



# Health and Social Care Act 2008

## 2008 CHAPTER 14

### PART 5

#### MISCELLANEOUS

##### *Social care*

#### **146 Direct payments in lieu of provision of care services**

- (1) Section 57 of the Health and Social Care Act 2001 (c. 15) (regulations may require or authorise direct payments to a person, with the person's consent, in respect of the person securing the provision to the person of certain care services) is amended as follows.
- (2) After subsection (1) insert—
- “(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—

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*Status: This is the original version (as it was originally enacted).*

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- (a) that person is a representative of P;
  - (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 representative 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.”
- (3) In subsection (3) (provision which may be included in regulations under the section)—
- (a) in paragraph (a) (provision as to circumstances in which payments not to be made), after “to a person” insert “or in respect of a person”;
  - (b) in paragraph (c)(i) (provision about determination of payee’s means), after “the payee’s means” insert “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”;
  - (c) in each of paragraphs (d) and (e)(ii) (provision as to conditions to be complied with by payee, and provision as to repayments by payee or otherwise), after “payee” insert “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),” and
  - (d) after paragraph (h) insert—
    - “(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) In subsection (4)(b) (gross payments: condition that payee pays amounts by way of reimbursement), after “payee” insert “in the case of direct payments under subsection (1), or the beneficiary in the case of direct payments under subsection (1A),”.
- (5) In subsection (5) (payments made net on basis that payee will contribute to cost of service)—
- (a) in paragraph (a), after “the payee will himself” insert “in the case of direct payments under subsection (1), or the beneficiary will in the case of direct payments under subsection (1A),” and
  - (b) in paragraph (b), after “payee” insert “or (as the case may be) the beneficiary”.
- (6) After subsection (5) insert—

“(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.”

(7) After subsection (7) insert—

“(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.”

(8) In section 64 of the Health and Social Care Act 2001 (c. 15) (regulations and orders), after subsection (4) insert—

“(4A) A statutory instrument containing—

(a) regulations made by the Welsh Ministers under section 57, or

(b) regulations made by the Welsh Ministers under section 65 that make provision for the purposes of, in consequence of or for giving full effect to section 57,

is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”