



# Health and Social Care Act 2001

## 2001 CHAPTER 15

### PART 4

#### SOCIAL CARE

##### *Direct payments*

#### 57 Direct payments

(1) Regulations may make provision for and in connection with requiring or authorising the responsible authority in the case of a person of a prescribed description who falls within [<sup>F1</sup>subsection (2A)] to make, with that person's consent, such payments to him as they may determine in accordance with the regulations in respect of his securing the provision of the service mentioned in [<sup>F2</sup>subsection <sup>F3</sup>... (2A)].

[<sup>F4</sup>(1A) Regulations may make provision for and in connection with requiring or authorising the responsible authority in the case of a person ("P") of a prescribed description—

- (a) who falls within subsection (2)(a), and
- (b) who falls within subsection (5A) or is reasonably believed by the authority to fall within that subsection,

to make, with the requisite consent, such payments as the authority may determine in accordance with the regulations to a suitable person other than P in respect of the other person's securing the provision for P of the service mentioned in subsection (2)(a).

(1B) In subsection (1A) "the requisite consent" means—

- (a) the consent of the other person; and
- (b) where the other person is not a surrogate of P but there is at least one person who is a surrogate of P, the consent also of a surrogate of P.

(1C) For the purposes of subsection (1A), a person (whether or not an individual) is "suitable" if—

- (a) that person is a representative of P;

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- (b) that person is not a representative of P (or there is no-one who is a representative of P), but—
  - (i) a surrogate of P, and
  - (ii) the responsible authority,
 consider that person to be a suitable person to receive the payments for the purpose of securing provision for P of the service concerned; or
- (c) that person is not a representative of P (or there is no-one who is a surrogate of P), and there is no-one who is a surrogate of P, but the responsible authority considers that person to be a suitable person to receive the payments for that purpose.]

<sup>F5</sup>(2) .....

[<sup>F6</sup>(2A) A person falls within this subsection if the person is under 18 and a local authority <sup>F7</sup>... have decided under section 47 of the 1990 Act that the person's needs call for the provision by them of services under section 117 of the Mental Health Act 1983 (after-care).

(2B) The local authority mentioned in [<sup>F8</sup>subsection (2A)] are referred to in this section as “the responsible authority”.]

(3) Regulations under this section may, in particular, make provision—

- (a) specifying circumstances in which the responsible authority are not required or authorised to make any payments under the regulations to a person [<sup>F9</sup>or in respect of a person], whether those circumstances relate to the person in question or to the particular service mentioned in [<sup>F10</sup>subsection (2A)];
- (b) for any payments required or authorised by the regulations to be made to a person by the responsible authority (“direct payments”) to be made to that person (“the payee”) as gross payments or alternatively as net payments;
- (c) for the responsible authority to make for the purposes of subsection (4) or (5) such determination as to—
  - (i) the payee's means [<sup>F11</sup>in the case of direct payments under subsection (1) or, in the case of direct payments under subsection (1A), the means of the person (“the beneficiary”) in respect of whom the payments are required or authorised to be made], and
  - (ii) the amount (if any) which it would be reasonably practicable for him to pay to the authority by way of reimbursement or contribution,
 as may be prescribed;
- (d) as to the conditions falling to be complied with by the payee [<sup>F12</sup>in the case of direct payments under subsection (1), or by the payee or by the beneficiary in the case of direct payments under subsection (1A),] which must or may be imposed by the responsible authority in relation to the direct payments (and any conditions which may not be so imposed);
- (e) specifying circumstances in which the responsible authority—
  - (i) may or must terminate the making of direct payments,
  - (ii) may require repayment (whether by the payee [<sup>F13</sup>in the case of direct payments under subsection (1), or by the payee or by the beneficiary in the case of direct payments under subsection (1A),] or otherwise) of the whole or part of the direct payments;

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- (f) for any sum falling to be paid or repaid to the responsible authority by virtue of any condition or other requirement imposed in pursuance of the regulations to be recoverable as a debt due to the authority;
  - (g) displacing functions or obligations of the responsible authority with respect to the provision of the service mentioned in [<sup>F14</sup>subsection (2A)] only to such extent, and subject to such conditions, as may be prescribed;
  - (h) authorising direct payments to be made to any prescribed person on behalf of the payee.
  - [<sup>F15</sup>(j) as to matters to which the responsible authority must, or may, have regard when making a decision for the purposes of a provision of the regulations;
  - (k) as to steps which the responsible authority must, or may, take before, or after, the authority makes a decision for the purposes of a provision of the regulations;
  - (l) specifying circumstances in which a person who has fallen within subsection (5A) but no longer does so (whether because of fluctuating capacity, or regaining or gaining of capacity) is to be treated, or may be treated, as falling within subsection (5A) for purposes of this section or for purposes of regulations under this section.]
- (4) For the purposes of subsection (3)(b) “gross payments” means payments—
- (a) which are made at such a rate as the authority estimate to be equivalent to the reasonable cost of securing the provision of the service concerned; but
  - (b) which may be made subject to the condition that the payee [<sup>F16</sup>in the case of direct payments under subsection (1), or the beneficiary in the case of direct payments under subsection (1A),] pays to the responsible authority, by way of reimbursement, an amount or amounts determined under the regulations.
- (5) For the purposes of subsection (3)(b) “net payments” means payments—
- (a) which are made on the basis that the payee will himself [<sup>F17</sup>in the case of direct payments under subsection (1), or the beneficiary will in the case of direct payments under subsection (1A),] pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the service concerned; and
  - (b) which are accordingly made at such a rate below that mentioned in subsection (4)(a) as reflects any such contribution by the payee [<sup>F18</sup>or (as the case may be) the beneficiary].
- [<sup>F19</sup>(5A) A person falls within this subsection if the person lacks capacity, within the meaning of the Mental Capacity Act 2005, to consent to the making of direct payments.
- (5B) In this section “representative”, in relation to a person, means such other person (whether or not an individual) as may be prescribed.
- (5C) In this section “surrogate”, in relation to a person, means—
- (a) a deputy appointed for the person by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005, or
  - (b) a donee of a lasting power of attorney created by the person,
- whose powers, as deputy or donee, consist of or include such powers as may be prescribed.]
- (6) Regulations under this section shall provide that, where direct payments are made in respect of a service which, apart from the regulations, would be provided under section 117 of the Mental Health Act 1983 (c. 20) (after-care)—

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- (a) the payments shall be made at the rate mentioned in subsection (4)(a); and
- (b) subsection (4)(b) shall not apply.

(7) Regulations made for the purposes of subsection (3)(a) may provide that direct payments shall not be made in respect of the provision of residential accommodation for any person for a period in excess of a prescribed period.

<sup>F20</sup>(7A) For the purposes of subsection (3)(d), the conditions that are to be taken to be conditions in relation to direct payments include, in particular, conditions in relation to—

- (a) the securing of the provision of the service concerned,
- (b) the provider of the service,
- (c) the person to whom payments are made in respect of the provision of the service, or
- (d) the provision of the service.]

<sup>F21</sup>(7B) . . . . .

(8) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

#### Textual Amendments

- F1** Words in s. 57(1) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **185(a)(i)**
- F2** Words in s. 57(1) substituted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), **Sch. para. 65(2)(b)** (with arts. 1(3), 3)
- F3** Words in s. 57(1) omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **185(a)(ii)**
- F4** S. 57(1A)-(1C) inserted (21.7.2008 for specified purposes, 9.11.2009 for E. in so far as not already in force, 29.3.2011 for W. in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 146(2), 170**; S.I. 2009/2567, art. 3; S.I. 2011/986, art. 3
- F5** S. 57(2) omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **185(b)**
- F6** S. 57(2A)(2B) inserted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), **Sch. para. 65(4)** (with arts. 1(3), 3)
- F7** Words in s. 57(2A) omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **185(c)**
- F8** Words in s. 57(2B) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **185(d)**
- F9** Words in s. 57(3)(a) inserted (21.7.2008 for specified purposes, 9.11.2009 for E. in so far as not already in force, 29.3.2011 for W. in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 146(3)(a), 170**; S.I. 2009/2567, art. 3; S.I. 2011/986, art. 3
- F10** Words in s. 57(3)(a) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **185(e)**
- F11** Words in s. 57(3)(c)(i) inserted (21.7.2008 for specified purposes, 9.11.2009 for E. in so far as not already in force, 29.3.2011 for W. in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 146(3)(b), 170**; S.I. 2009/2567, art. 3; S.I. 2011/986, art. 3
- F12** Words in s. 57(3)(d) inserted (21.7.2008 for specified purposes, 9.11.2009 for E. in so far as not already in force, 29.3.2011 for W. in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 146(3)(c), 170**; S.I. 2009/2567, art. 3; S.I. 2011/986, art. 3

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- F13** Words in s. 57(3)(e)(ii) inserted (21.7.2008 for specified purposes, 9.11.2009 for E. in so far as not already in force, 29.3.2011 for W. in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), [ss. 146\(3\)\(c\)](#), [170](#); S.I. 2009/2567, art. 3; S.I. 2011/986, art. 3
- F14** Words in s. 57(3)(g) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [185\(e\)](#)
- F15** S. 57(3)(j)-(l) inserted (21.7.2008 for specified purposes, 9.11.2009 for E. in so far as not already in force, 29.3.2011 for W. in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), [ss. 146\(3\)\(d\)](#), [170](#); S.I. 2009/2567, art. 3; S.I. 2011/986, art. 3
- F16** Words in s. 57(4)(b) inserted (21.7.2008 for specified purposes, 9.11.2009 for E. in so far as not already in force, 29.3.2011 for W. in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), [ss. 146\(4\)](#), [170](#); S.I. 2009/2567, art. 3; S.I. 2011/986, art. 3
- F17** Words in s. 57(5)(a) inserted (21.7.2008 for specified purposes, 9.11.2009 for E. in so far as not already in force, 29.3.2011 for W. in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), [ss. 146\(5\)\(a\)](#), [170](#); S.I. 2009/2567, art. 3; S.I. 2011/986, art. 3
- F18** Words in s. 57(5)(b) inserted (21.7.2008 for specified purposes, 9.11.2009 for E. in so far as not already in force, 29.3.2011 for W. in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), [ss. 146\(5\)\(b\)](#), [170](#); S.I. 2009/2567, art. 3; S.I. 2011/986, art. 3
- F19** S. 57(5A)-(5C) inserted (21.7.2008 for specified purposes, 9.11.2009 for E. in so far as not already in force, 29.3.2011 for W. in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), [ss. 146\(6\)](#), [170](#); S.I. 2009/2567, art. 3; S.I. 2011/986, art. 3
- F20** S. 57(7A) inserted (21.7.2008 for specified purposes, 9.11.2009 for E. in so far as not already in force, 29.3.2011 for W. in so far as not already in force) by [Health and Social Care Act 2008 \(c. 14\)](#), [ss. 146\(7\)](#), [170](#); S.I. 2009/2567, art. 3; S.I. 2011/986, art. 3
- F21** S. 57(7B) omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [185\(f\)](#)

#### Modifications etc. (not altering text)

- C1** S. 57(3)-(5)(7) applied (with modifications) by 1989 c. 41, s. 17A(3) (as substituted (16.3.2003 for E. for specified purposes, 8.4.2004 for E. in so far as not already in force, 8.7.2004 for W. for specified purposes, 1.11.2004 for W. in so far as not already in force) by [Health and Social Care Act 2001 \(c. 15\)](#), [ss. 58](#), [70\(2\)](#) (with [ss. 64\(9\)](#), [65\(4\)](#)); S.I. 2003/850, art. 3(1)(b)(2)(a); S.I. 2004/1754, art. 2(1)(2)(c)
- C2** S. 57(4)(a) applied (W.) (1.11.2004) by [The Community Care, Services for Carers and Children's Services \(Direct Payments\) \(Wales\) Regulations 2004 \(S.I. 2004/1748\)](#), regs. 1(b), [6\(3\)\(a\)](#)
- C3** S. 57(4)(a) applied (W.) (1.11.2004) by [The Community Care, Services for Carers and Children's Services \(Direct Payments\) \(Wales\) Regulations 2004 \(S.I. 2004/1748\)](#), regs. 1(b), [6\(4\)\(a\)](#)
- C4** S. 57(4)(b) excluded (W.) (1.11.2004) by [The Community Care, Services for Carers and Children's Services \(Direct Payments\) \(Wales\) Regulations 2004 \(S.I. 2004/1748\)](#), regs. 1(b), [6\(4\)\(b\)](#)
- C5** S. 57(4)(b) excluded (W.) (1.11.2004) by [The Community Care, Services for Carers and Children's Services \(Direct Payments\) \(Wales\) Regulations 2004 \(S.I. 2004/1748\)](#), regs. 1(b), [6\(3\)\(b\)](#)

#### Commencement Information

- I1** S. 57 partly in force; s. 57 in force for certain purposes at 11.5.2001, see s. 70(2)
- I2** S. 57 in force at 16.3.2003 for E. in so far as not already in force by [S.I. 2003/850](#), [art. 3\(1\)\(a\)](#)
- I3** S. 57 in force at 1.11.2004 for W. in so far as not already in force by [S.I. 2004/1754](#), [art. 2\(2\)\(b\)](#)

## 58 Direct payments in respect of children

For section 17A of the Children Act 1989 (c. 41) there shall be substituted—

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*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2001, Cross Heading: Direct payments. (See end of Document for details)*

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### “17A Direct payments

- (1) The Secretary of State may by regulations make provision for and in connection with requiring or authorising the responsible authority in the case of a person of a prescribed description who falls within subsection (2) to make, with that person’s consent, such payments to him as they may determine in accordance with the regulations in respect of his securing the provision of the service mentioned in that subsection.
- (2) A person falls within this subsection if he 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,
- and a local authority (“the responsible authority”) have decided for the purposes of section 17 that the child’s needs (or, if he is such a disabled child, his needs) call for the provision by them of a service in exercise of functions conferred on them under that section.
- (3) Subsections (3) to (5) and (7) of section 57 of the 2001 Act shall apply, with any necessary modifications, in relation to regulations under this section as they apply in relation to regulations under that section.
- (4) Regulations under this section shall provide that, where payments are made under the regulations to a person falling within subsection (5)—
- (a) the payments shall be made at the rate mentioned in subsection (4)(a) of section 57 of the 2001 Act (as applied by subsection (3)); and
  - (b) subsection (4)(b) of that section shall not apply.
- (5) A person falls within this subsection if he is—
- (a) a person falling within subsection (2)(a) or (b) and the child in question is aged 16 or 17, or
  - (b) a person who is in receipt of income support, working families’ tax credit or disabled person’s tax credit under Part 7 of the Social Security Contributions and Benefits Act 1992 (c. 4) or of an income-based jobseeker’s allowance.
- (6) In this section—
- “the 2001 Act” means the Health and Social Care Act 2001;
- “disabled” in relation to an adult has the same meaning as that given by section 17(11) in relation to a child;
- “prescribed” means specified in or determined in accordance with regulations under this section (and has the same meaning in the provisions of the 2001 Act mentioned in subsection (3) as they apply by virtue of that subsection).”

#### Commencement Information

- 14** S. 58 in force at 16.3.2003 for specified purposes for E. by [S.I. 2003/850, art. 3\(1\)\(b\)](#)
- 15** S. 58 in force at 8.4.2004 for E. in so far as not already in force by [S.I. 2003/850, art. 3\(2\)\(a\)](#)
- 16** S. 58 in force at 8.7.2004 for specified purposes for W. by [S.I. 2004/1754, art. 2\(1\)](#)
- 17** S. 58 in force at 1.11.2004 for W. in so far as not already in force by [S.I. 2004/1754, art. 2\(2\)\(c\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Health and Social Care Act 2001, Cross  
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