SCOTTISH STATUTORY INSTRUMENTS

2003 No. 243

SOCIAL WORK

The Community Care (Direct Payments) (Scotland) Regulations 2003

Made - - - -	*8th May 2003*
Laid before the Scottish Parliament - - - -	*12th May 2003*
Coming into force - -	*1st June 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 12B(1)(b), (1B), (3), (4) and (6) of the Social Work (Scotland) Act 1968(**1**) and of all other powers enabling them in that behalf hereby make the following Regulations:

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Community Care (Direct Payments) (Scotland) Regulations 2003 and shall come into force on 1st June 2003.

(2) In these Regulations–

"the Act" means the Social Work (Scotland) Act 1968;

"the 1983 Act" means the Mental Health Act 1983(**2**);

"the 1984 Act" means the Mental Health (Scotland) Act 1984(**3**);

"the 1995 Act" means the Criminal Procedure (Scotland) Act 1995(**4**);

"the 1997 Regulations" means the Community Care (Direct Payments) (Scotland) Regulations 1997(**5**);

"the 2000 Act" means the Adults with Incapacity (Scotland) Act 2000(**6**);

"attorney" means a person in respect of whom a beneficiary has made a continuing power of attorney within the meaning of section 15(1) of the 2000 Act or who has become a continuing

(**1**) 1968 c. 49. Section 12B was inserted by the Community Care (Direct Payments) Act 1996 (c. 30), section 4 and was amended by the Regulation of Care (Scotland) Act 2001 (asp 8), section 70 and by the Community Care and Health (Scotland) Act 2002 (asp 5), section 7 and Schedule 2, paragraph 1. See section 90(1) for the meaning of 'regulations'. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
(**2**) 1983 (c. 20).
(**3**) 1984 (c. 36).
(**4**) 1995 (c. 46).
(**5**) S.I. 1997/693 as amended by S.S.I. 2000/183 and 2001/447.
(**6**) 2000 asp 4.

attorney by virtue of section 88(1) of, and paragraph 4 of Schedule 4 to, the 2000 Act and who has power to deal with a direct payment on behalf of the beneficiary;

"beneficiary" means a person to whom a local authority owes a duty under section 12B(1) of the Act to make a direct payment in respect of securing the provision of a service mentioned in section 12B(1)(a)(i) or (ii) of that Act;

"direct payment" means a payment under section 12B(1) of the Act;

"guardian" means a person who has become a guardian by virtue of an order made under section 58 of the 2000 Act, or by virtue of section 88(1) of, and paragraph 1 of Schedule 4 to, the 2000 Act, and who has power to deal with a direct payment on behalf of the beneficiary.

(3) These Regulations extend to Scotland only.

Description of persons specified for the purposes of section 12B(1) of the Act

2. The description of persons specified for the purposes of subsection (1) of section 12B of the Act (persons who are not eligible for any direct payment) is–

(a) a person who does not fall within paragraph (b), of the definition of 'persons in need' in section 94(1) of the Act (interpretation);

(b) a person who appears to a local authority to be incapable of managing a direct payment, with or without assistance;

(c) a person who, in the case of a service under section 22(1) (promotion of welfare of children in need) of the Children (Scotland) Act 1995(**7**), is–

(i) a child in need aged less than 16 years; or

(ii) entitled to such a service in respect of a child in need, otherwise than as a parent of, or person having parental responsibility for that child;

(d) a person who is a patient subject to after care under a community care order under section 35A (community care orders) of the 1984 Act(**8**);

(e) a person who is a patient who is absent from hospital on leave under section 27 (leave of absence from hospital) of the 1984 Act(**9**);

(f) a person who has been given a conditional discharge under section 64(2)(**10**) (right of appeal of patients subject to restriction orders) or section 68(**11**) (powers of the Scottish Ministers in respect of patients subject to restriction orders) of the 1984 Act;

(g) a person who is subject to an order of a court under sections 57(2)(a), (b), (c) or (d)(**12**), 58(1) or 58(1) and 59 of the 1995 Act or who is required to submit to treatment for that person's drug or alcohol dependency or mental condition by virtue of a requirement of a probation order in terms of sections 228 to 230(**13**) of the 1995 Act;

(h) a person who is subject to a drug treatment and testing order imposed under section 234B of the 1995 Act(**14**);

(**7**) 1995 (c. 36).
(**8**) Section 35A was inserted by the Mental Health (Patients in the Community) Act 1995 (c. 52), section 4, and was modified by the Mental Health (Patients in the Community) (Transfer from England and Wales to Scotland) Regulations 1996 (S.I. 1996/742), regulation 3 and the Schedule.
(**9**) Section 27 was amended by the Mental Health (Patients in the Community) Act 1995 (c. 52), section 6.
(**10**) Section 64 was amended by the Mental Health (Public Safety and Appeals) (Scotland) Act 1999 (asp 1), sections 1 and 2.
(**11**) Section 68 was amended by the Mental Health (Public Safety and Appeals) (Scotland) Act 1999, section 1.
(**12**) Section 57(2) was amended by the Adults with Incapacity (Scotland) Act 2000, section 88 and Schedule 5, paragraph 26.
(**13**) Section 228 was relevantly amended by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 62 and Schedule 2, paragraph 21, the Crime and Disorder Act 1998 (c. 37) section 94 and Schedule 6, paragraph 1, and by the Criminal Justice and Court Services Act 2000 (c. 43) section 74 and Schedule 7 paragraph 12.2. Section 230(1) was amended by the Adults with Incapacity (Scotland) Act 2000, section 88 and Schedule 6.
(**14**) Section 234B was inserted by the Crime and Disorder Act 1998, section 89.

(i) a person who is released on licence under section 22 of the Prisons (Scotland) Act 1989(**15**) or under section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993(**16**) and in either case is subject to a condition to submit to treatment for his mental condition or for drug or alcohol dependency;

(j) a person who is released on licence under section 37(1) of the Criminal Justice Act 1991(**17**) subject to a condition that he submits to treatment for his mental condition or for his drug or alcohol dependency;

(k) a person who is required to submit to treatment for his mental condition or drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000(**18**) or a community punishment and rehabilitation order within the meaning of section 51 of that Act(**19**);

(l) a person subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;

(m) a person who is absent from hospital with leave given in accordance with section 17 (leave of absence from hospital) of the 1983 Act;

(n) a person who is subject to after care under supervision (which expressions shall be construed in accordance with section 25A (application for supervision) of the 1983 Act(**20**));

(o) a person in respect of whom there is in force a condition imposed in accordance with section 42(2) (powers of Secretary of State in respect of patients subject to restriction orders) or 73(4) (power to discharge restricted patients) (including such a condition which has been varied in accordance with section 73(5) or 75(3)) of the 1983 Act(**21**); or

(p) a person 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(**22**).

Categories of persons specified for the purposes of section 12B(1) of the Act

3.—(1) Subject to paragraph (2) below the categories of persons specified for the purposes of section 12B(1) (persons who may give consent) of the 1968 Act are–

(a) persons having parental responsibility for a beneficiary who has not attained the age of 18 years and who is owed a duty by a local authority under subsection (1) of section 12B;

(b) an attorney;

(**15**) 1989 c. 45. Sections 22 and 26 were repealed by the Prisons and Criminal Proceedings (Scotland) Act 1993 (c. 9) ("the 1993 Act"), Schedule 7, Part I but was saved in respect of prisoners to whom the 'existing provisions' as defined in paragraph 1 of Schedule 6 to the 1993 Act apply for the purposes of that Act; paragraph 1 of Schedule 6 was amended by the Criminal Justice Act 1993 (c. 36), section 76(3) and by the Criminal Justice and Public Order Act 1994 (c. 33), ("the 1994 Act"), section 134(1)(a); section 22 was expressly included in the definition of "existing provisions" by the 1994 Act, section 134(2) and in its application to prisoners to whom the "existing provisions" specified in paragraph 1 of Schedule 6 to the 1993 Act apply, was amended by the 1994 Act, section 134(4) and (5).

(**16**) 1993 (c. 9). Section 1 was modified by S.I. 1995/911, Article 3, and relevantly amended by the Crime and Disorder Act 1998, sections 98 and 119 and Schedule 8, paragraph 98 and the Convention Rights (Compliance) (Scotland) Act 2000 asp 7, section 1.

(**17**) 1991 c. 53. Section 37(1) as relevantly amended by the Crime and Disorder Act 1998, sections 119 and 120, Schedule 8, paragraph 83 and Schedule 10, S.I. 1998/2798, article 2 and Schedule 1, paragraphs 2, 3 and 4 and the Powers of the Criminal Courts (Sentencing) Act 2000 (c. 6), section 86.

(**18**) Section 41 was relevantly amended by the Criminal Justice and Court Services Act 2000, section 43(1).

(**19**) Section 51 was relevantly amended by the Criminal Justice and Court Services Act 2000, section 45.

(**20**) Section 25A was inserted by section 1(1) of the Mental Health (Patients in the Community) Act 1991 (c. 52), was modified by S.I. 1996/295, regulation 2 and Schedule and was amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 2(5) and Schedule 2 paragraph 43.

(**21**) Section 73 was relevantly amended by S.I. 2001/3712, article 4 and the Criminal Justice and Court Services Act 2000, section 10 and Schedule 7, paragraph 101.

(**22**) 1991 c. 25.