

**2004 No. 120**

**HEALTH AND PERSONAL SOCIAL SERVICES**

**The Personal Social Services and Children's Services  
(Direct Payments) Regulations (Northern Ireland) 2004**

*Made* - - - - - *16th March 2004*

*Coming into operation* *19th April 2004*

The Department of Health, Social Services and Public Safety(a), in exercise of the powers conferred on it by Article 18C of the Children (Northern Ireland) Order(b) and sections 8 and 10(5) of the Carers and Direct Payments Act (Northern Ireland) 2002(c) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Personal Social Services and Children's Services (Direct Payments) Regulations (Northern Ireland) 2004, and shall come into operation on 19th April 2004.

(2) In these Regulations –

“the Act” means the Carers and Direct Payments Act (Northern Ireland) 2002;

“the 1986 Order” means the Mental Health (Northern Ireland) Order 1986(d);

“direct payment” has the meaning given in regulation 2;

“relevant service” has the meaning given in regulation 2(2);

“prescribed person” means a person who is a person of a prescribed description under regulation 3 or, as the case may be, regulation 4.

**Duty to make direct payments**

**2.**—(1) If the conditions in paragraph (3) are satisfied, an authority must make in the case of a prescribed person who falls within section 8(2) of the Act, or Article 18C of the Children Order, with that persons consent, such payments to him (direct payments) as the authority may determine in accordance with regulation 5 in respect of his securing the provision of a relevant service.

(2) In this regulation a relevant service means –

(a) a particular personal social service under the 1972 Order; or

(b) a particular service under section 2 of the Act; or

(c) a service under Article 18 of the Children Order.

(3) The conditions referred to in paragraph (1) are that –

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(a) See S. I. 1999/283 (N.I. 1) – Article 3(6)

(b) S.I. 1995/755 (N.I. 2) – Article 18C is inserted by section 9 of the Carers and Direct Payments Act (N.I.) 2002

(c) 2002 c. 6 (N.I.)

(d) S.I. 1986/595 (N.I. 4); Relevant amending instruments are S.I. 1994/429 (N.I. 2) and S.I. 1996/3160 (N.I. 24)

- (a) the authority is satisfied that the person's needs for the relevant service can be met by securing the provision of it by means of a direct payment; and
- (b) in the case of a relevant service mentioned in paragraph (2)(c), the authority is satisfied that the welfare of the child in respect of whom the service is needed will be safeguarded and promoted by securing the provision of it by means of a direct payment.

**3.—(1)** For the purposes of section 8(1) of the Act a person is of a prescribed description if –

- (a) he is a person who appears to the authority to be capable of managing a direct payment by himself or with such assistance as may be available to him; and
  - (b) he is not a person to whom paragraph (2) applies.
- (2) This paragraph applies to a person if –
- (a) he is required to submit to treatment for his mental condition or for his drug or alcohol dependency by virtue of a requirement of –
    - (i) a probation order within the meaning of section 1 of the Probation Act (Northern Ireland) 1950(a); or
    - (ii) a combination order within the meaning of Article 15 of the Criminal Justice (Northern Ireland) Order 1996(b);
  - (b) he is received into guardianship in pursuance of a guardianship application made in accordance with Article 18 of the 1986 Order or placed under guardianship in pursuance of an order made under Article 44 of that Order;
  - (c) he is absent from hospital with leave given in accordance with Article 15 of the 1986 Order;
  - (d) in respect of whom there is in operation a condition imposed in accordance with Article 48(2) or 78(4) (including such a condition which has been varied in accordance with Article 78(5) or 80(3)) of the 1986 Order;
  - (e) in respect of whom there is in operation a supervision and treatment order within the meaning given by Part I of Schedule 2A to the 1986 Order(c).

**4.** For the purposes of Article 18C(1) of the Children Order a person is of a prescribed description if –

- (a) he is a person who appears to the authority to be capable of managing a direct payment by himself or with such assistance as may be available to him; and
- (b) he is not a person to whom paragraph (2) of regulation 3 applies.

#### **Amount of direct payments**

**5.—(1)** Subject to paragraph (2) a direct payment shall be made as a gross payment(d) unless the authority decides it shall be made as a net payment(e).

(2) For the purpose of making the payment referred to in paragraph (1), the authority shall determine, having regard to the prescribed person's means, what amount (if any) it is reasonably practical for him to pay towards securing the provision of the relevant service (whether by way of reimbursement as mentioned in section 8 (4) of the Act or by way of contribution as mentioned in section 8(5) of the Act).

**6.** Where a direct payment is made to a person falling within Article 18C(7) of the Children Order –

- (a) the payment shall be at the rate mentioned in paragraph (4)(a) of that Article; and
- (b) paragraph (4)(b) of that Article shall not apply.

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(a) 1950 c.7; Section 1 is prospectively repealed by S.I. 1996/3160 (N.I. 24) Schedule 7 and replaced by Article 10 thereof

(b) S.I. 1996/3160 (N.I. 24)

(c) Schedule 2A was inserted by S.I. 1996/3160 (N.I. 24)

(d) See section 8(4) of the Act for the definition of "gross payments"

(e) See section 8(5) of the Act for the definition of "net payments"

### **Conditions in respect of direct payments**

7.—(1) A direct payment shall be subject to the condition that the service in respect of which it is made shall not be secured from a person specified in paragraph (2) unless –

- (a) in the case of the service mentioned in regulation 2(2)(a) or (b), the authority is satisfied that securing the service from such a person is necessary to meet satisfactorily the prescribed person's need for that service;
- (b) in the case of the service mentioned in regulation 2(2)(c), the authority is satisfied that securing the service from such a person is necessary for promoting the welfare of the child in need.

(2) The persons specified for the purposes of paragraph (1) are –

- (a) the spouse of the prescribed person;
- (b) a person who lives with the prescribed person as if his spouse;
- (c) a person living in the same household as the prescribed person who is the prescribed person'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 of any person specified in sub-paragraph (c) who lives in the same household as the prescribed person;
- (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse.

(3) Paragraph 2 (c)(ii) and (iii) do not apply in the case of a person mentioned in Article 19C(2)(c) of the Children Order.

(4) An authority may make a direct payment subject to the following conditions:

- (a) that the payee shall not secure the relevant service from a particular person; and
- (b) that the payee shall provide such information to the authority as it considers necessary in connection with the direct payment.

### **Maximum period of residential accommodation which may be secured by means of a direct payment**

8.—(1) Subject to paragraph (2), a direct payment may not be used by a person who falls within regulation 3 or 4 for the purchase of residential accommodation for a period in excess of 4 weeks in any period of 12 months.

(2) The period of 12 months mentioned in paragraph (1) commences on the first day of residential accommodation purchased by use of all or part of any direct payment received.

### **Displaced functions and obligations of the authority**

9.—(1) Except as provided by paragraph (2), the fact that an authority makes a direct payment shall not affect its functions with respect to the provision under the relevant statutory provision of the service to which the payment relates.

(2) Where an authority makes a direct payment, it shall not be under any obligation with respect to the provision under the relevant statutory provision of the service to which the payment relates as long as it is satisfied that the need which calls for the provision of the service will be secured by the payee's own arrangements.

(3) In paragraphs (1) and (2), references to the relevant statutory provision, in relation to the provision of a service, are to the statutory provision under which the service would fall to be provided apart from these Regulations.

### **Repayment of direct payments**

**10.**—(1) Where an authority which has made a direct payment is satisfied, in relation to the whole or any part of the payment –

- (a) that it has not been used to secure the provision of the service to which it relates; or
- (b) that a condition mentioned in regulation 7 ceases to be met;

it may require the payment or, as the case may be, the part of the payment to be repaid.

(2) Any sum falling to be repaid by virtue of paragraph (1) shall be recoverable as a debt due to the authority.

### **Termination of direct payments**

**11.**—(1) Subject to paragraph (3), an authority shall terminate the making of direct payments to a person if –

- (a) he ceases to be a prescribed person; or
- (b) a condition mentioned in regulation 2(3) ceases to be met.

(2) An authority may terminate the making of direct payments to a prescribed person if any condition mentioned in regulation 6 ceases to be met.

(3) Notwithstanding that the person in respect of whom direct payments are made ceases to be capable of managing such payments an authority may continue to make such payments if –

- (a) the authority is reasonably satisfied that the person's incapability will be temporary;
- (b) another person is prepared to accept and manage such payments on the incapable person's behalf; and
- (c) the person with whom the arrangement for the provision of the relevant service has been made agrees to accept payment for the services from the person mentioned in subparagraph (b).

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 16th March 2004.

(L.S.)

*Leslie Frew*

Senior Officer of the Department of Health, Social Services and Public Safety

## **EXPLANATORY NOTE**

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

These regulations make provision for the making of direct payments in respect of a person securing the provision of certain personal social services. These services are services which would be provided under the Health and Personal Social Services (Northern Ireland) Order 1972; Article 18 of the Children (Northern Ireland) Order 1995 and to carers under section 2 of the Carers and Direct Payments Act (Northern Ireland) 2002.

Regulation 2 sets out the circumstances where an authority must make a direct payment.

Regulations 3 and 4 prescribe the categories of person who may receive direct payments. A person is of a prescribed category if he appears to the authority to be capable of managing a direct payment by himself or with assistance. Excepted from this description are persons whose liberty to arrange their own care is restricted by mental health or criminal justice legislation.

Regulation 5 provides that a direct payment shall be made either gross or net of such amount determined by the authority as being due by the person in respect of the service.

Regulation 6 provides that in certain cases a payment shall only be made as a gross payment.

Regulation 7 specifies conditions which shall or which may be made in respect of direct payments. In particular it prohibits a direct payment from being used to secure a service from certain persons, except in specified circumstances.

Regulation 8 sets out the maximum periods of residential accommodation which may be secured by means of a direct payment.

Regulation 9 provides that where an authority makes a direct payment it retains the functions as respects the provision of the service. It also provides that an authority shall not be under any obligation with respect to the provision of the service provided they are satisfied that the needs of the person will be secured by his own arrangements.

Regulation 10 sets out the circumstances where an authority may require a direct payment to be repaid.

Regulation 11 provides for the circumstances where an authority shall, or may, terminate direct payments.





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Published by The Stationery Office Limited

ISBN 0-337-95450-X



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