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## STATUTORY INSTRUMENTS

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# 2010 No. 1000

## The National Health Service (Direct Payments) Regulations 2010

### PART 1

#### Introductory

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**1.—**(1) These Regulations may be cited as the National Health Service (Direct Payments) Regulations 2010 and shall come into force on 1st June 2010.

(2) In these Regulations—

“the 2002 Act” means the National Health Service Reform and Health Care Professions Act 2002<sup>(1)</sup>;

“the 2005 Act” means the Mental Capacity Act 2005<sup>(2)</sup>;

“after-care PCT” means a pilot PCT which may make direct payments under regulation 2(7) in accordance with its pilot scheme;

“after-care services” means services that must be provided by a Primary Care Trust under section 117 of the Mental Health Act 1983 (after-care)<sup>(3)</sup>;

“care plan” means a plan prepared in accordance with regulation 11;

“child” means a person under the age of 16;

“nominee” has the meaning given in regulation 9(1) and (2);

“parental responsibility” has the meaning given in section 3 of the Children Act 1989 (meaning of parental responsibility)<sup>(4)</sup>;

“patient” means a person to or in respect of whom direct payments may be made in accordance with regulation 7 or 8(1) to (4) or (7);

“pilot PCT” means a Primary Care Trust<sup>(5)</sup> in respect of which the Secretary of State has made a pilot scheme;

“regulated activity” has the meaning given in section 8 of the Health and Social Care Act 2008 (regulated activity)<sup>(6)</sup>;

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(1) 2002 c. 17.

(2) 2005 c. 9.

(3) 1983 c. 20. Section 117 was amended by paragraph 107 of Schedule 1 to the [Health Authorities Act 1995 \(c. 17\)](#), by paragraph 15 of Schedule 1 to the [Mental Health \(Patients in the Community\) Act 1995 \(c. 52\)](#), by paragraph 12 of Schedule 4 to the [Crime \(Sentences\) Act 1997 \(c. 43\)](#), by paragraph 47 of Schedule 2 to the [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#) (“the 2002 Act”), by paragraph 24 of Schedule 3 and Schedule 11 to the [Mental Health Act 2007 \(c. 12\)](#), by paragraph 3 of Schedule 1 to the 2009 Act and by [S.I. 2007/961](#).

(4) 1989 c. 41. A person may have parental responsibility for a person who is not a child for the purposes of these Regulations; see section 105 of the Act, by virtue of which “child” for the purposes of the Act means, subject to paragraph 16 of Schedule 1 to the Act, a person under the age of eighteen.

(5) See section 18(1) of the NHS Act.

(6) 2008 c. 14. See the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, [S.I. 2010/781](#).

“relevant services for a disabled person” means any services in relation to which direct payments regulations, within the meaning of section 42 of the Welfare Reform Act 2009 (provision that may be made about direct payments)(7), have been made;

“relevant services for social care” means relevant services within the meaning of the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009(8);

“representative” means—

- (a) in the case of a person in respect of whom any deputy has been appointed by the Court of Protection under section 16(2)(b) of the 2005 Act (powers to appoint deputies) to make decisions on that person’s behalf in relation to matters in respect of which direct payments may be made, any such deputy;
- (b) in the case of a person who has appointed any donee of a lasting power of attorney within the meaning of section 9 of the 2005 Act (lasting powers of attorney) to make decisions on that person’s behalf in relation to matters in respect of which direct payments may be made, any such donee;
- (c) in the case of a person who has created an enduring power of attorney within the meaning of Schedule 4 to the 2005 Act (provisions applying to existing enduring powers of attorney), which is registered in accordance with paragraphs 4 and 13 of that Schedule or in respect of which an application has been made for such registration, any attorney in whom the power is vested;
- (d) in the case of a child, any person with parental responsibility for the child;
- (e) in the case of a person aged 16 or over but who lacks capacity and in respect of whom there is a person with parental responsibility, any such person with parental responsibility; or
- (f) in the case of a person in respect of whom a person has been appointed under regulation 8(4), that other person.

(3) In determining for the purposes of these Regulations what is in the best interests of a patient, other than a child, the person making the determination must comply with the requirements specified in section 4(1) to (7) of the 2005 Act (best interests).

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(7) 2009 c. 24.

(8) S.I. 2009/1887.