
STATUTORY INSTRUMENTS

1997 No. 693 (S.53)

SOCIAL WORK, SCOTLAND

The Community Care (Direct Payments) (Scotland) Regulations 1997

<i>Made</i>	- - - -	<i>7th March 1997</i>
<i>Laid before Parliament</i>		<i>11th March 1997</i>
<i>Coming into force</i>	- -	<i>1st April 1997</i>

The Secretary of State, in exercise of the powers conferred on him by section 12B(1)(b), (3) and (4) of the Social Work (Scotland) Act 1968(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Community Care (Direct Payments) (Scotland) Regulations 1997 and shall come into force on 1st April 1997.

(2) In these Regulations—

“the Act” means the Social Work (Scotland) Act 1968;

“the 1984 Act” means the Mental Health (Scotland) Act 1984(2); and

“the 1983 Act” means the Mental Health Act 1983(3)

Persons to whom direct payments may be made

2.—(1) Subject to paragraph (2) a person—

(a) who is a person in need as defined by section 94(1) of the Act and is also in the category of persons described in paragraph (b) of the definition of “person in need” in the said section 94(1); and

(b) who appears to the local authority to be capable of managing a direct payment by himself or with assistance,

is hereby specified as a description of persons for the purposes of section 12B(1)(b) of the Act.

(1) 1968 c. 49; section 12B was inserted by the Community Care (Direct Payments) Act 1996 (c. 30), s.4.

(2) 1984 c. 36.

(3) 1983 c. 20.

(2) No person is of a description specified for the purposes of section 12B(1)(b) of the Act if he is a person—

- (a) aged 65 or over unless a payment was made to him under section 12B of the Act in the period of 12 months which ended on the day before his sixty-fifth birthday;
- (b) who is a patient subject to after-care under a community care order under section 35A of the 1984 Act⁽⁴⁾;
- (c) who is a patient who is absent from hospital on leave under section 27 of the 1984 Act;
- (d) who is a patient subject to guardianship under section 37 of the 1984 Act;
- (e) who is a restricted patient within the meaning of section 63(1) of the 1984 Act, who has been given a conditional discharge under section 64 or 68 of the 1984 Act;
- (f) who is subject to an order of a court under sections 57(2)(a), (b), (c) or (d) or 58, or 58 and 59 of the Criminal Procedure (Scotland) Act 1995⁽⁵⁾ or who is required to submit to treatment for his mental condition or for his drug or alcohol dependency by virtue of a requirement of a probation order in terms of sections 228-230 of that Act;
- (g) who is released on licence under section 22 or 26 of the Prisons (Scotland) Act 1989⁽⁶⁾ or under section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993⁽⁷⁾ and is subject to a condition that he submits to treatment for his mental condition or for his drug or alcohol dependency;
- (h) who is released on licence under section 37 of the Criminal Justice Act 1991⁽⁸⁾ subject to a condition that he submits to treatment for his mental condition or for his drug or alcohol dependency;
- (i) who 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 2 of the Powers of Criminal Courts Act 1973⁽⁹⁾;
 - (ii) a combination order within the meaning of section 11 of the Criminal Justice Act 1991;
- (j) who is placed under guardianship in pursuance of—
 - (i) an application made in accordance with section 7 of the 1983 Act; or
 - (ii) an order made under section 37 of that Act;
- (k) who is absent from hospital with leave given in accordance with section 17 of the 1983 Act;
- (l) who is subject to after-care under supervision (which expression shall be construed in accordance with section 25A of the 1983 Act⁽¹⁰⁾);
- (m) in respect of whom there is in force a condition imposed in accordance with section 42(2) or 73(4) (including such a condition which has been varied in accordance with section 73(5) or 75(3) of the 1983 Act; or

⁽⁴⁾ Section 35A was inserted by section 4 of the Mental Health (Patients in the Community) Act 1995 (c. 52), s.4.

⁽⁵⁾ 1995 c. 46.

⁽⁶⁾ 1989 c. 45.

⁽⁷⁾ 1993 c. 9.

⁽⁸⁾ 1991 c. 53.

⁽⁹⁾ 1973 c. 62; section 2 was substituted by section 8(1) of the Criminal Justice Act 1991 (c. 53); section 3 and Schedule 1A (additional requirements which may be included in probation orders) was substituted by section 9 of, and Schedule 1, Part II, to that Act.

⁽¹⁰⁾ Section 25A was inserted by section 1(1) of the Mental Health (Patients in the Community) Act 1995 (c. 52).

- (n) in respect of whom there is in force a supervision and treatment order within the meaning given by Part I of Schedule 2 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991(11).

Persons from whom services may not be secured by means of a direct payment

3. The following descriptions of persons are specified for the purposes of section 12B(3) of the Act—

- (a) the spouse of the payee;
- (b) a person who lives with the payee as man and wife;
- (c) a person living in the same household as the payee who is the payee'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 of a description specified in paragraph (c) who lives in the same household as the payee; and
- (e) a person who lives with any person of a description specified in paragraph (c) as that person's spouse.

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

4.—(1) Subject to paragraph (2), the power to make a payment under section 12B(1) of the Act shall not be exercisable in relation to the provision of residential accommodation for any person in any period of 12 months for a period in excess of four weeks.

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

St Andrew's House,
Edinburgh
7th March 1997

James Douglas-Hamilton
Minister of State, Scottish Office

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Community Care (Direct Payments) Act 1996 (“the Act”) is to come into force on 1st April 1997. The Act inserts a new section 12B into the Social Work (Scotland) Act 1968 (“the 1968 Act”) which enables local authorities responsible for the provision of (or arranging the provision of) community care services to make direct payments to persons in respect of their securing the provision of such services.

These Regulations specify persons, to whom direct payments may be made under section 12B(1) of the 1968 Act, as being persons in need as defined by section 94(1) of the 1968 Act who are also suffering from illness or mental disorder or are substantially handicapped by any deformity or disability who appear to the local authority to be capable of managing a direct payment by themselves or with assistance. The Regulations except from this description any person who is aged sixty five or over (unless he received a direct payment in the year before he attained the age of 65) and persons whose liberty to arrange their own care is restricted by certain legislation relating to mental health and criminal justice (regulation 2). Secondly, these Regulations specify for the purposes of section 12B(3) of the 1968 Act the persons from whom services may not be secured by means of a direct payment as being the spouse of the payee and anyone who lives with him as his spouse and certain relatives who live in the same household as the payee as well as the spouse of such person and anyone living with such a person as his spouse (regulation 3).

Lastly, these regulations specify for the purposes of section 12B(4) of the 1968 Act the maximum period of residential accommodation which may be secured by means of a direct payment as being four weeks in any twelve month period. In calculating this period of four weeks, a period in residential care of less than four weeks is to be added to a succeeding period in residential care if the two periods are separated by a period of less than four weeks but not otherwise (regulation 4).

Businesses will not incur costs due to these Regulations.