

EXPLANATORY MEMORANDUM TO

THE COMMUNITY CARE SERVICES FOR CARERS AND CHILDREN'S SERVICES (DIRECT PAYMENTS) (ENGLAND) AMENDMENT REGULATIONS 2013

2013 No. 2270

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of The Community Care Services For Carers and Children's Services (Direct Payments) (England) Amendment Regulations 2013 is to allow certain local authorities to provide direct payments for residential care beyond the current restrictions detailed in The Community Care Services For Carers and Children's Services (Direct Payments) (England) Regulations 2009 (the '2009 Regulations'). Direct payments are cash payments given to people in lieu of social care services that would otherwise have been arranged for them by local authorities and may not (by virtue of the 2009 Regulations) currently be used for residential accommodation for more than four consecutive weeks in any 12 month period.

2.2 The outcomes from an evaluation of this programme (known as the "Direct Payments in Residential Care Trailblazer programme") will be used to inform the extension of the programme nationally. The Government has announced that it is intended that this will take place from 2016.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2009 Regulations currently permit direct payments to be made for the purposes of securing residential care for no more than four consecutive weeks in any 12 month period. Given this prohibition on providing direct payments for residential care, a legislative amendment is required to enable certain local authorities participating in the Trailblazer programme to provide direct payments for longer periods.

4.2 These Regulations amend the 2009 Regulations so as to permit the selected local authorities participating in the trailblazer programme to provide direct payments so that recipients may purchase long-term residential care from a Care Quality Commission (CQC) registered care home or nursing home provider.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Direct payments are crucial to achieving the government's aim to increase independence, choice and control for service users and their carers through allowing them the opportunity to arrange their own personalised care. They give people the freedom to design services around their specific circumstances and needs, resulting in better outcomes for both the service user and their carer.

7.4 The Law Commission report on adult social care (2011) recommended that the Government introduce direct payments for residential care to enable people who require this type of care to have the same choice and control as other people with direct payments in community settings.¹

7.3 The Government committed in the White Paper *Caring for our Future (2012)*² to test the use of direct payments in residential care, in response to the Law Commission recommendation. Following the publication of the White Paper, in August 2012 the Government published an expression of interest for local authorities interested in taking part in the direct payments in residential care scheme.

7.4 24 local authorities replied to the expression of interest, and following an independent sifting exercise, 20 sites were selected to go forward (since the sift, two sites have withdrawn from the scheme). The Department of Health, in conjunction with the Social Care Institute for Excellence (SCIE) has set up the trailblazer programme.

7.5 In July 2013, the consultation document, *Caring for our Future: consultation on reforming what and how people pay for their care and support*³ noted that due to the implications of social care funding reform, the Government intends to allow direct payments for residential care from April 2016.

7.6 It is intended that subject to the successful passage of the Care Bill (currently before the House of Lords) regulations implementing this nationally will be produced under powers contained in that Bill. It is therefore intended that the selected local authorities will capture learning and inform best practice guidance. The programme will be independently evaluated. This learning will inform how this policy is implemented nationally.

¹ The Law Commission Report – Adult Social Care. Recommendation 35: Direct payments should be extended to cover residential accommodation. 10 May 2011.

<http://lawcommission.justice.gov.uk/publications/1460.htm>

² Caring for Our Future White Paper – 11 July 2012.

<https://www.gov.uk/government/publications/caring-for-our-future-reforming-care-and-support>

³ Caring for our future: consultation on reforming what and how people pay for their care and support – 18 July 2013, <https://www.gov.uk/government/consultations/caring-for-our-future-implementing-funding-reform>

8. Consultation outcome

8.1 The issue of direct payments in residential care was included in the 2011 Caring for our Future engagement exercise, and gained the general support of respondents. In addition, the Department of Health has established a steering group consisting of social care sector partners to provide guidance for the trailblazer programme.

9. Guidance

9.1 No guidance will be issued for the amended regulations, however, there is existing direct payments guidance for community based direct payments (*Direct Payments Guidance 2009*). Guidance on direct payments has been available to local authorities since they were first introduced in 1997 and has been updated and expanded as their use has developed and increased. A guide for service users receiving or deciding whether to receive direct payments has also been published and an easy-read version produced. The trailblazer local authorities will also be supported throughout the duration of the programme by the Department of Health and SCIE.

10. Impact

10.1 An impact assessment has not been prepared for this instrument as it relates solely to councils involved in the 'trailblazer' programme. However, the programme was outlined in the impact assessment that accompanied the *Caring for our Future White Paper*⁴. Furthermore, no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

11.1 This instrument applies only to those councils taking part in the trailblazer programme and will have no bearing on the regulation of existing small businesses.

12. Monitoring and review

12.1 Councils involved in the trailblazer programme will monitor and review the work they undertake as with community based direct payments. There will also be an independent evaluation of the programme to draw out best practice and advice for the government.

13. Contact

Kevin Kitching at the Department of Health (Tel: 0113 25 46745 or email: Kevin.kitching@dh.gsi.gov.uk) can answer any queries regarding the instrument.

⁴ Impact assessment annex B – independence, choice and control. Available from: <https://www.gov.uk/government/publications/caring-for-our-future-reforming-care-and-support>