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STATUTORY INSTRUMENTS

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**2014 No. 2871**

**SOCIAL CARE, ENGLAND**

**The Care and Support (Direct Payments) Regulations 2014**

*Made* - - - - *20th October 2014*

*Laid before Parliament* *31st October 2014*

*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 33(1) and (2), 75(7), and 125(7) and (8) of the Care Act 2014(1).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Care and Support (Direct Payments) Regulations 2014 and, subject to paragraph (2), come into force immediately after section 33(1) of the Care Act 2014 comes fully into force(2).

(2) Regulation 11 comes into force immediately after section 33(1) of the Care Act 2014 comes fully into force unless section 75(7) of that Act comes fully into force later in which case it comes into force immediately after section 75(7) of that Act comes fully into force.

(3) In these Regulations—

“the Act” means the Care Act 2014;

“care home” has the meaning given by section 3 of the Care Standards Act 2000(3).

**Cases where a local authority must not meet needs by making a direct payment**

2. A local authority(4) must not meet needs by making a direct payment(5) if the adult(6) whose needs are to be met is a person to whom Schedule 1 applies.

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(1) 2014 c.23. The powers to make regulations are exercisable by the Secretary of State, see section 125(1). Section 75(7) of the Act provides that a local authority may discharge its duty under section 117 (after care) of the Mental Health Act 1983 (c.20) by making direct payments and that section of, and paragraph 1(10) of Schedule 4 to, the Act modify section 33(2) accordingly.

(2) Section 33(1) was commenced for the purpose of making regulations by S.I. 2014/2473.

(3) 2000 c.14. Section 3 was amended by the Health and Social Care Act 2008 (c.14), Schedule 5(1), paragraph 4(2) and (3).

(4) See section 1(4) of the Act as to the meaning of “local authority”; the definition is limited to local authorities in England.

(5) Sections 31(3) and 32(3) interpret the expression “direct payment”.

(6) See section 2(8) for the meaning of “adult”.

### Conditions which must apply to the making of direct payments

3.—(1) Direct payments must be made subject to the condition that they must not be used to pay any person mentioned in paragraph (3) to meet the needs of the adult in respect of whose needs the direct payment is made.

(2) Except that, if the local authority considers it is necessary to do so, direct payments may be used to pay a person mentioned in paragraph (3)—

- (a) to meet the care needs of the adult; or
- (b) to provide administrative and management support or services for the purpose of enabling a person to whom the direct payments are made to—
  - (i) comply with legal obligations arising from the making of and use of the direct payment, or
  - (ii) monitor the receipt and expenditure of the direct payment.

(3) The persons referred to in paragraph (1) are—

- (a) the spouse or civil partner of the adult;
- (b) a person who lives with the adult as if their spouse or civil partner;
- (c) a person living in the same household as the adult who is the adult'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) who lives in the same household as the adult; and
- (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner.

(4) A direct payment made under section 32 must be made subject to the condition that the authorised person<sup>(7)</sup> must—

- (a) notify the local authority if the authorised person reasonably believes that the adult no longer lacks the capacity to request the making of direct payments; and
- (b) if paragraph (5) applies, obtain—
  - (i) an enhanced criminal record certificate issued under section 113B (enhanced criminal record certificate) of the Police Act 1997<sup>(8)</sup>, or
  - (ii) verification that a satisfactory certificate of that type under that Act has been obtained,

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(7) See section 32(4) of the Act for the meaning of "authorised person".

(8) 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 the Safeguarding Vulnerable Groups Act 2006 (c.47), Schedule 9, paragraph 14(1) and (3); the Armed Forces Act 2006 (c.52), Schedule 16, paragraph 149; the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), sections 79(1) and 80; the Policing and Crime Act 2009 (c.26), sections 97(2) and 112(2) and Schedule 8, Part 8; the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 108(1) and (2); the Protection of Freedoms Act 2012 (c.9), sections 79(2) (b), 80(1), 82(1), 82(2) and (3) and Schedule 9, paragraphs 35 and 37 and Schedule 10, Parts 5 and 6; the Crime and Courts Act 2013 (c.22), Schedule 8, Part 2, paragraphs 55 and 60; and by S.I. 2009/203, S.I. 2010/1146 and 2012/3006.

in respect of any person from whom a service in respect of which a direct payment is made is secured.

- (5) This paragraph applies if the authorised person is—
- (a) a body corporate;
  - (b) an unincorporated body of persons;
  - (c) an individual who is not a person mentioned in paragraph (3); or
  - (d) an individual who is not a friend of the adult who is involved in the provision of care for the adult.

### **Conditions which may apply to the making of direct payments**

- 4.—(1) A local authority may make a direct payment subject to other conditions.
- (2) The conditions referred to in paragraph (1) may, in particular, require that—
- (a) the needs may not be met by a particular person;
  - (b) the adult or authorised person (in the case of direct payments made under section 32 of the Act) must provide information to the authority.
- (3) The conditions referred to in paragraph (1) may not require—
- (a) the needs of the adult to be met by any particular person; or
  - (b) information to be provided to the authority—
    - (i) more frequently and in more detail than is reasonably required by the authority for the purpose of enabling it to ascertain that—
      - (aa) making direct payments is an appropriate way to meet the needs in question, or
      - (bb) the conditions upon which it is made are complied with, or
    - (ii) in a format which is not reasonably practicable for the adult or authorised person to provide.

### **Steps which a local authority must take before making a direct payment under section 32 of the Act**

5.—(1) A local authority must take the steps in paragraph (2) before it can be satisfied that condition 5 in section 32 of the Act is met (the local authority to be satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question).

- (2) The steps referred to in paragraph (1) are that the authority must—
- (a) so far as is reasonably practicable and appropriate, consult and take into account the views of—
    - (i) anyone named by the adult as someone to be consulted on the matter of whether direct payments should be made to the authorised person;
    - (ii) anyone engaged in caring for the adult or interested in the adult's welfare; and
    - (iii) any person who is authorised under the Mental Capacity Act 2005(9) to make decisions about the adult's needs for care and support; and
  - (b) so far as is reasonably ascertainable, consider—

- (i) the adult's past and present wishes and feelings (and, in particular, any relevant written statement made by the adult when the adult had capacity<sup>(10)</sup> to request the local authority to meet his or her needs by making direct payments);
  - (ii) the beliefs and values that would be likely to influence the adult's decision if the adult had such capacity; and
  - (iii) other relevant factors that the adult would be likely to consider if he or she were able to do so; and
- (c) obtain an enhanced criminal record certificate issued under section 113B of the Police Act 1997—
- (i) in respect of the authorised person if he or she is an individual who is neither a person mentioned in regulation 3(3) nor a friend of the adult who is involved in the provision of care for the adult; and
  - (ii) (in a case where the authorised person 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 the adult's direct payments.

#### **Maximum periods of accommodation in a care home which may be secured by means of a direct payment**

6.—(1) A local authority may not make a direct payment for the provision of accommodation in a care home for an adult for a period of more than 4 consecutive weeks in any 12 month period, unless the local authority is one that is mentioned in Schedule 2.

(2) In calculating the period of 4 weeks mentioned in paragraph (1), a period of accommodation in a care home of less than 4 weeks shall be added to any succeeding period in such accommodation where the two periods are separated by a period of less than 4 weeks but not otherwise.

#### **Review of direct payments**

7.—(1) A local authority must conduct a review for the purpose of ascertaining whether the making of direct payments is an appropriate way to meet the adult's needs—

- (a) at least once within the first 6 months of the direct payment being made and at intervals not exceeding 12 months thereafter;
- (b) if it considers that there has been a breach of a condition and that it may exercise its discretion under section 33(5) of the Act (power to terminate payments or require repayment) in respect of that breach;
- (c) in the case of a direct payment made to meet the needs of an adult under section 31 of the Act, whenever the local authority considers that—
  - (i) that adult no longer has the capacity to request it to meet any of those needs by the making of direct payments to the adult; or
  - (ii) condition 3 (adult or nominated person is capable) or 4 (making direct payments to adult or nominated person is appropriate) of section 31 of the Act is no longer met;
- (d) in the case of a direct payment made to meet the needs of an adult under section 32 of the Act, whenever the local authority—
  - (i) considers that the adult no longer lacks the capacity to request the local authority to meet any of those needs by the making of direct payments to the adult; or

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<sup>(10)</sup> Section 80(2) of the Act provides that a reference in Part 1 to having or lacking capacity is to be interpreted in accordance with the Mental Capacity Act 2005.

- (ii) is notified by any person of concerns that the direct payment may not have been used to meet the needs for which the payment was made; or
  - (iii) considers, or is notified by any person of concerns, that condition 3, 4 or 5 of section 32 of the Act is no longer met.
- (2) When complying with its duty in paragraph (1) the local authority must involve—
  - (a) the adult;
  - (b) any carer<sup>(11)</sup> that the adult has;
  - (c) the authorised person to whom the direct payment is being made (in the case of direct payments made under section 32 of the Act);
  - (d) any person who is providing administrative or management support or services in accordance with regulation 3(2)(b); and
  - (e) either—
    - (i) any person whom the adult asks the authority to involve, or
    - (ii) if the adult lacks the capacity to do that—
      - (aa) the person who is authorised under the Mental Capacity Act 2005 to make decisions about the adult’s needs for care and support (if different to the person in paragraph (c)), or
      - (bb) if there is no such person, any person who appears to the authority to be interested in the adult’s welfare.
- (3) The local authority must take all reasonable steps to reach agreement as to the outcome of the review with—
  - (a) the adult concerned; or
  - (b) if the adult lacks capacity to reach such agreement—
    - (i) the person who is authorised under the Mental Capacity Act 2005 to make decisions about the adult’s needs for care and support, or
    - (ii) where there is no such person, any person who appears to the authority to be interested in the adult’s welfare.

**Making of direct payments for an adult who no longer has capacity to request the making of direct payments**

**8.—**(1) For the purpose of ascertaining whether section 33(4) (termination of direct payments) of the Act applies, an adult who lacks capacity to request the making of direct payments may nonetheless be regarded by a local authority as having capacity to do so in the circumstances in paragraph (2).

- (2) The circumstances are that—
  - (a) the authority is satisfied that the adult’s lack of capacity to make the request is temporary; and
  - (b) another person who appears to the authority to be capable of managing a direct payment is prepared to accept and manage such payments on behalf of the adult during the period of the adult’s incapacity.

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<sup>(11)</sup> See section 10(3) of the Act as to the meaning of “carer”.

### **Making of direct payments for an adult who no longer lacks capacity to request the making of direct payments**

**9.**—(1) For the purpose of ascertaining whether section 32(1)(b) of the Act ceases to apply, an adult who no longer lacks capacity to request the making of direct payments may nonetheless be regarded by a local authority as lacking capacity to do so in the circumstances in paragraph (2).

(2) The circumstances are that—

- (a) the authority is satisfied that the adult’s capacity to request the authority to meet the needs to which the adult’s personal budget(12) relates by making a direct payment is temporary; and
- (b) the direct payments made during the period that the adult has the capacity to make such a request are made subject to an additional condition that the authorised person shall allow the adult to manage the direct payments themselves for any period in respect of which the authority is satisfied that the adult has the capacity to request the making of direct payments.

### **Harmonisation with payments made under other legislation**

**10.** Where a direct payment is made for an adult for whom payments are made under section 12A (direct payments for health care) of the National Health Service Act 2006(13) (“the 2006 Act”), the local authority must take reasonable steps to co-ordinate the systems, processes and requirements which it applies or imposes in relation to the direct payment with those which apply in relation to the payments made under the 2006 Act with a view to minimising the administrative or other burdens which they place on the adult for whom, or the nominated or authorised person to whom, the local authority makes the direct payment.

### **Direct payments in respect of after-care under the Mental Health Act 1983**

**11.**—(1) In respect of a direct payment to discharge the duty of a local authority under section 117 (after-care) of the 1983 Act(14), these Regulations apply with the following modifications—

- (a) in regulation 2 for “meet needs” substitute “discharge its duty under section 117 of the 1983 Act”;
- (b) in regulation 3—
  - (i) in paragraph (1), for “meet the needs of the adult in respect of whose needs the direct payment is made” substitute “provide after-care services to the adult to discharge the duty under section 117 of the 1983 Act”, and
  - (ii) in paragraph (2)(a), for “meet the care needs of the adult” substitute “provide after-care services to the adult to discharge the duty under section 117 of the 1983 Act”;
- (c) in regulation 4—
  - (i) in paragraph (2)(a), for “needs may not be met” substitute “after-care services may not be provided”;

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(12) See section 26 of the Act as to the meaning of “personal budget”.

(13) 2006 c.41; section 12A was inserted by the Health Act 2009 (c.21), section 11 and amended by the Health and Social Care Act 2012 (c.7), Schedule 4, paragraph 10 and S.I. 2013/1563.

(14) 1983 c.20; section 117 was amended by the Health Authorities Act 1995 (c.17) Schedule 1, paragraphs 107(1) and (8)(b); the Mental Health (Patients in the Community) Act 1995 (c.52), Schedule 1, paragraph 15; the Crime (Sentences) Act 1997 (c.43), Schedule 4, paragraph 12(17); the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 2, paragraphs 42 and 47; the Mental Health Act 2007 (c.12), Schedule 3, paragraphs 1 and 24 and Schedule 11, Part 5; the Health Act 2009 (c.21), Schedule 1, paragraph 3; the Health and Social Care Act 2012 (c.7), section 40(1) to (4); and by S.I. 2007/961 and is prospectively amended by section 75 of the Act.

- (ii) in paragraph (3)(a), for “needs of the adult to be met” substitute “after-care services to be provided”, and
  - (iii) in paragraph (3)(b)(i)(aa), for “meet the needs in question” substitute “discharge its duty under section 117 of the 1983 Act”;
- (d) in regulation 5, in paragraph (2)(b)(i), for “meet his or her needs by making direct payments” substitute “make payments to the adult or a person nominated by the adult that are equivalent to the cost of providing or arranging for the provision of after-care services for the adult under section 117 of the 1983 Act”;
- (e) in regulation 7—
- (i) in paragraph (1), for “meet the adult’s needs” substitute “discharge its duty under section 117 of the 1983 Act”,
  - (ii) in paragraph (1)(c), for “to meet the needs of an adult under section 31 of the Act” substitute “discharge its duty under section 117 of the 1983 Act”,
  - (iii) in paragraph (1)(c)(i), for “meet any of those needs” substitute “make payments to the adult or a person nominated by the adult that are equivalent to the cost of providing or arranging for the provision of after-care services for the adult under section 117 of the 1983 Act”,
  - (iv) in paragraph (1)(d), for “to meet the needs of an adult under section 32 of the Act” substitute “under section 32 of the Act to discharge its duty under section 117 of the 1983 Act”,
  - (v) in paragraph (1)(d)(i), for “meet any of those needs” substitute “make payments to the adult or a person nominated by the adult that are equivalent to the cost of providing or arranging for the provision of after-care services for the adult under section 117 of the 1983 Act”,
  - (vi) in paragraph (1)(d)(ii), for “to meet the needs” substitute “only to pay for arrangements under which after-care services for the adult are provided under section 117 of the 1983 Act”,
  - (vii) in paragraph (2)(e)(ii)(aa) and (3)(b)(i), for “the adult’s needs for care and support” substitute “the provision of after-care services under section 117 of the 1983 Act”; and
- (f) in regulation 9, in paragraph (2), for “meet the needs to which the adult’s personal budget relates” substitute “make payments to the adult or a person nominated by the adult that are equivalent to the cost of providing or arranging for the provision of after-care services for the adult under section 117 of the 1983 Act”.
- (2) In this regulation “the 1983 Act” means the Mental Health Act 1983.

Signed by authority of the Secretary of State for Health.

20th October 2014

*Norman Lamb*  
Minister of State  
Department of Health

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

## SCHEDULE 1

Regulation 2

## Adults Whose Needs the Local Authority Must Not Meet By Making Direct Payments

This Schedule applies to a person if they are—

- (a) subject to a drug rehabilitation requirement, as defined by section 209 (drug rehabilitation requirement) of the Criminal Justice Act 2003 (“the 2003 Act”)(**15**), specified in a community order (as defined by section 177 (community orders) of that Act(**16**), or a suspended sentence order (as defined by section 189(**17**) of that Act);
- (b) subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003(**18**), specified in a community order (as defined by section 177 of that Act), or a suspended sentence order (as defined by section 189 of that Act);
- (c) released from prison on licence—
  - (i) under Chapter 6 of Part 12 (sentencing: release, licenses and recall) of the 2003 Act (**19**) or Chapter 2 of Part 2 (effect of custodial sentences: life sentences) of the Crime (Sentences) Act 1997 (“the 1997 Act”)(**20**), subject to a non standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour; or
  - (ii) subject to a drug testing requirement under section 64 (as amended by the Offender Rehabilitation Act 2014) (release on licence etc: drug testing)(**21**) or a drug appointment requirement under section 64A (release on licence etc: drug appointment) of the Criminal Justice and Courts Services Act 2000(**22**);
- (d) required to comply with a drug testing or a drug appointment requirement specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act (**23**);
- (e) required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal

(15) 2003 c.44; section 209 was amended by the Criminal Justice and Immigration Act 2008 (c.4) (“the 2008 Act”), Schedule 4 paragraphs 71 and 88 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) (“the 2012 Act”), section 74(1).

(16) Section 177 was amended by the 2008 Act, Schedule 4, paragraphs 71 and 82; the 2012 Act, sections 66(1) and (2), 70(1), 72(1) and (2) and 76(2) and (3); the Crime and Courts Act 2013 (c.22), Schedule 16, paragraphs 1, 2, 11 and 12.

(17) Section 189 was amended by the 2012 Act, section 68(1) to (5) and S.I. 2005/643.

(18) Section 212 was amended by the 2012 Act, section 75(1).

(19) Section 245 was repealed by the 2012 Act, Schedule 10, paragraph 22. Section 246 was amended by the Armed Forces Act 2006 (c.52) (“the 2006 Act”), Schedule 16, paragraph 221; the 2008 Act, section 24; the 2012 Act, sections 110 to 112, Schedule 10, paragraph 23, Schedule 20, paragraph 5 and Schedule 14, paragraph 7; Section 246A was inserted by the 2012 Act, section 125. Section 247 was amended by the 2008 Act, Schedule 28(2), paragraph 1 and the 2012 Act, Schedule 17, paragraph 3. Section 248 was amended by the 2012 Act, section 116. Section 149 was amended by the 2012 Act, Schedule 10, paragraph 24, Schedule 14, paragraph 8 and Schedule 17, paragraph 4. Section 250 was amended by the 2012 Act, sections 111 and 117, Schedule 10, paragraph 25, Schedule 14, paragraph 9, Schedule 20, paragraph 6; the Offender Management Act 2007 (c.21), section 28; the Domestic Violence Crime and Victims Act 2004 (c.28) Schedule 6, paragraph 5. Section 252 was amended by the 2006 Act, Schedule 16, paragraph 224 of the 2012 Act, Schedule 10, paragraph 27. Section 253 was amended by the 2012 Act, section 114 and Schedule 10, paragraph 28 and S.I. 2008/912.

(20) 1997 c.43. Section 31 was amended by the Crime and Disorder Act 1998 (c.37), Schedule 8, paragraph 131 and Schedule 10, paragraph 1; the Criminal Justice and Courts Services Act 2000 (c.43), Schedule 7, paragraph 4(1); the 2003 Act, Schedule 18, paragraph 1, Schedule 32, paragraph 83 and Schedule 37, paragraph 1; the Children Act 2004 (c.31), Schedule 5; the 2008 Act, Schedule 28; S.I. 2005/886 ;and 2008/91. Section 31A was inserted by the 2003 Act, Schedule 18, paragraph 2 and amended by the 2003 Act, Schedule 18, paragraph 2; the 2006 Act, Schedule 16, paragraph 141; the 2012 Act, section 117. Section 32 was amended by the 2003 Act, Schedule 32, paragraph 84 and the 2008 Act, section 31. Sections 32A and 32B were inserted by the 2012 Act, section 119.

(21) Section 64 is prospectively amended by the Offender Rehabilitation Act 2014 (c.11), section 11(2), Schedule 3, paragraph 13 and the prohibition on a person subject to a condition under that section does not apply until the date that the amendment comes into force.

(22) 2000 c.43. Section 64A is prospectively inserted by section 12 of the Offender Rehabilitation Act 2014 which comes into force on a date to be appointed.

(23) Section 256AA is prospectively inserted by section 2 of the Offender Rehabilitation Act 2014.



- Courts (Sentencing) Act 2000(24) or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- (f) subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000(25);
  - (g) required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995(26) or subject to a drug treatment and testing order within the meaning of section 234B(27) of that Act; or
  - (h) released on licence under section 22 or section 26 of the Prisons (Scotland) Act 1989 (release on licence etc)(28) or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993(29) and subject to a condition that they submit to treatment for their drug or alcohol dependency.

## SCHEDULE 2

Regulation 6(1)

### List Of Local Authorities Who Are Not Prohibited From Making A Direct Payment For The Purpose Of Securing Long Term Care In A Care Home

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

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(24) 2000 c.6. Sections 41 and 51 were repealed, with savings, by Schedule 37 to the 2003 Act.

(25) Section 52 was repealed, with savings, by Schedule 37 to the 2003 Act.

(26) 1995 c.46. Sections 227A to 227ZN (community payback orders) were inserted by section 14 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”). Sections 228 to 230 were repealed, with savings, by Schedule 2(1), paragraph 17 of the 2010 Act.

(27) Section 234B was inserted by section 89 of the Crime and Disorder Act 1998 (c.37).

(28) 1989 c.45. Section 22 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), section 47(3), Schedule 7, Part 1; the Criminal Justice and Public Order Act 1994 (c.33), section 134(5); the Criminal Justice (Scotland) Act 2003 (asp 7), sections 27(2) and 34(2). It was modified by the Crime (Sentences) Act 1997 (c.43), Schedule 5, paragraph 11 and S.I. 1995/910. Section 26 was repealed, with savings, by section 47(3), Schedule 7, Part 1 to the Prisoners and Criminal Proceedings (Scotland) Act 1993.

(29) 1993 c.9. Section 1 was amended by paragraph 98 of Schedule 8 to the Crime and Disorder Act 1998, section 1(2) of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7) and section 15(2) of the Management of Offenders etc (Scotland) Act 2005 (asp 14) (“MOSA”). Section 1AA was inserted by section 15(3) of MOSA.

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

Staffordshire County Council  
Stockport Council  
Surrey County Council

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for local authorities to meet a person’s needs by the making of a direct payment in accordance with sections 31 to 33 of the Care Act 2014 (“the Act”).

Regulation 2 prohibits a local authority from meeting needs by making a direct payment in the case of a person to whom Schedule 1 applies.

Regulations 3 and 4 set out conditions which may or must be imposed in respect of direct payments.

Regulation 5 sets out steps which a local authority must take in order to be satisfied that making direct payments under section 32 of the Act to an authorised person is an appropriate way to meet the needs in question.

Regulation 6 sets out the maximum periods of accommodation in a care home which may be secured by means of a direct payment in cases where the needs are met by a local authority that is not a local authority in Schedule 2.

Regulation 7 requires the authority to review the making of direct payments in certain circumstances.

Regulations 8 and 9 provide for the circumstances where a local authority is not required to terminate the making of direct payments in respect of people who no longer have capacity or no longer lack capacity to request a direct payment.

Regulation 10 applies in cases where a direct payment is made to a person who is in receipt of direct payments under section 12A of the National Health Service Act 2006 (“the 2006 Act”) and requires local authorities to take reasonable steps to co-ordinate its systems and processes in respect of the direct payment with those in place for the direct payment made under the 2006 Act.

Regulation 11 applies these Regulations with modifications to cases where a direct payment is made under section 117 of the Mental Health Act 1983.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>