement so far as reasonably practicable to make the information available in a format that is accessible to the person to whom the information is provided.

Pilot areas

3. The pilot areas are as follows—

- (a) the London borough of Barnet;
- (b) the metropolitan district of Barnsley;
- (c) the metropolitan district of Bury;
- (d) the non-metropolitan district of Epsom and Ewell;
- (e) the county of Essex;
- (f) the non-metropolitan district of Leicester;
- (g) the metropolitan district of Manchester;
- (h) the London borough of Newham;
- (i) the metropolitan district of Oldham;
- (j) the non-metropolitan district of Reigate and Banstead;
- (k) the metropolitan district of Sheffield;
- (l) the metropolitan district of Stockport;
- (m) the metropolitan district of Trafford.

Qualifying services

4. The right to control services which are qualifying services for the purposes of these Regulations are specified in the first column of the following table and the authority which is the relevant authority providing or arranging the provision of each of those services is specified in the second column—

(1) 1996 c. 53.
(2) 2005 c. 9.

<i>Qualifying service</i>	<i>Relevant authority providing or arranging the provision of the service</i>
(1) Assistance provided under the programmes known as “Access to Work” and “Work Choice Specialist Disability Employment Programme” in pursuance of arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973(3).	The Secretary of State.
(2) Non-statutory assistance provided by a principal local authority for the purpose of enabling people aged 18 or over to overcome barriers to participation in society associated with their disability where— <ul style="list-style-type: none"> (a) the assistance is given for the purpose of developing and sustaining people’s capacity to live more independently in their accommodation, (b) the assistance does not include the grant of a tenancy or the provision of accommodation, (c) the assistance is not a community care service, and (d) when the assistance is first provided it appears to the principal local authority that the need for the assistance is likely to last for more than 2 years. 	A principal local authority.

Meaning of “representative” and “surrogate”

5.—(1) In these Regulations “representative”, in relation to a person who lacks capacity (“P”), means—

- (a) a deputy appointed for P by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 (power to appoint a deputy to make decisions on P’s behalf), or
- (b) a donee of a lasting power of attorney within the meaning of section 9 of that Act created by P.

(2) In these Regulations “surrogate”, in relation to a person who lacks capacity, means a representative of the person whose powers, as deputy or donee, consist of or include powers relating to decisions about securing the provision of a community care service or a qualifying service.

Application of regulations 7 to 20

6.—(1) Regulations 7 to 20 apply if (and only if), in the case of an individual aged 18 or over who is resident in a pilot area, a relevant authority specified in the Table in regulation 4 has determined—

- (a) that the individual is entitled to receive a qualifying service, or
- (b) that it will provide a qualifying service, or arrange for a qualifying service to be provided, to the individual.

(2) In the following provisions of these Regulations—

- (a) the individual concerned is referred to as “P” or, in regulation 19, “A”, and
- (b) the relevant authority concerned is referred to as “the responsible authority”.

(3) 1973 c. 50. Section 2 of the Employment and Training Act 1973 was substituted by the Employment Act 1988 (c.19), section 25(1); subsections (4) and (6) were repealed by the Employment Act 1989 (c.38), section 29(4) and Schedule 7, Part 1. There are other amendments not relevant to these Regulations.

(3) Paragraph (1) is subject to paragraph (4).

(4) Where, immediately before the commencement of these Regulations, P is already receiving a qualifying service, regulations 7 to 20 do not apply in relation to that service unless the responsible authority and P agree that they are to apply in relation to that service as from a specified date.

Duty of responsible authority to provide information to beneficiary

7.—(1) The responsible authority must inform P in writing of—

- (a) the rights and choices available by virtue of these Regulations to P in relation to the provision of the qualifying service,
- (b) the likely value of the qualifying service for which P is eligible, and
- (c) the existence of the other right to control services and details of the relevant authorities by which they are provided.

(2) The responsible authority must provide P with written information about organisations which provide advice and assistance in connection with the exercise of the rights available by virtue of these Regulations.

(3) The responsible authority may arrange for the information required under this regulation—

- (a) to be provided by the relevant authority providing any other right to control service to P, and
- (b) to be combined with similar information about the other service.

Support plan: general

8.—(1) The responsible authority must work with P to develop a support plan for P.

(2) In relation to a qualifying service specified in paragraph (2) of the Table in regulation 4, the responsible authority must where appropriate develop a support plan for P even if P, though not lacking capacity to approve a support plan, is unwilling to work with the authority to develop a support plan.

(3) The support plan must be in writing and be signed on behalf of the responsible authority.

(4) If P approves the support plan, P or a person on P's behalf must sign the plan.

(5) The responsible authority must give a copy of the support plan to P.

(6) The responsible authority may arrange for a support plan under this regulation to be combined with a support plan developed in relation to any other right to control service provided to P.

Support plan: cases where beneficiary lacks capacity to approve

9.—(1) Where P falls within paragraph (2) or is believed by the responsible authority to fall within that paragraph, the responsible authority must if possible work with a suitable person ("S") other than P to develop a support plan for P.

(2) P falls within this paragraph if P lacks capacity to approve the provisions of a support plan.

(3) Where the responsible authority works with S pursuant to subsection (1)—

- (a) if S approves the support plan, S must sign the plan; and
- (b) where S is not a surrogate of P and a surrogate of P approves the support plan, that surrogate must sign the plan.

(4) In developing the support plan, the responsible authority must so far as reasonably practicable and appropriate consult and take into account the views of—

- (a) anyone named by P as someone to be consulted on the matter of a support plan relating to community care services,
 - (b) anyone engaged in caring for P or interested in P's welfare, and
 - (c) any surrogate or other representative of P.
- (5) In developing the support plan, the responsible authority must also, so far as they are ascertainable, consider—
- (a) P's past and present wishes and feelings (and, in particular, any relevant written statement made by P when P had capacity to approve a support plan),
 - (b) the beliefs and values that would be likely to influence P's decisions in relation to the support plan if P had such capacity, and
 - (c) the other factors that P would be likely to consider if P were able to do so.
- (6) The responsible authority may arrange for a support plan under this regulation to be combined with a support plan developed in relation to any other right to control service provided to P.

Contents of support plan

- 10.** The support plan must set out, in relation to the qualifying service to which it relates—
- (a) the level of funding to which P is entitled,
 - (b) where agreement has been reached with P, or a suitable person acting under regulation 9, as to the outcomes intended to be achieved, what those outcomes are,
 - (c) the services that are to be provided by or on behalf of the responsible authority or whose provision is to be arranged by or on behalf of P,
 - (d) the amount of any contribution payable by or on behalf of P, and
 - (e) the intervals (of not more than 12 months) at which the plan is to be reviewed by the responsible authority.

Right of beneficiary to control manner in which services are provided

11.—(1) Where outcomes have been agreed with P, the responsible authority must in preparing the support plan give effect to any request by P as to the manner in which any services are to be provided for the purpose of securing those outcomes.

(2) Paragraph (1) does not require the responsible authority to give effect to P's request if and to the extent that it appears to the responsible authority that one or more of the following apply—

- (a) it is not reasonably practicable to provide the services in the manner requested by P;
- (b) the provision of the services in the manner requested by P would not secure the agreed outcomes;
- (c) the level of funding specified in the plan is not sufficient to give effect to the request.

(3) Where the responsible authority refuses any request in reliance on paragraph (2), the authority must provide P with a written statement of the reasons for the refusal.

Duty to provide services in accordance with support plan

12. To the extent that a support plan provides for services to be provided by or on behalf of the responsible authority, the authority must provide them, or arrange for them to be provided, in accordance with the plan so far as it is reasonably practicable to do so.

Duty to review support plan

13.—(1) The responsible authority must work with P, and any other person who may approve P's support plan, to review P's support plan.

(2) Reviews must be undertaken at the intervals specified in the plan, or more frequently if circumstances require.

Direct payments to beneficiary

14.—(1) Where P has approved the support plan, the responsible authority must offer P the opportunity, with P's consent, to receive payments ("direct payments") in respect of P securing the provision of services that secure one or more of the outcomes referred to in regulation 10(b), but this is subject to paragraphs (2) and (3).

(2) Paragraph (1) does not apply if it appears to the responsible authority that—

- (a) P is incapable of managing a direct payment, either alone or with such assistance as may be available to P,
- (b) P's need for the qualifying service cannot be met by making a direct payment,
- (c) the making of direct payments would in the circumstances place an unreasonable financial burden on the authority,
- (d) the making of direct payments would have an adverse effect on the provision of qualifying services to or for the benefit of other persons, or
- (e) for any other reason relating to the disabled person or to the qualifying service the making of direct payments is not reasonably practicable in all the circumstances.

(3) Paragraph (1) does not apply if P is a person excluded by Schedule 1.

(4) If direct payments are to be made to P—

- (a) P's support plan must set out the level of such payments and include a statement by P confirming that P is aware of the obligation to repay any payment in the circumstances set out in regulation 18(1)(a) to (c), and
- (b) P, or someone on P's behalf, must sign the support plan as amended in accordance with sub-paragraph (a).

(5) A direct payment under this regulation is to be subject to the condition that the service in respect of which it is made must not be secured from a person mentioned in paragraph (6) unless the responsible authority is satisfied that securing the service from such a person is necessary to meet satisfactorily P's need for that service.

(6) The persons referred to in paragraph (5) are—

- (a) P's spouse or civil partner;
- (b) a person who lives with P as if they were P's spouse or civil partner;
- (c) a person living in the same household as P who is P'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) uncle or aunt, or
 - (vii) grandparent;

- (d) the spouse or civil partner of any person mentioned in sub-paragraph (c) who lives in the same household as P; and
 - (e) a person who lives with any person specified in sub-paragraph (c) as if they were that person's spouse or civil partner.
- (7) The responsible authority may make a direct payment subject to such other conditions as it thinks fit.
- (8) The conditions referred to in paragraph (7) may, in particular, require that P—
- (a) must not secure the service from a particular person; and
 - (b) must provide such information to the responsible authority as the authority considers necessary in connection with the direct payment.

Direct payments in case of person lacking capacity to request them

15.—(1) Where P falls within paragraph (2) or is believed by the responsible authority to fall within that paragraph, this regulation applies instead of regulation 14.

(2) P falls within this paragraph if P lacks capacity to consent to the making of direct payments under regulation 14.

(3) Where P's support plan has been approved by P or in accordance with regulation 9(3), the responsible authority must consider whether the conditions in regulation 16 could be met in relation to the making of payments ("direct payments") to a suitable person ("S") other than P in respect of S's securing the provision for P of services that secure one or more of those outcomes.

(4) The responsible authority may make direct payments to S if –

- (a) S so requests;
- (b) the conditions in regulation 16 are met; and
- (c) P is not a person excluded by Schedule 1.

(5) If direct payments are to be made to S under this regulation —

- (a) P's support plan must set out the level of such payments and include a statement by S confirming that S is aware of the obligation to repay any payment in the circumstances set out in regulation 18(1)(a) to (c), and
- (b) S and, where S is not a surrogate of P but there is a surrogate of P, that surrogate, must sign the support plan as amended in accordance with sub- paragraph (a).

(6) A direct payment under this regulation is to be subject to the condition that the service in respect of which it is made must not be secured from a person mentioned in regulation 14(6) unless the responsible authority is satisfied that securing the service from such a person is necessary to meet satisfactorily P's need for that service.

(7) The responsible authority may make a direct payment subject to such other conditions as it thinks fit.

(8) The conditions referred to in paragraph (7) may, in particular, require that S—

- (a) must not secure the service from a particular person; and
- (b) must provide such information to the responsible authority as the authority considers necessary in connection with the direct payment.

Conditions for direct payment to suitable person

16.—(1) This regulation sets out the conditions mentioned in regulation 15(4)(b).

(2) Condition A is that, where the suitable person referred to in regulation 15(3) (“S”) is not a surrogate of P but there is a surrogate of P, the direct payments are made with the consent of a surrogate of P.

(3) Condition B is that the responsible authority has, so far as reasonably practicable and appropriate, consulted and taken into account the views of—

- (a) anyone named by P as someone to be consulted on the matter of whether a direct payment should be made to S for the purpose of securing provision for P of community care services or on matters of that kind,
- (b) anyone engaged in the provision of care for P or interested in P’s welfare, and
- (c) any surrogate or other representative of P.

(4) Condition C is that the responsible authority has, so far as they are ascertainable, considered—

- (a) P’s past and present wishes and feelings (and, in particular, any relevant written statement made by P when P had capacity to request the making of direct payments),
- (b) the beliefs and values that would be likely to influence P’s decision in relation to direct payments if P had such capacity, and
- (c) the other factors that P would be likely to consider if P were able to do so.

(5) Condition D is that the responsible authority has obtained an enhanced criminal record certificate issued under section 113B of the Police Act 1997(4)—

- (a) in respect of S where S is an individual and neither, in relation to P, a person mentioned in regulation 14(6) nor, as it appears to the responsible authority, a friend of P who is involved in the provision of care for P, or
- (b) where S is a body corporate or an unincorporated body of persons, in respect of the individual who will, on behalf of that body, have overall responsibility for the day-to-day management of P’s direct payments.

(6) Condition E is that the responsible authority is satisfied that—

- (a) P’s need for the qualifying service can be met by securing the provision of it by means of a direct payment,
- (b) S appears to be capable of managing a direct payment alone or with such assistance as may be available to S,
- (c) S will act in the best interests, within the meaning of the Mental Capacity Act 2005, of P when securing the provision of services in respect of which the direct payment is made, and
- (d) in all the circumstances it is appropriate for a direct payment to be made to S.

Termination of direct payments to beneficiary or other person

17.—(1) The responsible authority must terminate the making of direct payments under regulation 14 or 15 if—

- (a) P ceases to be eligible to receive the qualifying service to which the direct payments relate,
- (b) it appears to the responsible authority that P or, in a case within regulation 15, the other person to whom the direct payments are made (“S”) is not using or has not used the direct payments in accordance with P’s support plan,

(4) 1997 c. 50. Section 113B was inserted by the Serious Organised Crime and Police Act 2005 (c. 15), section 163(2) and was amended by the following enactments: the Policing and Crime Act 2009 (c.26), sections 97(2) and 112(2) and Schedule 8, Part 8; the Safeguarding Vulnerable Groups Act 2006 (c.47), section 63(1) and Schedule 9, Part 2, paragraph 14(1) and (3); the Police Act 1997 (Criminal Records) (Electronic Communications) Order 2009 (S.I. 2009/203), articles 2 and 4(1) to (4); the Armed Forces Act 2006 (c.52), section 378(1), Schedule 16, paragraph 149 and the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010 (S.I. 2010/1146), regulation 8. There are other amendments not relevant to these Regulations.

- (c) in a case within regulation 14, it appears to the responsible authority that P is no longer capable of managing a direct payment, either alone or with such assistance as may be available to P,
 - (d) in a case within regulation 15, it appears to the responsible authority that S is no longer capable of managing a direct payment, either alone or with such assistance as may be available to S,
 - (e) it appears to the responsible authority that the outcomes specified in P's support plan are no longer capable of being secured by means of a direct payment, or
 - (f) P or, in a case within regulation 15, S asks the responsible authority to stop making direct payments.
- (2) Where paragraph (1) applies, the responsible authority must make the necessary changes to P's support plan and notify P (or, as the case requires, S) in writing of those changes.

Repayment of direct payments

18.—(1) A responsible authority which has made a direct payment may require the payment or part of the payment to be repaid where it is satisfied that –

- (a) the direct payment or part of the payment has not been used in accordance with P's support plan,
- (b) a condition imposed by or under regulation 14 or 15 has not been complied with, or
- (c) the sum paid exceeds that to which P is entitled under the level of funding as specified in the support plan.

(2) Any sum falling to be repaid by virtue of paragraph (1) shall be recoverable as a debt due to the responsible authority.

Review of decisions

19. The responsible authority must maintain arrangements under which a person ("A") may apply for a review of—

- (a) any decision to which regulation 11(3) relates made in respect of A,
- (b) any decision under regulation 14 to refuse direct payments in respect of A,
- (c) any refusal under regulation 9 or 15 to treat A as a suitable person for the purpose of that regulation,
- (d) any decision under regulation 15 to refuse to make direct payments to A in a case where the responsible authority has informed A that it regards A as a suitable person for the purposes of that regulation, and
- (e) any decision under regulation 17 to terminate the making of direct payments to A under regulation 14 or 15.

Arrangements for exercise of functions

20.—(1) The functions of the responsible authority under any of regulations 7 to 11 and 13 may be exercised by a person authorised by the responsible authority for the purpose or by employees of such a person.

(2) Anything done or omitted to be done by or in relation to an authorised person (or an employee of that person) in, or in connection with, the exercise or purported exercise of the function concerned is to be treated for all purposes as done or omitted to be done by or in relation to the responsible authority.

- (3) But paragraph (2) does not apply for the purposes of—
- (a) so much of any contract made between the authorised person and the responsible authority as relates to the exercise of the function, or
 - (b) any criminal proceedings brought in respect of anything done or omitted to be done by an authorised person (or an employee of that person).
- (4) In paragraphs (2) and (3), “authorised person” means a person authorised to exercise any function by virtue of paragraph (1).

Information sharing in relation to right to control services generally

21. Relevant authorities may disclose to each other information relating to individuals resident in pilot areas or individuals who act or purport to act for such individuals, for any of the following purposes in relation to right to control services—

- (a) determining eligibility for right to control services;
- (b) the development of support plans for individuals (including the assessment of their needs);
- (c) monitoring the application of direct payments (including any equivalent payment made in respect of a right to control service that is not a qualifying service);
- (d) ascertaining any of the matters mentioned in section 44(2) of the Welfare Reform Act 2009.

Transitional provisions on expiry

22. Where a support plan developed in accordance with regulation 8 or 9 is current immediately before the expiry date, the duty of the responsible authority to provide services or direct payments in accordance with these Regulations continues until the time when the support plan would otherwise next fall to be reviewed.

Disabled facilities grants for housing purposes

23.—(1) If the following conditions are met in relation to an application for a grant under section 1(1) of the Housing Grants, Construction and Regeneration Act 1996⁽⁵⁾ (“the 1996 Act”) which is approved after the commencement of these Regulations and before the expiry date, the provisions of Chapter 1 of Part 1 of that Act have effect subject to the provisions of Schedule 2.

- (2) Condition A is that the premises to which the application relates are—
- (a) subject to sub-paragraph (b), in a pilot area other than the county of Essex, or
 - (b) notwithstanding sub-paragraph (a), in any of the non-metropolitan districts of Brentwood, Harlow or Uttlesford.
- (3) Condition B is that the disabled occupant to whom the application relates is aged 18 or over.
- (4) Condition C is that the applicant is—
- (a) a person falling within section 19(1)(a) of the 1996 Act (person having or proposing to acquire an owner’s interest),
 - (b) a person falling within section 19(1)(b) of the 1996 Act (tenants) in a case where the landlord is a registered provider of social housing, or
 - (c) a person falling within section 19(1)(c) of the 1996 Act (occupiers of houseboats and caravans).

(5) 1996 c. 53. The following amendments to the 1996 Act were made by the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 (S.I. 2002/1860): the definition of ‘premises’ was inserted by article 11(1), Schedule 3, paragraphs 1 and 25(c); the definition of ‘disabled occupant’ was amended by articles 11(1) and 15(1), Schedule 3, paragraphs 1 and 5(a); and section 19(1)(c) was inserted by article 11(1), Schedule 3, paragraphs 1 and 4(1) and (2)(b).

Guidance

24. In exercising its functions under these Regulations, a relevant authority other than the Secretary of State must have regard to any guidance given from time to time by the Secretary of State.

Signed by authority of the Secretary of State for Work and Pensions.

25th November 2010

Maria Miller
Parliamentary Under Secretary of State
Department for Work and Pensions

We consent

29th November 2010

Michael Fabricant
Brooks Newmark
Two of the Lords Commissioners of Her
Majesty's Treasury