WELSH STATUTORY INSTRUMENTS

2004 No. 1748 (W.185)

SOCIAL SERVICES, WALES

The Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004

Made - - - -	*8 July 2004*
Coming into force - -	*1 November 2004*

The National Assembly for Wales, in exercise of powers conferred by sections 57(1), (3), (6) and (7) and 64(6) and (8) of the Health and Social Care Act 2001(**1**) and sections 17A(1), (3) and (4) and 104(4) of the Children Act 1989(**2**) hereby makes the following Regulations:

Citation, commencement and application

1. These Regulations —

(a) may be cited as the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004;

(b) come into force on 1 November 2004;

(c) apply only in relation to Wales.

Interpretation

2.—(1) In these Regulations —

"the 1983 Act" ("*Deddf 1983*") means the Mental Health Act 1983(**3**);

"the 1984 Act" ("*Deddf 1984*") means the Mental Health (Scotland) Act 1984(**4**);

"the 1989 Act" ("*Deddf 1989*") means the Children Act 1989;

(**1**) 2001 c. 15. Section 66 of the 2001 Act defines "regulations" as "regulations made by the relevant authority", and "relevant authority" as the National Assembly for Wales in relation to Wales (and the Secretary of State in relation to England). *See* section 57(8) of the 2001 Act for the definition of "prescribed".

(**2**) 1989 c. 41. Section 17A of the 1989 Act was substituted by section 58 of the 2001 Act. The power to make regulations under section 17A is conferred upon the Secretary of State. By virtue of section 68(1) of the 2001 Act, the reference to the 1989 Act in the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) shall be treated as a reference to that Act as amended by the 2001 Act. Accordingly, the powers of the Secretary of State under section 17A of the 1989 Act so far as exercisable in relation to Wales are exercisable by the Assembly: *see* Article 2(a) of, and the entry in respect of the 1989 Act in Schedule 1 to, the 1999 Order. *See* section 17A(6) of the 1989 Act for the definition of "prescribed".

(**3**) 1983 c. 60.

(**4**) 1984 c. 36.

"the 1995 Act" ("*Deddf 1995*") means the Criminal Procedure (Scotland) Act 1995(**5**);

"the 2000 Act" ("*Deddf 2000*") means the Powers of Criminal Courts (Sentencing) Act 2000(**6**);

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

"the 2003 Regulations" ("*Rheoliadau 2003*") means the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003(**7**);

"direct payment" ("*taliad uniongyrchol*") shall be construed in accordance with regulation 5;

"prescribed person" ("*person rhagnodedig*") means a person falling within the description prescribed by regulation 3 or (as the case may be) 4;

"relevant service" ("*gwasanaeth perthnasol*") has the meaning given by regulation 5(2); and

"responsible authority" ("*awdurdod cyfrifol*") shall be construed in accordance with section 57(2) of the 2001 Act or (as the case may be) section 17A(2) of the 1989 Act(**8**).

(2) In these Regulations—

(a) a reference to a numbered regulation or Schedule is to the regulation in, or the Schedule to, these Regulations bearing that number;

(b) a reference in a regulation or a Schedule to a numbered paragraph is a reference to the paragraph bearing that number in that regulation or that Schedule;

(c) a reference in a paragraph to a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in that paragraph.

Prescribed descriptions of persons — community care services and services for carers

3.—(1) For the purposes of section 57(1) of the 2001 Act, a person falling with section 57(2) of that Act(**9**) is of a prescribed description if—

(a) he or she is 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) he or she falls within a description in paragraph (2); unless

(c) he or she is a person to whom Schedule 1 applies.

(2) The descriptions are —

(a) a person to whom section 29 of the National Assistance Act 1948(**10**) applies;

(b) a person (not being a person falling within sub-paragraph (a)) referred to in section 57(2)(a) of the 2001 Act (persons in respect of whom a local authority have decided his or her needs call for the provision of a particular community care service) who is aged over 65;

(**5**) 1995 c. 46.
(**6**) 2000 c. 6.
(**7**) S.I. 2003/762.
(**8**) Under section 57(2) of the Health and Social Care Act 2001 and section 17A(2) of the Children Act 1989, the "responsible authority" in relation to a prescribed person is the local authority that has decided: (i) that his or her needs call for the provision by them of a particular community care service; (ii) to provide him or her with services by virtue of section 2(1) of the Carers and Disabled Children Act 2000; or (iii) that the needs of a disabled child call for the provision of services to the prescribed person under section 17 of the Children Act 1989.
(**9**) A person falls within section 57(2) of the 2001 Act if the responsible authority has decided: (i) that his or her needs call for the provision by them of a particular community care service; or (ii) to provide him or her with a particular service by virtue of section 2(1) of the Carers and Disabled Children Act 2000.
(**10**) 1948 c. 47. Section 29 applies to "persons aged eighteen or over who are blind, deaf or dumb or who suffer from mental disorder of any description, and other persons aged eighteen or over who are substantially and permanently handicapped by illness, injury, or congenital deformity or such other disabilities as may be prescribed…".

(c) a person in respect of whom the responsible authority has decided under section 2(1) of the Carers and Disabled Children Act 2000 (services for carers) to provide him or her with a particular service under that Act.

Prescribed descriptions of persons — children's services

4. For the purposes of section 17A(1) of the 1989 Act, a person falling within section 17A(2) of that Act(**11**) is of a prescribed description if —

(a) he or she is 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; unless

(b) he or she is a person to whom Schedule 1 applies.

Duty to make direct payments

5.—(1) If the conditions in paragraph (3) are satisfied, a responsible authority must make in respect of —

(a) a prescribed person under regulation 3 who falls within paragraph (2)(a) or (c) of that regulation;

(b) at 1 March 2005 and thereafter, a prescribed person under regulation 3 who falls within paragraph (2)(b) of that regulation; and

(c) a prescribed person under regulation 4;

such payments ("direct payments") as are determined in accordance with regulation 6 in respect of his or her securing the provision of a relevant service.

(2) In these Regulations a relevant service means —

(a) a community care service within the meaning of section 46 of the National Health Service and Community Care Act 1990(**12**); or

(b) a service under section 2 of the Carers and Disabled Children Act 2000(**13**); or

(c) a service which may be provided in the exercise of functions under section 17 of the 1989 Act (provision of services for children in need, their families and others).

(3) The conditions are that —

(a) the responsible authority are satisfied that the person's needs 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 mentioned in paragraph (2)(c), the responsible authority are satisfied that the welfare of the child in respect of whom the service is needed will be safeguarded or promoted by securing the provision of it by means of a direct payment.

Amount and payment of direct payments

6.—(1) Subject to paragraphs (3) and (4), a direct payment shall be made as a gross payment(**14**) unless the responsible authority decide it shall be made as a net payment(**15**).

(2) For the purpose of making the payment referred to in paragraph (1), the responsible authority shall determine, having regard to the prescribed person's means, what amount or amounts (if any) it

(**11**) A person falls within section 17A(2) of the 1989 Act if he or she is: (a) a person with parental responsibility for a disabled child; (b) a disabled person with parental responsibility for a child; or (c) a disabled child aged 16 or 17;
(**12**) 1990 c. 19.
(**13**) 2000 c. 16.
(**14**) *See* section 57(4) of the 2001 Act for the definition of "gross payments".
(**15**) *See* section 57(5) of the 2001 Act for the definition of "net payments".

is reasonably practicable for him or her 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)(**16**).

(3) 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 shall 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 shall not apply.

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

(a) the payment shall be made at the rate mentioned in subsection (4)(a) of section 57 of the 2001 Act(**18**); and

(b) subsection (4)(b) of that section(**19**) shall not apply.

(5) A direct payment may be paid to —

(a) the prescribed person; or

(b) a person nominated by him or her to receive the payment on his or her behalf.

Conditions in respect of direct payments

7.—(1) A direct payment shall be subject to the condition that the service in respect of which it is made shall not be secured from a person mentioned in paragraph (2) unless —

(a) in the case of a relevant service mentioned in regulation 5(2)(a) or (b), the responsible authority are satisfied that securing the service from such a person is necessary to meet satisfactorily the prescribed person's need for that service;

(b) in the case of a relevant service mentioned in regulation 5(2)(c), the responsible authority are satisfied that securing the service from such a person is necessary for promoting the welfare of the child in need.

(2) The persons are —

(a) the spouse of the prescribed person;

(b) a person who lives with the prescribed person as if his or her spouse;

(c) a person living in the same household as the prescribed person who is his or her —

(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;

(**16**) Section 17A(3) of the 1989 Act applies sections 57(3) to (5) and (7) of the 2001 Act to regulations made under section 17A of the 1989 Act.

(**17**) A person falls within section 17A(5) if he or she has parental responsibility for a disabled child aged 16 or 17 or is a disabled person with parental responsibility for a child of that age or is in receipt of income support, working families tax credit or disabled person's tax credit.

(**18**) The rate mentioned in section 57(4)(a) is such rate as the authority estimate to be equivalent to the reasonable cost of securing the provision of the service concerned.

(**19**) Section 57(4)(b) permits an authority to make gross direct payments subject to the condition that the payee pays to the authority, by way of reimbursement, an amount or amounts determined under the regulations.

(d) the spouse of any person falling within sub-paragraph (c) who lives in the same household as the prescribed person; and

(e) a person who lives with any person falling within sub-paragraph (c) as if that person's spouse.

(3) Paragraph (2)(c)(ii) and (iii) do not apply in the case of a person mentioned in section 17A(2)(c) of the 1989 Act(**20**).

(4) A responsible authority may make a direct payment subject to such other conditions (if any) as they think fit.

(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;

(b) must provide such information to the responsible authority as they consider necessary in connection with the direct payment.

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

8.—(1) Subject to paragraph (2), a direct payment may not be made in respect of a prescribed person who falls within regulation 3(1) for the provision to him or her 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) shall 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 shall be included in the calculation.

(3) A direct payment may not be made in respect of a prescribed person who falls within regulation 4 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.

Displaced functions and obligations of the responsible authority

9.—(1) Except as provided by paragraph (2), the fact that a responsible authority makes a direct payment shall not affect their 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, they shall not be under any obligation with respect to the provision under the relevant enactment of the service to which the payment relates as long as they are satisfied that the need which calls for the provision of the service will be met by the payee's own arrangements.

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

Repayment of direct payments

10.—(1) Where a responsible authority which has made a direct payment is satisfied, in relation to the whole or any part of the payment —

(**20**) A disabled child aged 16 or 17 is the person mentioned in section 17A(2)(c).