

*Status: This version of this provision is prospective.*

**Changes to legislation:** *Mental Capacity Act (Northern Ireland) 2016, Section 282 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



## 2016 CHAPTER 18

### PART 14

#### MISCELLANEOUS

##### *Direct payments in place of provision of care services*

PROSPECTIVE

##### **Direct payments in place of provision of care services**

**282.—**(1) Section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002 (direct payments in place of provision of care services) is amended as follows.

(2) After subsection (2) insert—

“(2A) Regulations may make provision for and in connection with requiring or authorising an authority in the case of a person who falls within subsection (2B) (“P”) to make to a suitable person, with the appropriate consent, such payments as the authority may determine in accordance with the regulations in respect of that person's securing the provision for P of the service mentioned in subsection (2B)(a).

(2B) A person falls within this subsection if—

- (a) the authority has decided under the 1972 Order that his or her needs call for the provision by it of a particular social care service;
- (b) he or she lacks capacity to consent to the making of payments, under regulations under this section, in respect of securing the

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provision for him or her of that service or is reasonably believed by the authority to lack that capacity; and

(c) he or she is of a prescribed description.

(2C) In subsection (2A) “a suitable person” means—

(a) where there is an attorney or deputy for P—

(i) the attorney or deputy; or

(ii) any individual or other person (other than P) who is considered by the attorney or deputy and by the authority to be suitable to receive the payments in respect of securing the provision for P of the service concerned;

(b) where there is no attorney or deputy for P, any individual or other person (other than P) who is considered by the authority to be suitable to receive those payments.

(2D) In subsection (2A) “the appropriate consent” means—

(a) the consent of the person to whom the payments are made by the authority; and

(b) where there is an attorney or deputy for P and the person mentioned in paragraph (a) is not the attorney or deputy, the consent of the attorney or deputy.

(2E) In subsection (2B) “lacks capacity” has the same meaning as in the Mental Capacity Act (Northern Ireland) 2016 (“the Mental Capacity Act”); and sections 1 and 5 of that Act (principles relating to capacity) apply in relation to regulations under subsection (2A) as they apply in relation to that Act.

(2F) For the purposes of subsections (2C) and (2D)—

(a) there is an attorney for P if there is at least one person who is an attorney under a lasting power of attorney or enduring power of attorney (within the meaning of the Mental Capacity Act) granted by P whose powers as attorney consist of or include such powers as may be prescribed;

(b) there is a deputy for P if there is at least one person who is a deputy appointed for P under section 113(2)(b) of that Act and whose powers as deputy consist of or include such powers as may be prescribed.

(2G) Where there are two or more persons each of whom is an attorney for P for the purposes of subsections (2C) and (2D), references in those subsections to “the attorney” are to be read—

(a) if the powers prescribed under subsection (2F)(a) are exercisable by the attorneys jointly and severally, as meaning any of the attorneys;

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(b) otherwise, as meaning the attorneys.

(2H) Where there are two or more persons each of whom is a deputy for P for the purposes of subsections (2C) and (2D), references in those subsections to “the deputy” are to be read—

(a) if the powers prescribed under subsection (2F)(b) are exercisable by the deputies jointly and severally, as meaning any of the deputies;

(b) otherwise, as meaning the deputies.”.

(3) In subsection (3)—

(a) in paragraph (a)—

(i) for “to a person” substitute “to or in respect of a person”; and

(ii) after “(2)(a) or (b)” insert “or (2B)(a)”;

(b) in paragraph (c)(i) after “the payee's means” insert “(in the case of payments under subsection (1)) or the means of P (in the case of payments under subsection (2A))”;

(c) in paragraph (d), after “payee” insert “(in the case of payments under subsection (1)) or P or the payee (in the case of payments under subsection (2A))”;

(d) in paragraph (e), for “repayment (whether by the payee or otherwise) of the whole or part of the direct payments” substitute “the whole or part of the direct payments to be repaid, whether by the payee (in the case of payments under subsection (1)) or by P or the payee (in the case of payments under subsection (2A)) or otherwise”;

(e) in paragraph (g) after “(2)(a) or (b)” insert “or (2B)(a)”;

(f) after paragraph (h) insert—

“(j) requiring or authorising the authority to have regard to prescribed matters when making a decision for the purposes of a provision of the regulations;

(k) requiring or authorising the authority to take prescribed steps before or after the authority makes a decision for the purposes of a provision of the regulations;

(l) specifying circumstances in which a person who fell within paragraph (b) of subsection (2B) but no longer does so must or may be treated as falling within that paragraph for the purposes of this section or of the regulations.”.

(4) In subsection (4)(b) after “the payee” insert “(in the case of payments under subsection (1)) or P (in the case of payments under subsection (2A))”.

(5) In subsection (5)—

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- (a) in paragraph (a), for “the payee will himself” substitute “ the payee (in the case of payments under subsection (1)) or P (in the case of payments under subsection (2A)) will ”;
  - (b) in paragraph (b), after “the payee” insert “ or P ”.
- (6) After subsection (6) insert—
- “(6A) Conditions that for the purposes of subsection(3)(d) are to be taken to be conditions in relation to direct payments include, in particular, conditions relating to—
- (a) the securing of the provision of the service concerned;
  - (b) the provider of the service;
  - (c) the person to whom payments are made in respect of the provision of the service; or
  - (d) the provision of the service.”.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by [2022 c. 18 \(N.I.\) Sch. 3 para. 77\(b\)](#)