

Draft Regulations laid before Parliament under section 49(1) of the Welfare Reform Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

DISABLED PERSONS, ENGLAND

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

*Made - - - - - *** 2010
Coming into force in accordance with regulation 1(2)
and (3)*

These Regulations are made in exercise of the powers conferred on the Secretary of State by sections 41, 44, 45(2), 46 and 50 of the Welfare Reform Act 2009(1).

These Regulations are made for the purpose mentioned in section 38 of that Act and with a view to ascertaining the matters mentioned in section 44(2)(a) to (c) of that Act.

In accordance with section 47(1) of that Act the Secretary of State published a draft of these Regulations and invited representations to be made to the Secretary of State about the draft, by persons appearing to the Secretary of State to be affected by the Regulations, during the period 25th February to 19th May 2010.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 49(1) of that Act.

The Secretary of State with the consent of the Treasury(2) makes the following Regulations:

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

(1) 2009 c. 24. Section 50 provides that 'prescribed' means specified in, or determined in accordance with, regulations under section 41 of that Act.

(2) The consent of the Treasury is required by section 45(3)(a) of the Welfare Reform Act 2009.

(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⁽³⁾;

"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⁽⁴⁾.

⁽³⁾ 1996 c. 53.

⁽⁴⁾ 2005 c. 9.

(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—

<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 ⁽⁵⁾ .	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— (a) the assistance is given for the purpose of developing and sustaining people’s capacity to live more independently in their accommodation,	A principal local authority.

(5) 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.

<i>Qualifying service</i>	<i>Relevant authority providing or arranging the provision of the service</i>
<p>(b) the assistance does not include the grant of a tenancy or the provision of accommodation,</p> <p>(c) the assistance is not a community care service, and</p> <p>(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.</p>	

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) 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(6)—

- (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,
- (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 –

(6) 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.

- (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(7) (“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).

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.

Date

Name
Minister of State
Department for Work and Pensions

(7) 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).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Disabled People's Right to Control (Pilot Scheme) (England) Regulations 2010 No. 2862*

We consent

Date

Names
Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE 1

Regulation 14(3) and 15(4)(c)

PERSONS EXCLUDED FROM DIRECT PAYMENTS

The following persons are excluded by this Schedule from direct payments—

- (a) a person who is subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003⁽⁸⁾, imposed by a community order within the meaning of section 177 of that Act or by a suspended sentence order within the meaning of section 189 of that Act;
- (b) a person who is subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003, imposed by a community order within the meaning of section 177 of that Act or by a suspended sentence order within the meaning of section 189 of that Act;
- (c) a person who is released on licence under Part 2 of the Criminal Justice Act 1991⁽⁹⁾, Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997⁽¹⁰⁾ subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug-related or alcohol-related behaviour;
- (d) a person who is required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000⁽¹¹⁾ or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- (e) a person who is subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000⁽¹²⁾;
- (f) a person who is required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a probation order within the meaning of sections 228 to 230 of the Criminal Procedure (Scotland) Act 1995 or is subject to a drug treatment and testing order within the meaning of section 234B of that Act⁽¹³⁾;
- (g) a person who is released on licence under section 22 or 26 of the Prisons (Scotland) Act 1989⁽¹⁴⁾ or under section 1 or 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993⁽¹⁵⁾ and is subject to a condition that they submit to treatment for their drug or alcohol dependency.

⁽⁸⁾ 2003 c. 44 ('the 2003 Act'). Section 209 was amended by paragraph 88 of Schedule 4 to the Criminal Justice and Immigration Act 2008 (c.4) and by S.I. 2008/912. Section 177 was amended by paragraph 82 of Schedule 4 to that Act. Section 189 was amended by S.I. 2005/643.

⁽⁹⁾ 1991 c. 53. Part 2 was repealed, with savings (as to which see paragraph 19 of Schedule 2 to the Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Savings Provisions) Order 2005 (S.I. 2005/950)), by sections 303(a) and 332 of, and Part 7 of Schedule 37 to, the 2003 Act.

⁽¹⁰⁾ 1997 c. 43. There are amendments to this Chapter of the Act not relevant to these Regulations.

⁽¹¹⁾ 2000 c. 6. Sections 41 and 51 were repealed, with savings, by Schedule 37 to the 2003 Act.

⁽¹²⁾ Section 52 was repealed, with savings, by Schedule 37 to the 2003 Act.

⁽¹³⁾ 1995 c.46. Section 228 was amended by paragraph 21 of Schedule 1 to the Crime and Punishment (Scotland) Act 1997 (c.48), by paragraph 1 of Schedule 6 to the Crime and Disorder Act 1998 (c.37), by paragraph 122 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c.43), by section 42(11) of the Criminal Justice (Scotland) Act 2003 (asp 7) and by S.I. 2001/1149 and 2008/912. Section 229 was amended by section 49(4) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6). Section 229A was inserted by section 12(2) of the Management of Offenders etc (Scotland) Act 2005 (asp 14) ("MOSA"). Section 230 was amended by Schedule 6 to the Adults with Incapacity (Scotland) Act 2000 (asp 4), by section 135 of, and paragraph 8 of Schedule 4 and Schedule 5 to, the Mental Health (Care and Treatment) Scotland Act 2003 (asp 13) and by S.I. 2009/1182. Section 234B was inserted by section 89 of the Crime and Disorder Act 1998.

⁽¹⁴⁾ 1989 c. 45. Sections 22 and 26 were repealed, with savings, by Schedule 7 to the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9).

⁽¹⁵⁾ 1993 c. 9. Section 1 was amended by paragraph 98 of Schedule 8 to the Crime and Disorder Act 1998, by section 1(2) of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7) and by section 15(2) of MOSA. Section 1AA was inserted by section 15(3) of MOSA.

SCHEDULE 2

Regulation 23(1)

MODIFICATIONS OF CHAPTER 1 OF PART 1 OF THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

1. In this Schedule “the 1996 Act” means the Housing Grants, Construction and Regeneration Act 1996, and expressions used in this Schedule and in Chapter 1 of Part 1 of that Act have the same meaning as in that Chapter.

2. Section 2 of the 1996 Act has effect as if it required the local housing authority, in any case where the authority has not given a direction that no estimates are required but an application under that section does not contain the estimates that would (apart from this paragraph) be required by subsection (2)(b) of that section, to obtain those estimates that would otherwise be required.

3. If the local housing authority notifies the applicant under section 34(1) of the 1996 Act that the application is approved, it must provide the following information to the disabled occupant—

- (a) an explanation of the right of the disabled occupant, subject to the provisions of paragraph 5, to choose a contractor other than the contractor, or one of the contractors, whose estimate accompanied the application,
- (b) an explanation of the right of the disabled occupant, subject to the provisions of paragraph 6, to require the grant to be paid to the disabled occupant rather than to the contractor or the applicant (if not the disabled occupant),
- (c) information about the existence of other right to control services and the relevant authorities by which they are provided, and
- (d) information about organisations which provide advice and assistance in connection with the exercise of the rights available by virtue of these Regulations.

4.—(1) If the local housing authority approves an application for a grant under section 1(1) of the 1996 Act⁽¹⁶⁾, the authority must work with the disabled occupant to develop a support plan for the disabled occupant.

(2) The support plan must set out—

- (a) the amount of the grant,
- (b) the works to be carried out and the contractor by whom they are to be carried out,
- (c) whether the grant is to be paid to the disabled occupant, to the applicant (if different) or to the contractor,
- (d) whether the grant is to be payable in instalments and if so when they are to be payable, and
- (e) the purpose falling within section 23(1)⁽¹⁷⁾ of the 1996 Act that the carrying out of the works is intended to achieve.

(3) The part of the support plan which relates to the matters referred to in sub-paragraph (2)(b) requires the approval of—

- (a) the applicant, and
- (b) any person who in relation to the application gave an owner’s certificate for the purposes of section 22(3)⁽¹⁸⁾ of the 1996 Act or a consent certificate for the purposes of section 22A(3)⁽¹⁹⁾ of that Act.

⁽¹⁶⁾ Paragraphs (a) and (b) of subsection (1) were repealed by *S.I. 2002/1860*, articles 11(1) and 15, Schedule 3, paragraphs 1 and 2(a)(i) and Schedule 6 and paragraph (c) (i) and (ii) was inserted by article 11(1), Schedule 3, paragraphs 1 and 2(a) (ii). ‘Caravans’ was inserted by the Housing Act 2004 (c.34), section 224(1) and (2).

⁽¹⁷⁾ Subsection (1) was amended by *S.I. 2002/1860*, articles 11(1) and 15, Schedule 3, paragraphs 1 and 7 and Schedule 6. For the insertion of the word ‘caravan’ please see footnote (a) in relation to sub-paragraph (1).

⁽¹⁸⁾ Section 22(3) was amended by *SI 2002/1860*, articles 11(1) and 15(1), Schedule 3, paragraphs 1 and 5(c) and Schedule 6.

(4) If the support plan provides for the grant to be paid to the disabled occupant, the support plan also requires the consent of the disabled occupant.

(5) The support plan must be in writing and be signed by or on behalf of the local housing authority.

(6) The local housing authority must give a copy of the support plan to the disabled occupant and the applicant (if different).

(7) The local housing authority may arrange for a support plan under this Schedule to be combined with a support plan developed in relation to any other right to control service.

5. Section 38 of the 1996 Act (conditions as to contractors employed) does not apply unless the local housing authority notifies the applicant and the disabled occupant that it considers that the disabled occupant is incapable of managing —

- (a) a grant, either alone or with such assistance as may be available to the disabled occupant, or
- (b) the proposed works, either alone or with such assistance as may be available to the disabled occupant.

6. Section 39 of the 1996 Act (payment of grant to contractor) is not to be regarded as enabling the local housing authority to pay a grant or part of a grant as mentioned in subsection (1)(a) or (b) of that section unless—

- (a) the disabled occupant so requests,
- (b) it appears to the authority that the disabled occupant is incapable of managing a grant, either alone or with such assistance as may be available to the disabled occupant,
- (c) it appears to the authority that the disabled occupant is incapable of managing the proposed works, either alone or with such assistance as may be available to the disabled occupant, or
- (d) where part of the grant has been paid, it appears to the authority that that part has not been applied in accordance with the support plan.

7.—(1) If the support plan so provides, the local housing authority must pay a grant or part of a grant to the disabled occupant, even if the disabled occupant was not the applicant for the grant.

(2) Sub-paragraph (1) does not apply if the disabled occupant is a person excluded by Schedule 1 to these Regulations.

8. Section 52 of the 1996 Act (power to impose other conditions) has effect as if it enabled a condition imposed under that section, in a case where the grant was paid to a disabled occupant other than the applicant, also to enable the amounts mentioned, together with interest as mentioned in subsection (1) of that section, to be required to be paid by the person to whom the grant was paid.

9. The local housing authority must maintain arrangements under which disabled occupants affected by decisions of the local housing authority by virtue of paragraph 5 or 6 may apply for a review of those decisions.

10.—(1) The functions of the local housing authority under any of paragraphs 3, 4 and 7 may be exercised by a person authorised by the local housing 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 local housing authority.

(19) Section 22A was inserted by [S.I. 2002/1860](#), article 11(1), Schedule 3, paragraphs 1 and 6 and subsection (3) was amended by the Housing Act 2004, section 224.

- (3) But sub-paragraph (2) does not apply—
- (a) for the purposes of so much of any contract made between the authorised person and the local housing authority as relates to the exercise of the function, or
 - (b) for the purposes of 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 sub-paragraphs (2) and (3) “authorised person” means a person authorised to exercise any function by virtue of sub-paragraph (1).
- 11.** Where an application for a grant has been approved before the expiry date, the provisions of this Schedule are to continue to apply during the period of 12 months beginning with the expiry date.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 41 of the Welfare Reform Act 2009 enables the Secretary of State by regulations to make provision for the purpose of enabling disabled people aged 18 or over to exercise greater choice in relation to, and greater control over, the way in which certain services are provided to or for them by or on behalf of public bodies. Section 44 enables regulations under section 41 to make temporary provision as a pilot scheme.

These Regulations make temporary provision for the purpose mentioned above. They apply only in the pilot areas listed in regulation 3.

The Independent Living Fund trust deed referred to in regulation 2 can be obtained free of charge from the Independent Living Fund, Equinox House, Island Business Quarter, City Link, Nottingham, NG2 4LA or from funds@ilf.org.uk.

Regulations 7 to 20 relate only to the “qualifying services” specified in regulation 4. These include two programmes known as “Access to Work” and “Work Choice Specialist Disability Employment Programme” (‘Work Choice’), which are administered by Jobcentre Plus. They also include certain housing-related assistance provided by local authorities. Information about Access to Work and Work Choice can be obtained from Jobcentre Plus offices. Alternatively, such information can be obtained from the contact centres, details of which are available at <http://www.direct.gov.uk/en/DisabledPeople/Employmentsupport/WorkSchemesAndProgrammes/index.htm>.

Regulation 7 places a duty on the responsible authority to inform an individual (referred to as ‘P’) who is eligible for qualifying services of the rights and choices available under these Regulations and under other right to control services. ‘Right to control services’ is defined in regulation 2(1) and includes qualifying services together with other specified services.

Regulations 8 to 13 contain provisions relating to the support plan which must be developed by the responsible authority. Regulation 11 provides that, subject to some limitations, requests by P as to the manner in which services are to be provided must be given effect in the support plan. Services must, so far as is practicable, be provided in accordance with the support plan (regulation 12).

Regulations 14 to 16 set out when direct payments are to be made to P or to a suitable person on P’s behalf.

Regulation 17 provides for circumstances in which direct payments must terminate and regulation 18 gives a power for the responsible authority to recover payments made.

Regulation 19 provides for the review of certain decisions made by the responsible authority.

Regulation 21 relates to the sharing of information between relevant authorities in relation to right to control services for certain purposes.

Regulation 22 contains transitional provisions relating to support plans made under these Regulations before the expiry of the Regulations.

Regulation 23 and Schedule 2 modify the provisions of Chapter 1 of Part 1 of the Housing Grants, Construction and Regeneration Act 1996, which relate to disabled facilities grants, in their application to certain cases relating to premises within certain of the pilot areas. The main effect of the modifications is to require the local housing authority to prepare a support plan and (subject to certain conditions) to give the disabled occupant a wider choice of contractors and enable the disabled occupant to receive direct payment of the grant in certain circumstances.

Regulation 24 imposes a duty on relevant authorities other than the Secretary of State to have regard to guidance issued by the Secretary of State.

A full impact assessment has not been made for this instrument as it has no impact on the private sector and civil society organisations.