
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) (England) Regulations 2003.

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 2, 3 and 4 prescribe the descriptions of persons who may receive direct payments.

Regulation 5 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 6 prescribes powers which a depute or donee must have in order to be a surrogate of a person lacking capacity.

Regulation 7 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 8 sets out the circumstances where an authority must, or may, make direct payments to persons lacking capacity.

Regulations 9 and 10 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 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.

Regulations 11 and 12 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 13 sets out the maximum periods of residential accommodation which may be secured by means of a direct payment.

Regulation 14 provides that where an authority make a direct payment they retain the functions as respects the provision of the service. It also provides that an authority are not under any obligation with respect to the provision of the service provided they are satisfied that the needs of the person will be secured by their own arrangements.

Regulation 15 sets out the circumstances where an authority may require a direct payment to be repaid.

Regulation 16 provides for the authority to review the making of direct payments in certain circumstances.

Regulations 17 and 18 provide for the circumstances where an authority must, or may, terminate direct payments to persons who have the capacity to consent and to persons lacking capacity respectively.

Status: *This is the original version (as it was originally made).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

Regulation 19 makes amendments to various regulations pursuant to the enactment of these Regulations.

Regulation 20 revokes various regulations.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Health, Room 118, Wellington House, 133-155 Wellington Road, London SE1 8UG (telephone number: 020 7972 4086). The impact assessment is also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website www.opsi.gov.uk.