Draft Regulations laid before Parliament under section 49(1) of the Welfare Reform Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

DISABLED PERSONS, ENGLAND

The Disabled People's Right to Control (Pilot Scheme) (England) Regulations 2010

*Made - - - - *** 2010*
Coming into force in accordance with regulation 1(2) and (3)

These Regulations are made in exercise of the powers conferred on the Secretary of State by sections 41, 44, 45(2), 46 and 50 of the Welfare Reform Act 2009(**1**).

These Regulations are made for the purpose mentioned in section 38 of that Act and with a view to ascertaining the matters mentioned in section 44(2)(a) to (c) of that Act.

In accordance with section 47(1) of that Act the Secretary of State published a draft of these Regulations and invited representations to be made to the Secretary of State about the draft, by persons appearing to the Secretary of State to be affected by the Regulations, during the period 25th February to 19th May 2010.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 49(1) of that Act.

The Secretary of State with the consent of the Treasury(**2**) makes the following Regulations:

Citation, commencement, duration and extent

1.—(1) These Regulations may be cited as the Disabled People's Right to Control (Pilot Scheme) (England) Regulations 2010.

(2) Subject to paragraph (3), these Regulations come into force on 13th December 2010.

(3) In relation to the pilot areas—

(a) referred to in regulation 3(b) and (k), these Regulations come into force on 1st March 2011; and

(**1**) 2009 c. 24. Section 50 provides that 'prescribed' means specified in, or determined in accordance with, regulations under section 41 of that Act.
(**2**) The consent of the Treasury is required by section 45(3)(a) of the Welfare Reform Act 2009.

(b) referred to in regulation 3(c), (g), (i), (l) and (m), these Regulations come into force on 1st April 2011.

(4) These Regulations cease to be in force on 13th December 2012 ("the expiry date"), but this is subject to regulation 22 and to paragraph 11 of Schedule 2.

(5) These Regulations extend to England and Wales.

(6) These Regulations apply to England only.

Interpretation

2.—(1) In these Regulations—

"direct payment" is to be read in accordance with regulations 14 and 15;

"expiry date" has the meaning given by regulation 1(4);

"pilot area" means an area listed in regulation 3;

"principal local authority" means—

(a) a county council,

(b) the council of any district comprised in an area for which there is no county council,

(c) a London borough council,

(d) the Common Council of the City of London in its capacity as a local authority, or

(e) the Council of the Isles of Scilly;

"qualifying service" has the meaning given by regulation 4;

"relevant authority", in relation to a right to control service, means the relevant authority as defined in section 40 of the Welfare Reform Act 2009 that is responsible for providing or arranging the provision of the service;

"representative" has the meaning given by regulation 5(1);

"the responsible authority" is to be read in accordance with regulation 6(2)(b);

"right to control service" means—

(a) a qualifying service,

(b) community care services,

(c) financial assistance provided by the Independent Living Fund (2006) established by a deed dated 10th April 2006, or

(d) grants under Chapter 1 of Part 1 of the Housing Grants, Construction and Regeneration Act 1996(**3**);

"support plan" means—

(a) in relation to a qualifying service, a support plan developed in accordance with regulation 8 or 9, and

(b) in relation to a right to control service which is not a qualifying service, a support plan developed in relation to that right to control service;

"surrogate" has the meaning given by regulation 5(2).

(2) In these Regulations, references to a person lacking capacity are to be read in accordance with the Mental Capacity Act 2005(**4**).

(**3**) 1996 c. 53.
(**4**) 2005 c. 9.

(3) Where any provision of these Regulations requires a relevant authority to inform a person in writing of any matter, that requirement is to be read as including a requirement so far as reasonably practicable to make the information available in a format that is accessible to the person to whom the information is provided.

Pilot areas

3. The pilot areas are as follows—

(a) the London borough of Barnet;

(b) the metropolitan district of Barnsley;

(c) the metropolitan district of Bury;

(d) the non-metropolitan district of Epsom and Ewell;

(e) the county of Essex;

(f) the non-metropolitan district of Leicester;

(g) the metropolitan district of Manchester;

(h) the London borough of Newham;

(i) the metropolitan district of Oldham;

(j) the non-metropolitan district of Reigate and Banstead;

(k) the metropolitan district of Sheffield;

(l) the metropolitan district of Stockport;

(m) the metropolitan district of Trafford.

Qualifying services

4. The right to control services which are qualifying services for the purposes of these Regulations are specified in the first column of the following table and the authority which is the relevant authority providing or arranging the provision of each of those services is specified in the second column—

Qualifying service	*Relevant authority providing or arranging the provision of the service*
(1) Assistance provided under the programmes known as "Access to Work" and "Work Choice Specialist Disability Employment Programme" in pursuance of arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973(**5**).	The Secretary of State.
(2) Non-statutory assistance provided by a principal local authority for the purpose of enabling people aged 18 or over to overcome barriers to participation in society associated with their disability where— (a) the assistance is given for the purpose of developing and sustaining people's capacity to live more independently in their accommodation,	A principal local authority.

(**5**) 1973 c. 50. Section 2 of the Employment and Training Act 1973 was substituted by the Employment Act 1988 (c.19), section 25(1); subsections (4) and (6) were repealed by the Employment Act 1989 (c.38), section 29(4) and Schedule 7, Part 1. There are other amendments not relevant to these Regulations.

Qualifying service	*Relevant authority providing or arranging the provision of the service*
(b) the assistance does not include the grant of a tenancy or the provision of accommodation, (c) the assistance is not a community care service, and (d) when the assistance is first provided it appears to the principal local authority that the need for the assistance is likely to last for more than 2 years.	

Meaning of "representative" and "surrogate"

5.—(1) In these Regulations "representative", in relation to a person who lacks capacity ("P"), means—

(a) a deputy appointed for P by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 (power to appoint a deputy to make decisions on P's behalf), or

(b) a donee of a lasting power of attorney within the meaning of section 9 of that Act created by P.

(2) In these Regulations "surrogate", in relation to a person who lacks capacity, means a representative of the person whose powers, as deputy or donee, consist of or include powers relating to decisions about securing the provision of a community care service or a qualifying service.

Application of regulations 7 to 20

6.—(1) Regulations 7 to 20 apply if (and only if), in the case of an individual aged 18 or over who is resident in a pilot area, a relevant authority specified in the Table in regulation 4 has determined—

(a) that the individual is entitled to receive a qualifying service, or

(b) that it will provide a qualifying service, or arrange for a qualifying service to be provided, to the individual.

(2) In the following provisions of these Regulations—

(a) the individual concerned is referred to as "P" or, in regulation 19, "A", and

(b) the relevant authority concerned is referred to as "the responsible authority".

(3) Paragraph (1) is subject to paragraph (4).

(4) Where, immediately before the commencement of these Regulations, P is already receiving a qualifying service, regulations 7 to 20 do not apply in relation to that service unless the responsible authority and P agree that they are to apply in relation to that service as from a specified date.

Duty of responsible authority to provide information to beneficiary

7.—(1) The responsible authority must inform P in writing of—

(a) the rights and choices available by virtue of these Regulations to P in relation to the provision of the qualifying service,

(b) the likely value of the qualifying service for which P is eligible, and

(c) the existence of the other right to control services and details of the relevant authorities by which they are provided.

(2) The responsible authority must provide P with written information about organisations which provide advice and assistance in connection with the exercise of the rights available by virtue of these Regulations.

(3) The responsible authority may arrange for the information required under this regulation—

(a) to be provided by the relevant authority providing any other right to control service to P, and

(b) to be combined with similar information about the other service.

Support plan: general

8.—(1) The responsible authority must work with P to develop a support plan for P.

(2) In relation to a qualifying service specified in paragraph (2) of the Table in regulation 4, the responsible authority must where appropriate develop a support plan for P even if P, though not lacking capacity to approve a support plan, is unwilling to work with the authority to develop a support plan.

(3) The support plan must be in writing and be signed on behalf of the responsible authority.

(4) If P approves the support plan, P or a person on P's behalf must sign the plan.

(5) The responsible authority must give a copy of the support plan to P.

(6) The responsible authority may arrange for a support plan under this regulation to be combined with a support plan developed in relation to any other right to control service provided to P.

Support plan: cases where beneficiary lacks capacity to approve

9.—(1) Where P falls within paragraph (2) or is believed by the responsible authority to fall within that paragraph, the responsible authority must if possible work with a suitable person ("S") other than P to develop a support plan for P.

(2) P falls within this paragraph if P lacks capacity to approve the provisions of a support plan.

(3) Where the responsible authority works with S pursuant to subsection (1)—

(a) if S approves the support plan, S must sign the plan; and

(b) where S is not a surrogate of P and a surrogate of P approves the support plan, that surrogate must sign the plan.

(4) In developing the support plan, the responsible authority must so far as reasonably practicable and appropriate consult and take into account the views of—

(a) anyone named by P as someone to be consulted on the matter of a support plan relating to community care services,

(b) anyone engaged in caring for P or interested in P's welfare, and

(c) any surrogate or other representative of P.

(5) In developing the support plan, the responsible authority must also, so far as they are ascertainable, consider—

(a) P's past and present wishes and feelings (and, in particular, any relevant written statement made by P when P had capacity to approve a support plan),

(b) the beliefs and values that would be likely to influence P's decisions in relation to the support plan if P had such capacity, and

(c) the other factors that P would be likely to consider if P were able to do so.

(6) The responsible authority may arrange for a support plan under this regulation to be combined with a support plan developed in relation to any other right to control service provided to P.

Contents of support plan

10. The support plan must set out, in relation to the qualifying service to which it relates—