
STATUTORY INSTRUMENTS

1997 No. 693

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

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.

(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⁽¹⁾;
- (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⁽²⁾ 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⁽³⁾ or under section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993⁽⁴⁾ 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⁽⁵⁾ 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—

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

(2) 1995 c. 46.

(3) 1989 c. 45.

(4) 1993 c. 9.

(5) 1991 c. 53.

- (i) a probation order within the meaning of section 2 of the Powers of Criminal Courts Act 1973⁽⁶⁾;
- (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⁽⁷⁾);
- (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
- (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⁽⁸⁾.

⁽⁶⁾ 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.

⁽⁷⁾ Section 25A was inserted by section 1(1) of the Mental Health (Patients in the Community) Act 1995 (c. 52).

⁽⁸⁾ 1991 c. 25.