



Welfare Reform Act 2009

2009 CHAPTER 24

PART 2

DISABLED PEOPLE: RIGHT TO CONTROL PROVISION OF SERVICES

Power to make regulations

41 Power to make provision enabling exercise of greater choice and control

- (1) The appropriate authority (as defined by section 45) may by regulations made by statutory instrument make any provision that would in the opinion of the authority making the regulations serve the purpose of this Part.
- (2) Regulations under this section may, in particular, make provision for and in connection with requiring a relevant authority to take the following steps in relation to a disabled person (“P”) for whom it is obliged, or has decided, to provide, or arrange the provision of, relevant services—
 - (a) to inform P of the right to control conferred by virtue of the regulations, of the value of the relevant services to which P is entitled and of the choices available to P by virtue of the regulations;
 - (b) to work with P to determine the outcomes to be achieved by the provision of the relevant services;
 - (c) to work with P to prepare a plan (a “support plan”) setting out how those outcomes will be achieved;
 - (d) to work with P to review and revise the support plan in prescribed circumstances;
 - (e) if P so requests, to make payments to P in respect of P securing the provision of an equivalent service;
 - (f) to the extent that P chooses to receive relevant services provided or arranged by the relevant authority, to provide, or arrange for them to be provided, in accordance with P's support plan as far as it is reasonably practicable to do so.
- (3) Regulations under this section may also—

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- (a) specify who is or is not to be treated as a disabled person for any purpose of the regulations;
 - (b) make provision about the circumstances in which a relevant authority is to be taken to have decided to provide a relevant service to a person;
 - (c) make provision as to matters to which a relevant authority must, or may, have regard when making a decision for the purposes of a provision of the regulations;
 - (d) make provision as to steps which a relevant authority must, or may, take before, or after, the relevant authority makes a decision for the purposes of a provision of the regulations (including provision requiring the relevant authority to review its decision).
- (4) Regulations under this section may enable or require the disclosure of information by one relevant authority to another for prescribed purposes of the regulations.
- (5) Regulations under this section may, for the purpose of this Part—
- (a) vary the conditions attached to any power of a relevant authority to provide financial assistance to disabled people;
 - (b) vary the conditions attached to any power of a relevant authority to provide financial assistance to another relevant authority in connection with the provision of relevant services to disabled people by the other authority.
- (6) Regulations under this section may require a relevant authority exercising any function under the regulations to have regard to any guidance given from time to time by the appropriate authority.

42 Provision that may be made about direct payments

- (1) In this section “direct payments regulations” means regulations under section 41 making provision by virtue of subsection (2)(e) of that section and “direct payments” means payments made by a relevant authority under the regulations.
- (2) Direct payments regulations relating to a relevant service (“the qualifying service”) of a relevant authority (“the providing authority”) may in particular—
- (a) specify circumstances in which the providing authority is or is not required to comply with a request for direct payments to be made under the regulations, whether those circumstances relate to the disabled person or to the qualifying service;
 - (b) make provision about the manner in which a request for direct payments is to be made;
 - (c) make provision enabling a disabled person to require a providing authority to assess the amount of the payments to which the person would be entitled if the person were to request the authority to make them;
 - (d) enable a disabled person to require a providing authority to comply with a request to provide direct payments in place of the qualifying service (or its provision at certain times or in certain circumstances) while providing, or continuing to provide, other relevant services (or providing, or continuing to provide, the qualifying service at other times or in other circumstances);
 - (e) make provision displacing functions or obligations of the providing authority with respect to the provision of the qualifying service (whether arising under any enactment, under any trust or otherwise) to such extent and subject to such conditions as may be prescribed.

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- (3) Direct payments regulations must include provision excluding any duty of a providing authority to comply with a request for direct payments, or a class of such requests, if compliance with the request, or with requests falling within that class, would in all the circumstances impose an unreasonable financial burden on the providing authority.
- (4) Direct payments regulations may—
- (a) make provision for and in connection with requiring or authorising the providing authority to make direct payments to the disabled person or such other person as the authority may determine (“the payee”) in accordance with the regulations in respect of the person securing the provision of the equivalent service;
 - (b) make provision as to the conditions falling to be complied with by the payee in relation to the direct payments;
 - (c) prescribe circumstances in which the providing authority may or must terminate the making of direct payments;
 - (d) prescribe circumstances in which the providing authority may require repayment (whether by the payee or otherwise) of the whole or any part of the direct payments;
 - (e) make provision for any sum falling to be paid or repaid to the providing 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;
 - (f) prescribe circumstances in which any sum is to cease to be payable by virtue of paragraph (d);
 - (g) make provision authorising direct payments to be made to a prescribed person on behalf of the disabled person.
- (5) For the purposes of subsection (4)(b), the conditions that are to be taken to be conditions in relation to direct payments include, in particular, conditions relating to—
- (a) what is or is not to be regarded as an equivalent service,
 - (b) the securing of the provision of the equivalent service,
 - (c) the provider of the service,
 - (d) the person to whom the payments are made in respect of the provision of the service, or
 - (e) the provision of the service.

43 Exercise of rights on behalf of persons who lack capacity

- (1) Regulations under section 41 may make provision for and in connection with enabling any request or consent for the purposes of the regulations (including any request or consent relating to payments by virtue of subsection (2)(e) of that section) to be made or given on behalf of a disabled person who falls within subsection (2) by a person of a prescribed description.
- (2) A person falls within this subsection—
- (a) in relation to England and Wales, if the person lacks capacity, within the meaning of the Mental Capacity Act 2005 (c. 9), in relation to the decision concerned, and
 - (b) in relation to Scotland, if the person is incapable, within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4), in relation to that decision.

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44 Pilot schemes

- (1) Regulations to which this subsection applies may be made so as to have effect for a specified period not exceeding 36 months.
- (2) Subsection (1) applies to regulations under section 41 that are made with a view to ascertaining—
 - (a) the extent to which their provisions contribute to achieving the purpose of this Part,
 - (b) the extent of any beneficial effects on the lives of the disabled people affected, and
 - (c) the extent of any financial burden imposed on the relevant authorities to which the regulations relate.
- (3) Regulations which, by virtue of subsection (1), are to have effect for a limited period are referred to in this section as a “pilot scheme”.
- (4) Subsections (6)(a) and (7)(a) of section 39 do not restrict the power to make a pilot scheme; and accordingly a pilot scheme may relate to community care services.
- (5) A pilot scheme may provide that its provisions are to apply only in relation to—
 - (a) one or more specified areas;
 - (b) one or more specified classes of person;
 - (c) persons selected—
 - (i) by reference to prescribed criteria, or
 - (ii) on a sampling basis.
- (6) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period.
- (7) A pilot scheme may be replaced by a further pilot scheme making the same or similar provision.
- (8) The appropriate authority which made a pilot scheme must prepare and publish a report on the operation of the scheme.

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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):

- Sch. 4 para. 9(3)(b) repealed by [2009 c. 24 Sch. 7 Pt. 1](#)