

2013 No. 2270

SOCIAL SERVICES, ENGLAND

**The Community Care, Services for Carers and Children's
Services (Direct Payments) (England) (Amendment)
Regulations 2013**

<i>Made</i> - - - -	<i>8th September 2013</i>
<i>Laid before Parliament</i>	<i>13th September 2013</i>
<i>Coming into force</i> - -	<i>1st November 2013</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 57(1), (1A), (3)(a) and (d) and (7) 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 2013 and come into force on 1st November 2013.

(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.

Amendments to the Principal Regulations

2. The Principal Regulations are amended as follows.

3. After paragraph (2) of regulation 13 (Maximum periods of residential accommodation which may be secured by means of a direct payment) insert—

“(2A) The prohibition in paragraph (1) does not apply to a local authority listed in Schedule 2A where the direct payment is made for the provision to a person of residential accommodation together with nursing or personal care the provision of which is a regulated activity within the meaning of Chapter 2 of Part 1 of the Health and Social Care Act 2008(c).

(a) 2001 c.15. Section 57 was amended by section 146 of the Health and Social Care Act 2008 (c.14) (“the 2008 Act”). Sections 57(1A) was inserted by section 146(2) and section 57(3) was amended by section 146(3) of that Act. See section 57(8) for the definition of “prescribed” and section 66 for the definitions of “regulations” and “the relevant authority”.
(b) S.I. 2009/1887 to which there are amendments not relevant to these Regulations.
(c) 2008 c.14. The meaning of the term “regulated activity” is in section 8.

(2B) Sections 24(5) and 32(1) and (3) to (5) of the National Assistance Act 1948^(a) shall apply where a person is provided with a direct payment as referred to in paragraph (2A) and for the purposes of those sections that person shall be deemed as having been provided with residential accommodation under Part III of that Act.”

4. After Schedule 2 (Enactments under which an obligation to receive relevant services may be imposed and in respect of which direct payments may be made) insert—

“SCHEDULE 2A

Regulation 13

LIST OF LOCAL AUTHORITIES IN RESPECT OF WHOM THE RESTRICTION ON THE MAXIMUM PERIODS OF RESIDENTIAL ACCOMMODATION DOES NOT APPLY

Bristol City Council
Cornwall Council
Dorset County Council
Gateshead Council
Hertfordshire County Council
Hull City Council
Lincolnshire County Council
London Borough of Enfield
London Borough of Havering
London Borough of Redbridge
Manchester City Council
Milton Keynes Council
Norfolk County Council
North Lincolnshire Council
Nottinghamshire County Council
Staffordshire County Council
Stockport Council
Surrey County Council”

Amendments to other Regulations

5. In paragraph (2)(a) of regulation 7 of the Social Security (Attendance Allowance) Regulations 1991 (Persons in care homes)^(b)-

(a) in paragraph (v) omit “or”; and

(a) 1948 c.29 (7 & 8 GEO6). Section 32 was amended by the Social Work (Scotland) Act 1968, section 95(1), 97(1), Schedule 8, paragraph 14 and section 95(2), Schedule 9, paragraph 9, Part I and the Health and Social Care Act 2008, section 148(2).

(b) S.I.1991/2740. Amendments to regulation 7 have been made by the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007 (S.I. 2007/2875) reg.2(2) and the Social Security (Disability Living Allowance, Attendance Allowance and Carers Allowance) (Amendment) Regulations 2013 (S.I. 2013/389) reg.3(7).

(b) after paragraph (v) insert “(vi) section 57 of the Health and Social Care Act 2001, or”.

6. In paragraph (2)(a) of regulation 9 of the Social Security (Disability Living Allowance) Regulations 1991 (Persons in care homes)(a)-

(a) in paragraph (v) omit “or”; and

(b) after paragraph (v) insert “(vi) section 57 of the Health and Social Care Act 2001, or”.

7. In paragraph (2) of regulation 28 of the Social Security (Personal Independence Payment) Regulations 2013 (Care home residents)(b)-

(a) in paragraph (e) omit “or”; and

(b) after paragraph (e) insert “(ee) section 57 of the Health and Social Care Act 2001, or”.

Signed by authority of the Secretary State for Health.

Norman Lamb
Minister of State,
Department of Health

8th September 2013

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”) so that the local authorities listed in the new Schedule 2A inserted by regulation 4 are not prohibited from making direct payments for the provision of residential accommodation (the provision of which is a regulated activity under Chapter 2 of Part 1 of the Health and Social Care Act 2008) for a period of more than four consecutive weeks in any period of 12 months.

Regulation 3 amends regulation 13 of the Principal Regulations by inserting new paragraphs (2A) and (2B) after paragraph (2).

Paragraph (2A) provides that the prohibition in regulation 13(1) on making a direct payment for the provision of residential accommodation for a period of more than four weeks in any period of 12 months does not apply in circumstances where the payment is made for residential accommodation together with nursing or personal care the provision of which is a regulated activity within the meaning of Chapter 2 of Part 1 of the Health and Social Care Act 2008, by a local authority which is on the list in Schedule 2A of the Principal Regulations.

Paragraph (2B) applies sections 24(5) and 32(1) and (3) to (5) of the National Assistance 1948 Act so that a person who receives a direct payment under paragraph (2A) is deemed to have been provided with accommodation under Part III of the National Assistance Act 1948 for the purposes of determining their ordinary residence and making financial adjustments between local authorities.

Regulation 4 inserts a new Schedule 2A after Schedule 2 to the Principal Regulations which lists the local authorities who are not prohibited from making a direct payment for residential accommodation for a longer period than the period specified in regulation 13(1).

Regulations 5 to 7 make amendments to the Regulations relating to social security benefits specified therein so that payments under those Regulations cease as provided for in those regulations in respect of a person who is resident in a care home for a period of more than four

(a) S.I.1991/2890. Amendments to regulation 9 have been made by the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007 (S.I. 2007/2875) reg.3(2) and the Social Security (Disability Living Allowance, Attendance Allowance and Carers Allowance (Amendment) Regulations 2013/389 reg. 4(7).

(b) S.I.2013/377

weeks in any period of 12 months and receives a direct payment for that purpose by an authority on the list in Schedule 2A.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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