

2010 No. 2246

SOCIAL SERVICES, ENGLAND

**The Community Care, Services for Carers and Children's
Services (Direct Payments) (England) (Amendment)
Regulations 2010**

<i>Made</i>	- - - -	<i>9th September 2010</i>
<i>Laid before Parliament</i>		<i>14th September 2010</i>
<i>Coming into force</i>	- -	<i>29th October 2010</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 57(1), (1A) and (3) and 64(6) and (8) of the Health and Social Care Act 2001(a).

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Community Care, Services for Carers and Children's Services (Direct Payments) (England) (Amendment) Regulations 2010 and shall come into force on 29th October 2010.

(2) In these Regulations, "the principal Regulations" means the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009(b).

(3) These Regulations apply in relation to England.

Amendment of regulation 9 of the principal Regulations

2. In regulation 9 of the principal Regulations (amount and payment of direct payments under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act)—

(a) in paragraph (2), at the beginning insert "Subject to paragraph (6),";

(b) after paragraph (5), insert—

"(6) For the purpose of making a direct payment under section 57(1) of the 2001 Act in respect of the prescribed person securing the provision of residential accommodation, the responsible authority(c) may make the determination referred to in paragraph (2) irrespective of the prescribed person's means."(d).

(a) 2001 c.15 ("the 2001 Act"); section 57(1A) was inserted by section 146(2) of the Health and Social Care Act 2008 (c.14) ("the 2008 Act"). Section 57(3) was amended by section 146(1) and (3) of the 2008 Act. See section 57(8) of the 2001 Act for the definition of "prescribed" and section 66 of that Act for the definitions of "regulations" and "the relevant authority".

(b) S.I. 2009/1887 ("the 2009 Regulations"). There are no relevant amendments.

(c) See section 57(2) of the 2001 Act and section 17A(2) of the 1989 Act for the definition of "responsible authority" for the purposes of direct payments under section 57(1) of the 2001 Act and section 17A(1) of the 1989 Act respectively.

(d) "Prescribed person" is defined in regulation 1 of the 2009 Regulations.

Amendment of regulation 10 of the principal Regulations

3. In regulation 10 of the principal Regulations (amount and payment of direct payments under section 57(1A) of the 2001 Act)—

- (a) in paragraph (2), at the beginning insert “Subject to paragraph (4),”;
- (b) after paragraph (3), insert—

“(4) For the purpose of making the payment referred to in paragraph (1) in respect of the prescribed person securing the provision of residential accommodation, the responsible authority, in making the determination referred to in paragraph (2), may do so irrespective of P’s means.”(a).

Signed by authority of the Secretary of State for Health.

9th September 2010

Paul Burstow
Minister of State,
Department of Health

(a) “P” is defined in regulation 1 of the 2009 Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 ("the principal Regulations").

The principal Regulations make provision for the making of direct payments in respect of a person securing the provision of certain social care services.

Regulations 9 and 10 of the principal Regulations 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 making the direct payment ("the authority") as being due ("the amount due") by the person in respect of the service ("the prescribed person"). In determining the amount due the authority must have regard to the means of the prescribed person.

Regulation 2 amends regulation 9 of the principal Regulations to remove the requirement on the authority, in determining the amount due, to have regard to the means of the prescribed person, where the direct payment is made in respect of the prescribed person securing the provision of residential accommodation and the prescribed person is an adult.

Regulation 3 makes a similar amendment to regulation 10 of the principal Regulations.

A full Impact Assessment has not been prepared for these Regulations as no impact on business, charities or voluntary bodies is foreseen.

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STATUTORY INSTRUMENTS

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£4.00