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## 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. In doing so they revoke and replace the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004.

The services in question are those 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 3, 4 and 5 prescribe the descriptions of persons who may receive direct payments.

Regulation 6 prescribes persons who may act as representatives of persons lacking the capacity to consent to the making of direct payments within the meaning of the Mental Capacity Act 2005 ("persons lacking capacity").

Regulation 7 prescribes powers which a depute or donee must have in order to be a surrogate of a person lacking capacity.

Regulation 8 sets out the circumstances where a responsible authority ("an authority") must, or may, make direct payments to persons who have the capacity to consent to the making of a direct payment.

Regulation 9 sets out the circumstances where an authority must, or may, make direct payments to persons lacking capacity.

Regulations 10 and 11 make provision as to the amount and payment of direct payments to persons who have the capacity to consent and to persons lacking capacity respectively. Direct payments must be made either gross or net of such amount determined by the authority as being due to be contributed by the person in respect of the service. In certain cases a payment may only be made gross. In the case of direct payments to persons who have the capacity to consent, a payment may be made to the prescribed person or to such other person nominated by that person. They specify the circumstances in which an authority is required to determine a person's means in accordance with the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011.

Regulations 12 and 13 specify conditions which must or may be imposed in respect of direct payments to persons with the capacity to consent and to persons lacking capacity respectively. In particular they prohibit a direct payment from being used to secure a service from certain persons, except in specified circumstances.

Regulation 14 sets out the maximum periods of residential accommodation which may be secured by means of a direct payment and the circumstances in which a direct payment may not be used to secure such accommodation.

Regulation 15 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 is not under any obligation with respect to the provision of the service provided if it is satisfied that the needs of the person will be secured by their own arrangements.

Regulation 16 sets out the circumstances where an authority may require a direct payment to be repaid.

Regulation 17 provides for the authority to review the making of direct payments in certain circumstances.

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

Regulations 18 and 19 provide for the circumstances where an authority must, or may, stop making direct payments to persons who have the capacity to consent and to persons lacking capacity respectively.

Regulation 20 and Schedule 3 make provision for the revocation of specified regulations.