STATUTORY RULES OF NORTHERN IRELAND

2004 No. 120

HEALTH AND PERSONAL SOCIAL SERVICES

The Personal Social Services and Children's Services (Direct Payments) Regulations (Northern Ireland) 2004

Made - - - -	*16th March 2004*
Coming into operation	*19th April 2004*

The Department of Health, Social Services and Public Safety(**1**), in exercise of the powers conferred on it by Article 18C of the Children (Northern Ireland) Order(**2**) and sections 8 and 10(5) of the Carers and Direct Payments Act (Northern Ireland) 2002(**3**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Personal Social Services and Children's Services (Direct Payments) Regulations (Northern Ireland) 2004, and shall come into operation on 19th April 2004.

(2) In these Regulations –

"the Act" means the Carers and Direct Payments Act (Northern Ireland) 2002;

"the 1986 Order" means the Mental Health (Northern Ireland) Order 1986(**4**);

"direct payment" has the meaning given in regulation 2;

"relevant service" has the meaning given in regulation 2(2);

"prescribed person" means a person who is a person of a prescribed description under regulation 3 or, as the case may be, regulation 4.

Duty to make direct payments

2.—(1) If the conditions in paragraph (3) are satisfied, an authority must make in the case of a prescribed person who falls within section 8(2) of the Act, or Article 18C of the Children Order, with that persons consent, such payments to him (direct payments) as the authority may determine in accordance with regulation 5 in respect of his securing the provision of a relevant service.

(**1**) *See*S. I. 1999/283 (N.I. 1) – Article 3(6)
(**2**) S.I.1995/755 (N.I. 2) – Article 18C is inserted by section 9 of the Carers and Direct Payments Act (N.I.) 2002
(**3**) 2002 c. 6 (N.I.)
(**4**) S.I. 1986/595 (N.I. 4); Relevant amending instruments are S.I. 1994/429 (N.I. 2) and S.I. 1996/3160 (N.I. 24)

(2) In this regulation a relevant service means –

(a) a particular personal social service under the 1972 Order; or

(b) a particular service under section 2 of the Act; or

(c) a service under Article 18 of the Children Order.

(3) The conditions referred to in paragraph (1) are that –

(a) the authority is 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 authority is satisfied 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.

3.—(1) For the purposes of section 8(1) of the Act a person is of a prescribed description if –

(a) he is a person who appears to the authority to be capable of managing a direct payment by himself or with such assistance as may be available to him; and

(b) he is not a person to whom paragraph (2) applies.

(2) This paragraph applies to a person if –

(a) he is required to submit to treatment for his mental condition or for his drug or alcohol dependency by virtue of a requirement of –

(i) a probation order within the meaning of section 1 of the Probation Act (Northern Ireland) 1950(**5**); or

(ii) a combination order within the meaning of Article 15 of the Criminal Justice (Northern Ireland) Order 1996(**6**);

(b) he is received into guardianship in pursuance of a guardianship application made in accordance with Article 18 of the 1986 Order or placed under guardianship in pursuance of an order made under Article 44 of that Order;

(c) he is absent from hospital with leave given in accordance with Article 15 of the 1986 Order;

(d) in respect of whom there is in operation a condition imposed in accordance with Article 48(2) or 78(4) (including such a condition which has been varied in accordance with Article 78(5) or 80(3)) of the 1986 Order;

(e) in respect of whom there is in operation a supervision and treatment order within the meaning given by Part I of Schedule 2A to the 1986 Order(**7**).

4. For the purposes of Article 18C(1) of the Children Order a person is of a prescribed description if –

(a) he is a person who appears to the authority to be capable of managing a direct payment by himself or with such assistance as may be available to him; and

(b) he is not a person to whom paragraph (2) of regulation 3 applies.

Amount of direct payments

5.—(1) Subject to paragraph (2) a direct payment shall be made as a gross payment(**8**) unless the authority decides it shall be made as a net payment(**9**).

(**5**) 1950 c. 7; Section 1 is prospectively repealed by S.I. 1996/3160 (N.I. 24) Schedule 7 and replaced by Article 10 thereof
(**6**) S.I. 1996/3160 (N.I. 24)
(**7**) Schedule 2A was inserted by S.I. 1996/3160 (N.I. 24)
(**8**) *See* section 8(4) of the Act for the definition of "gross payments"
(**9**) *See* section 8(5) of the Act for the definition of "net payments"

(2) For the purpose of making the payment referred to in paragraph (1), the authority shall determine, having regard to the prescribed person's means, what amount (if any) it is reasonably practical for him to pay towards securing the provision of the relevant service (whether by way of reimbursement as mentioned in section 8 (4) of the Act or by way of contribution as mentioned in section 8(5) of the Act).

6. Where a direct payment is made to a person falling within Article 18C(7) of the Children Order –

(a) the payment shall be at the rate mentioned in paragraph (4)(a) of that Article; and

(b) paragraph (4)(b) of that Article shall not apply.

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 specified in paragraph (2) unless –

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

(2) The persons specified for the purposes of paragraph (1) are –

(a) the spouse of the prescribed person;

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

(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 of any person specified in sub-paragraph (c) who lives in the same household as the prescribed person;

(e) a person who lives with any person specified in 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 Article 19C(2)(c) of the Children Order.

(4) An authority may make a direct payment subject to the following conditions:

(a) that the payee shall not secure the relevant service from a particular person; and

(b) that the payee shall provide such information to the authority as it considers necessary in connection with the direct payment.