
STATUTORY INSTRUMENTS

2009 No. 1887

The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009

Direct payments under section 57(1A) of the 2001 Act

8.—(1) The responsible authority must take the steps in paragraph (2) before they may be satisfied that it is appropriate for a payment under section 57(1A) of the 2001 Act to be made to a suitable person⁽¹⁾ (“S”) in respect of S securing the provision of a relevant service for a person falling within the description prescribed by regulation 3 (“P”).

(2) The steps referred to in paragraph (1) are that the responsible authority must—

(a) so far as is reasonably practicable and appropriate, consult and take into account the views of—

(i) anyone named by P as someone to be consulted on the matter of whether a payment should be made to S for the purpose of securing provision for P of a relevant service or on matters of that kind,

(ii) anyone engaged in caring for P or interested in P's welfare, and

(iii) any representative or surrogate of P⁽²⁾;

(b) so far as is reasonably ascertainable, consider—

(i) P's past and present wishes and feelings (and, in particular, any relevant written statement made by P when P had capacity, within the meaning of the Mental Capacity Act 2005⁽³⁾, to consent to the making of direct payments),

(ii) the beliefs and values that would be likely to influence P's decision if P had such capacity, and

(iii) the other factors that P would be likely to consider if P were able to do so;

(c) obtain a criminal record certificate issued under section 113B of the Police Act 1997⁽⁴⁾—

(i) in respect of S where S is an individual and neither a person mentioned in paragraph (3) nor a friend of P who is involved in the provision of care for P, and

(ii) 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.

(3) The persons referred to in paragraph (2)(c)(i) are—

(a) the spouse or civil partner of P;

(1) See section 57(1C) of the 2001 Act for the definition of “suitable person”. Section 57(1C) was inserted by section 146(2) of the 2008 Act.

(2) See section 57(5B) of the 2001 Act and regulation 5 for the definition of “representative”. See section 57(5C) of the 2001 Act and regulation 6 for the definition of “surrogate”.

(3) See section 1 of that Act for the key principles applying to decisions and actions taken under that Act, including the presumption of capacity. See section 2 of that Act for the definition of a person who lacks capacity.

(4) 1997 c.50. Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15) and was amended by paragraph 14 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c.47), by paragraph 149 of Schedule 16 to the Armed Forces Act 2006 (c.52), by sections 79(1) and 80 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) and by S.I. 2009/203.

- (b) a person who lives with P as if their spouse or civil partner;
 - (c) a person 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) aunt or uncle, or
 - (vii) grandparent;
 - (d) the spouse or civil partner of any person specified in sub-paragraph (c); and
 - (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner.
- (4) Where, having taken the steps in paragraph (2), the responsible authority are satisfied of the matters listed in paragraph (5), the responsible authority—
- (a) may, with the requisite consent⁽⁵⁾, make such payments under section 57(1A) of the 2001 Act as are determined in accordance with regulation 10 (“direct payments”) to S in respect of S securing the provision of a relevant service for P which P is obliged to receive as a result of an obligation imposed under an enactment mentioned in Schedule 2;
 - (b) in a case where there is in force, in respect of P, a condition imposed in accordance with section 42(2) or 73(4) (including such a condition which has been varied in accordance with section 73(5) or 75(3)) of the 1983 Act or in a case where P is a patient who has been conditionally discharged under section 193(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003, may, with the requisite consent, make direct payments to S in respect of S securing the provision of a relevant service for P; and
 - (c) in all other cases must, with the requisite consent, make direct payments to S in respect of S securing the provision of a relevant service for P.
- (5) The matters referred to in paragraph (4) are that—
- (a) P's need for the relevant service can be met by securing the provision of it by means of a direct payment;
 - (b) S—
 - (i) will act in the best interests, within the meaning of the Mental Capacity Act 2005⁽⁶⁾, of P when securing the provision of services in respect of which the direct payment is made, and
 - (ii) appears to be capable of managing a direct payment by themselves or with such assistance as may be available to them, and
 - (c) in all the circumstances it is appropriate for a direct payment to be made to S.

⁽⁵⁾ See section 57(1B) of the 2001 Act for the definition of “requisite consent”. Section 57(1B) was inserted by section 146(2) of the 2008 Act.

⁽⁶⁾ See section 4 of that Act for the best interests principle.