



## 2002 CHAPTER 6

### *Direct payments*

#### **Direct payments**

**8.—**(1) Regulations may make provision for and in connection with requiring or authorising an authority in the case of a person of a prescribed description who falls within subsection (2) to make, with that person's consent, such payments to him as the authority may determine in accordance with the regulations in respect of his securing the provision of the service mentioned in paragraph (a) or (b) of that subsection.

- (2) A person falls within this subsection if the authority has decided—
- (a) under the 1972 Order that his needs call for the provision by it of a particular personal social service; or
  - (b) under section 2(1) to provide him with a particular service under that section.
- (3) Regulations under this section may, in particular, make provision—
- (a) specifying circumstances in which the authority is not required or authorised to make any payments under the regulations to a person, whether those circumstances relate to the person in question or to the particular service mentioned in subsection (2)(a) or (b);
  - (b) for any payments required or authorised by the regulations to be made to a person by the authority (“direct payments”) to be made to that person (“the payee”) as gross payments or alternatively as net payments;
  - (c) for the authority to make for the purposes of subsection (4) or (5) such determinations as to—
    - (i) the payee's means; and

- (ii) the amount (if any) which it would be reasonably practicable for him to pay to the authority by way of reimbursement or contribution, as may be prescribed;
  - (d) as to the conditions falling to be complied with by the payee which must or may be imposed by the authority in relation to the direct payments (and any conditions which may not be so imposed);
  - (e) specifying circumstances in which the authority—
    - (i) may or must terminate the making of direct payments;
    - (ii) may require repayment (whether by the payee or otherwise) of the whole or part of the direct payments);
  - (f) for any sum falling to be paid or repaid to the authority by virtue of any condition or other requirement imposed in pursuance of the regulations to be recoverable as a debt due to the authority;
  - (g) displacing functions or obligations of the authority with respect to the provision of the service mentioned in subsection (2)(a) or (b) only to such extent, and subject to such conditions, as may be prescribed;
  - (h) authorising direct payments to be made to any prescribed person on behalf of the payee.
- (4) For the purposes of subsection (3)(b) “gross payments” means payments—
- (a) which are made at such rate as the authority estimates to be equivalent to the reasonable cost of securing the provision of the service concerned; but
  - (b) which may be made subject to the condition that the payee pays to the authority, by way of reimbursement, an amount or amounts determined under the regulations.
- (5) For the purposes of subsection (3)(b) “net payments” means payments—
- (a) which are made on the basis that the payee will himself pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the service concerned; and
  - (b) which are accordingly made at such a rate below that mentioned in subsection (4)(a) as reflects any such contribution by the payee.
- (6) Regulations made for the purposes of subsection (3)(a) may provide that direct payments shall not be made in respect of the provision of residential accommodation for any person for a period in excess of a prescribed period.
- (7) The statutory provisions mentioned in the first column of the Schedule are repealed to the extent specified in the second column of that Schedule.

**Direct payments in respect of children**

9. After Article 18B of the Children Order there shall be inserted—

**“Direct payments**

**18C.**—(1) The Department may by regulations make provision for and in connection with requiring or authorising an authority in the case of a person of a prescribed description who falls within paragraph (2) to make, with that person’s consent, such payments to him as the authority may determine in accordance with the regulations in respect of his securing the provision of the service mentioned in that paragraph.

(2) A person falls within this paragraph if he is—

- (a) a person with parental responsibility for a disabled child;
- (b) a disabled person with parental responsibility for a child; or
- (c) a disabled child aged 16 or 17,

and the authority has decided for the purposes of Article 18 that the child’s needs (or, if he is such a disabled child, his needs) call for the provision by it of a service under that Article.

(3) Regulations under this Article may, in particular, make provision—

- (a) specifying circumstances in which the authority is not required or authorised to make any payments under the regulations to a person, whether those circumstances relate to the person in question or to the particular service mentioned in paragraph (2);
- (b) for any payments required or authorised by the regulations to be made to a person by the authority (“direct payments”) to be made to that person (“the payee”) as gross payments or alternatively as net payments;
- (c) for the authority to make for the purposes of paragraph (4) or (5) such determinations as to—
  - (i) the payee’s means; and
  - (ii) the amount (if any) which it would be reasonably practicable for him to pay to the authority by way of reimbursement or contribution,
 as may be prescribed;
- (d) as to the conditions falling to be complied with by the payee which must or may be imposed by the authority in relation to the direct payments (and any conditions which may not be so imposed);
- (e) specifying circumstances in which the authority—
  - (i) may or must terminate the making of direct payments;

- (ii) may require repayment (whether by the payee or otherwise) of the whole or part of the direct payments);
  - (f) for any sum falling to be paid or repaid to the authority by virtue of any condition or other requirement imposed in pursuance of the regulations to be recoverable as a debt due to the authority;
  - (g) displacing functions or obligations of the authority with respect to the provision of the service mentioned in paragraph (2) only to such extent, and subject to such conditions, as may be prescribed;
  - (h) authorising direct payments to be made to any prescribed person on behalf of the payee.
- (4) For the purposes of paragraph (3)(b) “gross payments” means payments—
- (a) which are made at such rate as the authority estimates to be equivalent to the reasonable cost of securing the provision of the service concerned; but
  - (b) which may be made subject to the condition that the payee pays to the authority, by way of reimbursement, an amount or amounts determined under the regulations.
- (5) For the purposes of paragraph (3)(b) “net payments” means payments—
- (a) which are made on the basis that the payee will himself pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the service concerned; and
  - (b) which are accordingly made at such a rate below that mentioned in paragraph (4)(a) as reflects any such contribution by the payee.
- (6) Regulations under this section shall provide that, where payments are made under the regulations to a person falling within paragraph (7)—
- (a) the payments shall be made at the rate mentioned in paragraph (4) (a); and
  - (b) paragraph (4)(b) shall not apply.
- (7) A person falls within this subsection if he is—
- (a) a person falling within paragraph (2)(a) or (b) and the child in question is aged 16 or 17; or
  - (b) a person who is in receipt of income support, working families' tax credit or disabled person's tax credit under Part VII of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) or of an income-based jobseeker's allowance.

(8) Regulations made for the purposes of paragraph (3)(a) may provide that direct payments shall not be made in respect of the provision of residential accommodation for any person for a period in excess of a prescribed period.

(9) In this Article “prescribed” means specified in or determined in accordance with regulations under this Article.”.