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WELSH STATUTORY INSTRUMENTS

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**2011 No. 831**

**The Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011**

**Title, commencement and application**

1.—(1) The title of these Regulations is the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011 and they come into force on 11 April 2011.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2. In these Regulations—

“the 1983 Act” (“*Deddf 1983*”) means the Mental Health Act 1983(1);

“the 1989 Act” (“*Deddf 1989*”) means the Children Act 1989;

“the 1990 Act” (“*Deddf 1990*”) means the National Health Service and Community Care Act 1990(2);

“the 2001 Act” (“*Deddf 2001*”) means the Health and Social Care Act 2001;

“chargeable service” (“*gwasanaeth y caniateir codi ffioedd amdano*”) has the meaning set out in section 13 of the Social Care Charges (Wales) Measure 2010(3);

“direct payment” (“*taliad uniongyrchol*”) has the meaning given in regulation 8 or 9;

“prescribed person” (“*person rhagnodedig*”) means a person falling within the description prescribed by regulation 3 or 5 who falls within section 57(2) of the 2001 Act or section 17A(2) of the 1989 Act;

“P” means a person falling within the description prescribed by regulation 4 who falls within subsection (2)(a) of section 57 of the 2001 Act and subsection (5A)(4) of that section or is reasonably believed by the responsible authority(5) to fall within that subsection;

“relevant service” (“*gwasanaeth perthnasol*”) means —

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(1) 1983 c. 20.

(2) 1990 c. 19.

(3) 2010 *nawm* 2. Section 13(2) contains the list of chargeable services which are —

(a) a service provided under section 29 of the National Assistance Act 1948 (c. 29) unless the service is one for which payment may be required under section 22 or 26 of that Act;

(b) a service provided under section 45(1) of the Health Services and Public Health Act 1968 (c. 46);

(c) a service provided under Schedule 15 to the National Health Service (Wales) Act 2006 (c. 42);

(d) a service provided under paragraph 1 of Part II of Schedule 9 to the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) unless the service is one for which payment may be required under section 22 or 26 of the National Assistance Act 1948;

(e) a service provided under section 2 of the Carers and Disabled Children Act 2000 (c. 16) unless the service is provided in the form of residential care.

The Welsh Ministers may, by order, amend the list of services prescribed by section 13(2).

(4) Section 57A of the Act was inserted by section 146(6) of the 2008 Act.

(5) See section 57(2) of the Act for the definition of “responsible authority”.

- (a) in the case of direct payments under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act—
    - (i) a community care service within the meaning of section 46 of the 1990 Act<sup>(6)</sup>,
    - (ii) a service under section 2 of the Carers and Disabled Children Act 2000 (services for carers)<sup>(7)</sup>, or
    - (iii) a service which the responsible authority<sup>(8)</sup> may provide in exercise of functions under section 17 of the 1989 Act <sup>(9)</sup> (provision of services for children in need, their families and others); or
  - (b) in the case of direct payments under section 57(1A) of the 2001 Act, a community care service within the meaning of section 46 of the 1990 Act;
- “S” is the suitable person referred to in regulation 9(1).

**Prescribed descriptions of persons under section 57(1) of the 2001 Act – community care services and services for carers**

3. For the purposes of section 57(1) of the 2001 Act, a person is of a prescribed description if he or she is—

- (a) a person who appears to the responsible authority to be capable of managing a direct payment by himself or herself, or with such assistance as may be available to him or her;
- (b) not a person who falls, or is reasonably believed by the responsible authority to fall within section 57(5A) of the 2001 Act; and
- (c) not a person to whom Schedule 1 applies.

**Prescribed descriptions of persons under section 57(1A) of the 2001 Act – community care services**

4. For the purposes of section 57(1A) of the 2001 Act a person is of a prescribed description if they are not a person to whom Schedule 1 applies.

**Prescribed descriptions of persons under section 17A(1) of the 1989 Act – children’s services**

5. For the purposes of section 17A(1) of the 1989 Act, a person is of a prescribed description if he or she is—

- (a) a person who appears to the responsible authority to be capable of managing a direct payment by himself or herself or with such assistance as may be available to him or her; and
- (b) not a person to whom Schedule 1 applies.

**Persons prescribed as representatives**

6. For the purposes of section 57(5B) of the 2001 Act, a person is prescribed as a representative in relation to another person if they are—

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(6) Section 46 was amended by paragraph 14 of Schedule 10 to the Local Government (Wales) Act 1994 (c. 19) and by paragraphs 128 and 129 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c. 43).

(7) 2000 c. 16.

(8) See section 17A(2) of the Children Act 1989 (c. 41) for the definition of “responsible authority”.

(9) Section 17 was amended by section 7(1) and (2) of the Children (Leaving Care) Act 2000 (c. 35), by paragraphs 15 and 16 of Schedule 3 to the Tax Credits Act 2002 (c. 21) and by section 116(1) of the Adoption and Children Act 2002 (c. 38), by section 53(1) of the Children Act 2004 (c. 31), by paragraph 6 of Schedule 3 to the Welfare Reform Act 2007 (c. 5), by section 24 of the Children and Young Persons Act 2008 (c. 23), paragraph 1 of Schedule 1, paragraphs 1 and 2 of Schedule 3 and by Schedule 4 to that Act.

- (a) a deputy appointed for that other person by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005(10); or
- (b) a donee of a lasting power of attorney within the meaning of section 9 of the Mental Capacity Act 2005 created by that other person.

### **Prescribed powers for surrogates**

7. For the purposes of section 57(5C) of the 2001 Act (which provides that a “surrogate” (“*lladmerydd*”), in relation to a person, means a person listed in that provision whose powers consist of or include such powers as may be prescribed), the prescribed powers are powers relating to decisions about securing the provision of a community care service within the meaning of section 46 of the 1990 Act.

### **Direct payments under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act**

- 8.—(1) If the conditions in paragraph (2) are satisfied, a responsible authority—
- (a) may, with that person’s consent, make in respect of a prescribed person such payments under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act as are determined in accordance with regulation 10 (“direct payments”) (“*taliadau uniongyrchol*”) in respect of the prescribed person securing the provision of a relevant service which the person is obliged to receive as a result of an obligation imposed under an enactment mentioned in Schedule 2;
  - (b) may, with that person’s consent, make in respect of a prescribed person 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 who is a patient who has been conditionally discharged under section 193(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003(11), direct payments in respect of the prescribed person securing the provision of a relevant service; and
  - (c) in all other cases must, with that person’s consent, make in respect of a prescribed person direct payments in respect of the prescribed person securing the provision of a relevant service.
- (2) The conditions referred to in paragraph (1) are that the responsible authority is satisfied—
- (a) that the person’s need 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 as defined in paragraph (a)(iii) of the definition of that term in regulation 2 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.

### **Direct payments under section 57(1A) of the 2001 Act**

9.—(1) The responsible authority must take the steps in paragraph (2) before it may be satisfied that it is appropriate for a payment under section 57(1A) of the 2001 Act to be made to a suitable person (“S”) in respect of S securing the provision of a relevant service for a person falling within the description prescribed by regulation 4 (“P”).

- (2) The steps referred to in paragraph (1) are that the responsible authority must—
- (a) so far as is reasonably practicable and appropriate, consult and take into account the views of—

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(10) 2005 c. 9.  
(11) 2003 asp 13.

- (i) anyone named by P as someone to be consulted on the matter of whether a payment should be made to S for the purpose of securing provision for P of a relevant service or on matters of that kind,
  - (ii) anyone engaged in caring for P or interested in P's welfare, and
  - (iii) any representative or surrogate of P<sup>(12)</sup>;
- (b) so far as is reasonably ascertainable, consider—
  - (i) P's past and present wishes and feelings (and, in particular, any relevant written statement made by P when P had capacity, within the meaning of the Mental Capacity Act 2005<sup>(13)</sup>, to consent to the making of direct payments),
  - (ii) the beliefs and values that would be likely to influence P's decision if P had such capacity, and
  - (iii) the other factors that P would be likely to consider if P were able to do so;
- (c) obtain an enhanced criminal record certificate issued under section 113B of the Police Act 1997<sup>(14)</sup>—
  - (i) in respect of S where S is an individual and is neither a person mentioned in paragraph (3) nor a friend of P who is involved in the provision of care for P, and
  - (ii) where S is a body corporate or an unincorporated body of persons, in respect of the individual who will, on behalf of that body, have overall responsibility for the day-to-day management of P's direct payments,
 such certificate to include suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act<sup>(15)</sup>).
- (3) The persons referred to in paragraph (2)(c)(i) are—
  - (a) the spouse or civil partner of P;
  - (b) a person who lives with P as if their spouse or civil partner;
  - (c) a person who is P'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 or civil partner of any person specified in sub-paragraph (c); and
  - (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner.

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(12) See section 57(5B) of the 2001 Act and regulation 6 for the definition of "representative". See section 57(5C) of the 2001 Act and regulation 7 for the definition of "surrogate".

(13) 2005 c. 9. See section 1 of that Act for the key principles applying to decisions and actions taken under that Act, including the presumption of capacity. See section 2 of that Act for the definition of a person who lacks capacity.

(14) 1997 c. 50. Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15) and was amended by paragraph 14 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47), by paragraph 149 of Schedule 16 to the Armed Forces Act 2006 (c. 52), by sections 79(1) and 80 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) and by S.I. 2009/203.

(15) Inserted by the Safeguarding and Vulnerable Groups Act 2006 (c. 47); sub-section (2)(d) was amended by the Policing and Crime Act 2009 (c. 26), section 81(2) and (3)(h).

(4) Where, having taken the steps in paragraph (2), the responsible authority is satisfied of the matters listed in paragraph (5), the responsible authority —

- (a) may, with the requisite consent<sup>(16)</sup>, make such payments under section 57(1A) of the 2001 Act as are determined in accordance with regulation 11 (“direct payments”) (“*taliadau uniongrychol*”) to S in respect of S securing the provision of a relevant service for P which P is obliged to receive as a result of an obligation imposed under an enactment mentioned in Schedule 2;
  - (b) in a case where there is in force, in respect of P, 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 in a case where P is a patient who has been conditionally discharged under section 193(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003, may, with the requisite consent, make direct payments to S in respect of S securing the provision of a relevant service for P; and
  - (c) in all other cases must, with the requisite consent, make direct payments to S in respect of S securing the provision of a relevant service for P.
- (5) The matters referred to in paragraph (4) are that—
- (a) P’s need for the relevant service can be met by securing the provision of it by means of a direct payment;
  - (b) S—
    - (i) will act in the best interests, within the meaning of the Mental Capacity Act 2005<sup>(17)</sup>, of P when securing the provision of services in respect of which the direct payment is made, and
    - (ii) appears to be capable of managing a direct payment by himself or herself or with such assistance as may be available to him or her, and
  - (c) in all the circumstances it is appropriate for a direct payment to be made to S.

**Amount and payment of direct payments under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act**

**10.**—(1) Subject to paragraphs (5) and (6), a direct payment under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act will be made as a gross payment<sup>(18)</sup> unless the responsible authority decides it will be made as a net payment<sup>(19)</sup>.

(2) Subject to paragraphs (3) and (8), for the purpose of making the payment referred to in paragraph (1), the responsible authority must determine, having regard to the prescribed person’s means, what amount or amounts (if any) it is reasonably practicable for the prescribed person to pay towards securing the provision of the relevant service (whether by way of reimbursement as mentioned in section 57(4) of the 2001 Act or by way of a contribution as mentioned in section 57(5) of that Act).

- (3) Paragraphs (2), (5) and (8) do not apply to a prescribed person who—
- (a) falls within the description prescribed by regulation 3; and
  - (b) is, or will be, securing the provision of a chargeable service,
- but paragraph (4) has effect in respect of such a person.

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<sup>(16)</sup> See section 57(1B) of the 2001 Act for the definition of “requisite consent”. Section 57(1B) was inserted by section 146(2) of the Health and Social Care Act 2008 (c. 14).

<sup>(17)</sup> 2005 c. 9. See section 4 of that Act for the best interests principle.

<sup>(18)</sup> See section 57(4) of the 2001 Act, as amended by section 146(4) of the 2008 Act, for the definition of “gross payment”.

<sup>(19)</sup> See section 57(5) of the 2001 Act, as amended by section 146(5) of the 2008 Act, for the definition of “net payment”.

(4) For the purposes of making the payment referred to in paragraph (1), the responsible authority must determine what amount or amounts (if any) it is reasonably practicable for the prescribed person to pay towards securing the provision of a chargeable service (whether by way of reimbursement as mentioned in section 57(4) of the 2001 Act or by way of contribution as mentioned in section 57(5) of that Act) in accordance with the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011.

(5) Where the relevant service is one which, apart from these Regulations, would be provided under section 117 of the 1983 Act (after-care)—

- (a) the payment is to be made at the rate mentioned in subsection (4)(a) of section 57 of the 2001 Act; and
- (b) subsection (4)(b) of that section does not apply.

(6) Where a direct payment is made to a person falling within section 17A(5) of the 1989 Act—

- (a) the payment is to be made at the rate mentioned in subsection (4)(a) of section 57 of the 2001 Act; and
- (b) subsection (4)(b) of that section does not apply.

(7) The payment referred to in paragraph (1) may be made to—

- (a) the prescribed person; or
- (b) a person nominated by the prescribed person to receive the payment on their behalf.

(8) For the purpose of making a direct payment under section 57(1) of the 2001 Act in respect of the prescribed person securing the provision of residential accommodation, the responsible authority may make the determination referred to in paragraph (2) irrespective of the means of the prescribed person.

#### **Amount and payment of direct payments under section 57(1A) of the 2001 Act**

**11.—**(1) Subject to paragraph (5), a direct payment under section 57(1A) of the 2001 Act will be made to S as a gross payment unless the responsible authority decides it will be made as a net payment.

(2) Subject to paragraphs (3) and (6), for the purpose of making the payment referred to in paragraph (1), the responsible authority must determine, having regard to P's means, what amount or amounts (if any) it is reasonably practicable for P to pay towards securing the provision of the relevant service (whether by way of reimbursement as mentioned in section 57(4) of the 2001 Act or by way of a contribution as mentioned in section 57(5) of that Act).

(3) Paragraphs (2), (5) and (6) do not apply to P where P is a person—

- (a) who falls within the description prescribed by regulation 4; and
- (b) for whom provision of a chargeable service is or will be secured,

but paragraph (4) applies in respect of such a person.

(4) For the purposes of making the payment referred to in paragraph (1), the responsible authority must determine what amount or amounts (if any) it is reasonably practicable for P to pay towards securing the provision of a chargeable service (whether by way of reimbursement as mentioned in section 57(4) of the 2001 Act or by way of contribution as mentioned in section 57(5) of that Act) in accordance with the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011.

(5) Where the relevant service is one which, apart from these Regulations, would be provided under section 117 of the 1983 Act (after-care)—

- (a) the payment is to be made at the rate mentioned in subsection (4)(a) of section 57 of the 2001 Act; and

(b) subsection (4)(b) of that section does not apply.

(6) For the purpose of making the payment referred to in paragraph (1) in respect of the person securing the provision of residential accommodation, the responsible authority, in making the determination referred to in paragraph (2), may do so irrespective of P's means.

**Conditions in respect of direct payments under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act**

**12.**—(1) A direct payment under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act is subject to the condition that the service in respect of which it is made must not be secured from a person mentioned in paragraph (2) unless the responsible authority is satisfied that securing the service from such a person is necessary—

- (a) in the case of a relevant service as defined in paragraph (a)(i) or (ii) of the definition of that term in regulation 2, to meet satisfactorily the prescribed person's need for that service; or
- (b) in the case of a relevant service as defined in paragraph (a)(iii) of the definition of that term in regulation 2, for promoting the welfare of the child in respect of whom the service is needed.

(2) The persons referred to in paragraph (1) are—

- (a) the spouse or civil partner of the prescribed person;
- (b) a person who lives with the prescribed person as if their spouse or civil partner;
- (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 or civil partner of any person specified in sub-paragraph (c) who lives in the same household as the prescribed person; and
- (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner.

(3) Paragraphs (2)(c)(ii) and (iii) do not apply in the case of a person mentioned in section 17A(2)(c) of the 1989 Act.

(4) A responsible authority may make a direct payment under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act subject to such other conditions (if any) as it considers appropriate.

(5) The conditions referred to in paragraph (4) may, in particular, require that the payee—

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

**Conditions in respect of direct payments under section 57(1A) of the 2001 Act**

**13.**—(1) A direct payment under section 57(1A) of the 2001 Act is subject to the conditions in paragraph (2).

- (2) The conditions referred to in paragraph (1) are that—
- (a) the service in respect of which the direct payment is made may not be secured from a person mentioned in paragraph (3) unless the responsible authority is satisfied that securing the service from such a person is necessary to meet satisfactorily P’s need for that service; and
  - (b) S must —
    - (i) act in the best interests, within the meaning of the Mental Capacity Act 2005, of P when securing the provision of services in respect of which the direct payment is made,
    - (ii) provide such information to the responsible authority as that authority considers necessary in connection with the direct payment,
    - (iii) if S is an individual mentioned in regulation 9(2)(c)(i) or a body corporate or an unincorporated body of persons, obtain an enhanced criminal record certificate issued under section 113B of the Police Act 1997, which includes suitability information relating to vulnerable adults (within the meaning of section 113BB (2) of that Act), or obtain verification that a satisfactory certificate under that Act has been obtained, in respect of any person from whom a service in respect of which a direct payment is made is secured,
    - (iv) notify the responsible authority if S reasonably believes that P no longer falls within section 57(5A) of the 2001 Act, and
    - (v) use the direct payment for securing the provision for P of the services for which the payment was made.
- (3) The persons referred to in paragraph (2) are—
- (a) the spouse or civil partner of P;
  - (b) a person who lives with P as if their spouse or civil partner;
  - (c) a person living in the same household as P who is P’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 or civil partner of any person specified in sub-paragraph (c) who lives in the same household as P; and
  - (e) a person who lives with any person specified in sub-paragraph (c) as if that person’s spouse or civil partner.
- (4) A responsible authority may make a direct payment under section 57(1A) of the 2001 Act subject to such other conditions (if any) as it considers appropriate.

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

14.—(1) Subject to paragraphs (2) and (4), a direct payment may not be made in respect of a prescribed person who falls within regulation 3 or 4 for the provision to that person of residential accommodation for a period in excess of 4 weeks in any period of 12 months.



- (2) In calculating the period of 4 weeks mentioned in paragraph (1), in any 12 month period—
  - (a) an initial period in residential accommodation of less than 4 weeks (period A) will only be added to a succeeding period (period B) where period B begins within 4 weeks of the end of period A; and
  - (b) any period in residential accommodation subsequent to period B will be included in the calculation.
- (3) A direct payment may not be made in respect of a prescribed person who falls within regulation 5 for the provision of residential accommodation—
  - (a) for any single period in excess of 4 weeks; and
  - (b) for any period in excess of 120 days in any period of 12 months.
- (4) A direct payment may not be made for the provision of residential accommodation where a person—
  - (a) falls within the description of a person prescribed by regulation 3 or 4; and
  - (b) that person is or will be receiving a direct payment, or a direct payment is being or will be made in respect of that person, for the purposes of securing the provision of a chargeable service.

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

**15.**—(1) Except as provided by paragraph (2), the fact that a responsible authority makes a direct payment does not affect its functions with respect to the provision under the relevant enactment of the service to which the payment relates.

(2) Where a responsible authority makes a direct payment, it is not under any obligation with respect to the provision under the relevant enactment 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—

- (a) in the case of direct payments under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act, the payee's own arrangements; or
- (b) in the case of direct payments under section 57(1A) of the 2001 Act, the arrangements made by S.

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

#### **Repayment of direct payments**

**16.**—(1) A responsible authority which has made a direct payment may require the payment or part of the payment to be repaid where it is satisfied that—

- (a) the direct payment or part of the payment has not been used to secure the provision of the service to which it relates; or
- (b) a condition imposed under regulation 12 or 13 has not been complied with.

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

#### **Review**

**17.**—(1) A responsible authority must review the making of direct payments under section 57(1A) of the 2001 Act—

- (a) at least once within the first year of the direct payments being made;

- (b) at appropriate intervals, not exceeding twelve months, thereafter;
- (c) where the responsible authority reasonably considers, on the basis of information given by S or by any other person, that P no longer falls within section 57(5A) of the 2001 Act; and
- (d) whenever notified by any person of concerns that—
  - (i) the direct payment may not have been used to secure the provision for P of the services for which the payment was made, or
  - (ii) may mean that the responsible authority would no longer be satisfied of the matters listed in regulation 9(5)(b) or (c).

(2) A responsible authority must review the making of direct payments under section 57(1) of the 2001 Act where the responsible authority reasonably considers, on the basis of information given by any person, that P falls within section 57(5A) of that Act.

#### **Termination of direct payments under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act**

**18.**—(1) Subject to paragraph (3), a responsible authority must stop making direct payments under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act to a person if—

- (a) the person ceases to be a prescribed person; or
- (b) a condition mentioned in regulation 8(2) ceases to be met.

(2) A responsible authority may stop making the whole or part of direct payments under section 57(1) of the 2001 Act or section 17A(1) of the 1989 Act to a prescribed person if—

- (a) any condition imposed under regulation 12 or referred to in section 57(4)(b) of the 2001 Act is not complied with; or
- (b) in all the circumstances the responsible authority considers it appropriate to stop the making of direct payments.

(3) A responsible authority may continue to make direct payments to a person who ceases to satisfy regulation 3(b) who would otherwise be a prescribed person if—

- (a) the authority is reasonably satisfied that that person’s lack of capacity to consent will be temporary;
- (b) another person who appears to the responsible authority to be capable of managing a direct payment is prepared to accept and manage such payments on behalf of that person during the period of their incapacity; and
- (c) the person with whom the arrangement for the provision of the relevant service has been made agrees to accept payment for the service from the person mentioned in subparagraph (b).

#### **Termination of direct payments under section 57(1A) of the 2001 Act**

**19.**—(1) A responsible authority must stop making direct payments under section 57(1A) of the 2001 Act to S if—

- (a) the person in respect of whom the payments are made (“the beneficiary”) (“*y buddiolwr*”) ceases to—
  - (i) fall within the description of persons prescribed by regulation 4, or
  - (ii) fall within section 57(2)(a) of the 2001 Act; or
- (b) the responsible authority is no longer satisfied of any of the matters listed in regulation 9(5).

(2) Subject to paragraphs (4) and (5), a responsible authority must stop making direct payments under section 57(1A) of the 2001 Act to S if the beneficiary no longer falls within section 57(5A) of the 2001 Act or is reasonably believed by the responsible authority no longer to fall within that section.

(3) A responsible authority may stop making the whole or part of the direct payments to S if any condition imposed under regulation 13 or referred to in section 57(4)(b) of the 2001 Act is not complied with.

(4) A responsible authority may continue to make direct payments under section 57(1A) of the 2001 Act to S notwithstanding that the beneficiary ceases to fall within section 57(5A) of the 2001 Act, if—

- (a) the authority is reasonably satisfied that the beneficiary's capacity to consent to the making of direct payments will be temporary; and
- (b) the direct payments are made subject to the additional condition that S will allow the beneficiary to manage the direct payments themselves for any period in respect of which the responsible authority is satisfied that the beneficiary has capacity to consent to the making of direct payments and is capable of managing such payments.

(5) Where paragraph (2) applies and a responsible authority reasonably believes that the beneficiary's capacity to consent is not temporary, before terminating payments under section 57(1A), the authority must consult the beneficiary with regard to whether the beneficiary consents to the making of direct payments under section 57(1) of the 2001 Act.

(6) Subject to paragraph (7), direct payments under section 57(1A) may not be terminated under paragraph (2) until direct payments under section 57(1) of the 2001 Act are made where, in accordance with paragraph (5), the beneficiary consents to direct payments under section 57(1) of the 2001 Act, if the beneficiary—

- (a) is a prescribed person;
- (b) falls within section 57(2)(a) of the 2001 Act; and
- (c) the condition in regulation 8(2)(a) is met.

(7) Nothing in paragraph (6) affects the responsible authority's discretion not to make direct payments under section 57(1) of the 2001 Act under regulation 8(1)(a) or (b).

### **Revocation**

**20.** The instruments specified in column 1 of Schedule 3 to these Regulations are revoked to the extent specified in column 3 of that Schedule.

*Gwenda Thomas*  
Deputy Minister for Social Services under  
authority of the Minister for Health and Social  
Services, one of the Welsh Ministers

16 March 2011