

**2010 No. 1000**

**NATIONAL HEALTH SERVICE, ENGLAND**

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

<i>Made</i> - - - -	<i>25th March 2010</i>
<i>Laid before Parliament</i>	<i>29th March 2010</i>
<i>Coming into force</i> - -	<i>1st June 2010</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 8(1), 12A(4), 12B(1) to (4), 12C(1) to (6), 75, 272(7) and (8) and 273(4) of the National Health Service Act 2006(a).

**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(b);

“the 2005 Act” means the Mental Capacity Act 2005(c);

“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)(d);

“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);

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(a) 2006 c. 41. Sections 12A to 12D were inserted by section 11 of the Health Act 2009 (c. 21) (“the 2009 Act”). See section 275 of the National Health Service Act 2006 (“the NHS Act”) for the definitions of “prescribed” and “regulations”. By virtue of section 271 of the NHS Act, the powers conferred on the Secretary of State by the Act, as exercised in making these Regulations, are exercisable only in relation to England.

(b) 2002 c. 17.

(c) 2005 c. 9.

(d) 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.

“parental responsibility” has the meaning given in section 3 of the Children Act 1989 (meaning of parental responsibility)(a);

“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(b) 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)(c);

“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)(d), 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(e);

“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).

## PART 2

### Pilot Schemes

#### Secretary of State’s power to make a pilot scheme

2.—(1) The Secretary of State may make pilot schemes in accordance with which direct payments may be made.

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- (a) 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.
  - (b) *See* section 18(1) of the NHS Act.
  - (c) 2008 c. 14. *See* the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, S.I. 2010/781.
  - (d) 2009 c. 24.
  - (e) S.I. 2009/1887.

(2) The Secretary of State may make a pilot scheme only in response to a pilot proposal made in accordance with regulation 3.

(3) If a pilot proposal is submitted to the Secretary of State, the Secretary of State may make a pilot scheme—

- (a) in accordance with the terms of the pilot proposal; or
- (b) with provisions which differ from the terms of the pilot proposal, but which the Secretary of State considers appropriate in the interests of the health service<sup>(a)</sup>.

(4) The pilot scheme made by the Secretary of State may include, as respects payments to which the scheme applies, any provision within section 12B(2) of the National Health Service Act 2006 (regulations about direct payments).

(5) The Secretary of State may not make a pilot scheme for the whole of England.

(6) Where the Secretary of State has made a pilot scheme, the Secretary of State may direct<sup>(b)</sup> a pilot PCT to exercise—

- (a) his powers to make a direct payment<sup>(c)</sup> in accordance with that scheme; and
- (b) his functions in relation to the making of payments under that scheme under the following provisions—
  - (i) regulation 8(4) and (6) to (8),
  - (ii) regulation 9(1)(c), (4)(b) and (5),
  - (iii) regulations 10 to 13,
  - (iv) regulation 14(3), (5), (8) and (9),
  - (v) regulation 15(c), and
  - (vi) regulations 16 to 20.

(7) Where the Secretary of State has made a pilot scheme which includes provision for the making of direct payments for the purpose of securing the provision of after-care services, the pilot PCT may make direct payments in accordance with these Regulations.

### **Pilot proposal for direct payments for health care**

**3.—**(1) A Primary Care Trust which seeks to become a pilot PCT must make a pilot proposal and submit it to the Secretary of State.

(2) A pilot proposal must specify—

- (a) the name of the proposed pilot PCT;
- (b) if there is more than one proposed pilot PCT, the name of the proposed pilot PCT which is to be principally responsible for the operation of the proposed pilot scheme;
- (c) the geographical area in respect of which the proposed pilot scheme will operate;
- (d) the health needs in respect of which services to patients may be secured by means of direct payments made in accordance with the proposed pilot scheme;
- (e) whether the proposed pilot PCT intends to secure the provision of after-care services under the proposed pilot scheme;
- (f) the other criteria by which patients who may benefit under the proposed pilot scheme may be identified;
- (g) the period for which the proposed pilot scheme is to have effect; and
- (h) any other provisions to be included in the proposed pilot scheme.

(3) The period mentioned in paragraph (2)(g) must not exceed three years.

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(a) See section 275 of the NHS Act for the definition of “health service”.

(b) See section 7 of the NHS Act. By virtue of section 273(4)(c)(i) a direction by the Secretary of State under section 7 must be given by regulations or an instrument in writing.

(c) See section 12A(1) of the NHS Act.

(4) A Primary Care Trust making a pilot proposal must ensure that the proposals for the provisions to be included in the proposed pilot scheme, as respects the making of direct payments, are compatible with the requirements of regulations 7 to 20.

#### **Secretary of State's powers in relation to a pilot scheme**

4.—(1) The Secretary of State may at any time amend a pilot scheme by a notice in writing to the pilot PCT if he considers that the amendment is appropriate in the interests of the health service.

(2) An amendment under paragraph (1) may include—

- (a) an extension of the period for which a pilot scheme has effect, but the maximum period for which the pilot scheme has effect must not exceed five years; or
- (b) an additional restriction or obligation imposed on the pilot PCT in relation to the pilot scheme.

(3) The Secretary of State may require a pilot PCT to notify the Secretary of State in writing of the intended arrangements to provide for continuity of care for patients on expiry of the pilot scheme, including—

- (a) arrangements for services to be procured for a patient by means of a direct payment under another pilot scheme; or
- (b) arrangements to continue to provide services to a patient by means other than by a direct payment.

(4) The Secretary of State may at any time revoke a pilot scheme by notice in writing to the pilot PCT if he considers that revocation is appropriate in the interests of the health service.

#### **Review of pilot schemes**

5.—(1) The Secretary of State must in relation to each pilot scheme—

- (a) arrange for a person independent of the Secretary of State to review the pilot scheme; or
- (b) require a pilot PCT to arrange for a person not employed or otherwise engaged by the pilot PCT or the Secretary of State to review the pilot scheme of the pilot PCT.

(2) Arrangements under paragraph (1) may provide for the person to conduct a review of a pilot scheme in conjunction with a review of one or more other pilot schemes.

(3) A review may be commenced at any time but must be completed within a reasonable time following the expiry of the period for which the pilot scheme is to have effect.

(4) The findings of a review must be published by the Secretary of State on completion of the review.

(5) The Secretary of State or pilot PCT may require that the following matters are considered as part of a review of a pilot scheme—

- (a) the effect of direct payments on the health, well-being and satisfaction of—
  - (i) patients,
  - (ii) representatives,
  - (iii) nominees,
  - (iv) persons with parental responsibility for a child,
  - (v) persons who principally care for a child, and
  - (vi) carers who normally provide unpaid care for a member of the carer's family or a friend;
- (b) substantial differences in relation to the use of direct payments for, by or in respect of patients, or the effect on the health, well-being or satisfaction of patients, who vary one from another in—
  - (i) socio-economic background,

- (ii) age,
  - (iii) gender,
  - (iv) ethnicity,
  - (v) disability, or
  - (vi) health needs;
- (c) the effect of direct payments on the cost-effectiveness of care received by patients;
  - (d) the effect of direct payments on the provision of services to persons for whom no direct payment has been made with similar health needs to those of patients for whom direct payments have been made;
  - (e) the effect of direct payments on the satisfaction, development of skills and knowledge or on the workload of—
    - (i) care workers who are paid to support a person with health needs with everyday tasks,
    - (ii) persons providing a service secured by a direct payment,
    - (iii) any other persons involved in the administration of direct payments under these Regulations, or
    - (iv) persons involved in the administration of a service secured by means of a direct payment;
  - (f) the extent to which direct payments have led to innovation in the provision of health services within the meaning of section 14 of the Health Act 2009 (innovation prizes)(a); and
  - (g) the administration, governance and management of direct payments within a pilot scheme.
- (6) Nothing in paragraph (5) shall prevent consideration in a review of matters not mentioned in that paragraph.
- (7) A pilot PCT must—
- (a) at the request of the person reviewing a pilot scheme, provide information which may reasonably be required for the purposes of the review; and
  - (b) co-operate with the person who is reviewing the pilot scheme.
- (8) Information provided by a pilot PCT under paragraph (7)(a) must be accurate, and provided within a reasonable time of receipt of the request by the pilot PCT.

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(a) 2009 c. 21.

## PART 3

### Direct Payments

#### Direct payments

6. Regulations 7 to 20 apply to the making of direct payments under a pilot scheme subject to any provisions included within the scheme pursuant to regulation 2(4).

#### Persons to whom a direct payment may be made

7.—(1) A direct payment may be made to a person who—

- (a) is a person—
  - (i) for whose benefit the pilot PCT is responsible, under or by virtue of the National Health Service Act 2006, for providing or securing the provision of services; or
  - (ii) who is entitled to receive after-care services from the pilot PCT;
- (b) meets the criteria set out in the pilot scheme; and
- (c) consents to the making of a direct payment to them.

(2) A direct payment may only be made to a person falling within paragraph (1) if the person—

- (a) is aged 16 or over;
- (b) has capacity to consent to the making of a direct payment to them; and
- (c) is not a person described in the Schedule.

#### Direct payments in respect of children and persons who lack capacity

8.—(1) A direct payment may be made in respect of a person who is a child or a person to whom paragraph (2) or (3) applies, if that person—

- (a) is a person—
  - (i) for whose benefit the pilot PCT is responsible, under or by virtue of the National Health Service Act 2006, for providing or securing the provision of services; or
  - (ii) who is entitled to receive after-care services from the pilot PCT;
- (b) meets the criteria set out in the pilot scheme;
- (c) is not a person described in the Schedule; and
- (d) has a representative who consents to the making of direct payments in respect of them.

(2) This paragraph applies to a person, other than a child, who lacks capacity to consent to the making of a direct payment to them and in respect of whom there is a deputy, donee, attorney or person with parental responsibility as mentioned in the definition of “representative” in regulation 1(2).

(3) This paragraph applies to a person, other than a child, who lacks capacity to consent to the making of a direct payment to them but is a person in respect of whom there is no deputy, donee, attorney or person with parental responsibility as mentioned in the definition of “representative” in regulation 1(2).

(4) Where paragraph (3) applies to a person, the Secretary of State or after-care PCT may appoint another person they consider appropriate to receive and manage a direct payment in respect of that person.

(5) A representative to whom a direct payment is made in respect of a patient must—

- (a) agree to act on the patient’s behalf in relation to the direct payment;
- (b) act in the best interests of the patient when securing the provision of services in respect of which the direct payment is made;

- (c) be responsible as a principal for all contractual arrangements entered into for the benefit of the patient and secured by means of the direct payment;
- (d) use the direct payment in accordance with the care plan; and
- (e) comply with the provisions of these Regulations.

(6) Paragraph (7) applies where a person has been receiving direct payments on the basis that they were a patient eligible under regulation 7, but the person no longer has capacity to consent to the making of a direct payment to them, or the Secretary of State or after-care PCT reasonably believes that the person no longer has the necessary capacity.

(7) Where this paragraph applies, the Secretary of State or after-care PCT may continue to make direct payments in respect of the person if—

- (a) the Secretary of State or after-care PCT is reasonably satisfied that the person’s lack of capacity is likely to be temporary;
- (b) a representative or nominee in respect of the person continues, or agrees pursuant to paragraph (5)(a) or regulation 9(4)(a), to receive direct payments on behalf of the person; and
- (c) direct payments are made subject to the condition that the representative or nominee must allow the person to manage the direct payments themselves for any period in respect of which the Secretary of State or after-care PCT is satisfied that the person has capacity to consent to the making of the direct payments and is capable of managing direct payments.

(8) Where a patient without capacity gains or regains capacity to consent to the making of a direct payment to them—

- (a) if the patient and their representative or nominee consents, the Secretary of State or after-care PCT may continue to make direct payments to the representative or nominee of the patient in accordance with the care plan;
- (b) if the patient does not consent to the continued making of direct payments to the representative or nominee, the Secretary of State or after-care PCT must stop making the direct payments; and
- (c) the Secretary of State or after-care PCT must as soon as reasonably possible review the making of the direct payments in accordance with regulation 17.

(9) Where a patient reaches the age of 16, paragraph (8) shall apply as if the patient were a patient without capacity who gained capacity to consent to the making of a direct payment to them.

### **Nominated person**

**9.—(1)** The following persons may nominate another person (a “nominee”) to receive a direct payment on the patient’s behalf—

- (a) a patient with capacity to consent to the making of a direct payment who is not a child;
- (b) the representative of a patient who is a donee, deputy, attorney or person with parental responsibility for the patient mentioned in the definition of “representative” in regulation 1(2); or
- (c) in a case where regulation 8(7) applies, the Secretary of State or after-care PCT.

(2) If a patient who lacks capacity to consent to the making of a direct payment to them has indicated in advance of losing capacity a wish to have another person nominated to receive direct payments on the patient’s behalf, that other person shall be a nominee.

(3) A nominee to whom a direct payment is made in respect of a patient must—

- (a) be responsible as a principal for all contractual arrangements entered into for the benefit of the patient and secured by means of the direct payment;
- (b) use the direct payment in accordance with the care plan; and
- (c) comply with the provisions of these Regulations.

- (4) Before making a direct payment to a nominee—
  - (a) the nominee must agree to receive the direct payment in respect of the patient; and
  - (b) the Secretary of State or an after-care PCT must agree to the making of the direct payment to the nominee.
- (5) If the person who has nominated a nominee pursuant to paragraph (1) notifies the Secretary of State or an after-care PCT in writing that they wish to withdraw or change the nomination, the Secretary of State or after-care PCT must consider whether to—
  - (a) stop making the direct payments; and
  - (b) as soon as reasonably possible review the making of the direct payments in accordance with regulation 17.

### **Decision to make a direct payment**

**10.—(1)** The Secretary of State or an after-care PCT must make any decision to make a direct payment to or in respect of a patient in accordance with this regulation.

(2) Before deciding whether to make a direct payment to a patient the Secretary of State or an after-care PCT—

- (a) may consult the following persons—
  - (i) anyone identified by the patient as a person to be consulted for the purpose,
  - (ii) if the patient is a person aged 16 or over but under the age of 18, a person with parental responsibility for the patient,
  - (iii) the person primarily involved in the care of the patient,
  - (iv) any other person who provides care for the patient,
  - (v) any independent mental capacity advocate<sup>(a)</sup> or independent mental health advocate<sup>(b)</sup> appointed for the patient,
  - (vi) any health professional or other professional person who provides health services to the patient,
  - (vii) any local authority social care team that is responsible for ensuring that the patient’s social care needs are met, and
  - (viii) any other person who appears to the Secretary of State or after-care PCT to be able to provide information of relevance;
- (b) may require the patient to provide information relating to—
  - (i) the patient’s state of health,
  - (ii) any health condition of the patient in respect of which a direct payment is contemplated, and
  - (iii) any bank, building society, post office or other account into which a direct payment may be made; and
- (c) must be satisfied that the patient is capable of managing a direct payment by themselves or with the assistance that may be available to them.

(3) Before deciding whether to make a direct payment in respect of a patient to the representative of the patient, the Secretary of State or after-care PCT may consult—

- (a) the patient;
- (b) any deputy appointed in respect of the patient by the Court of Protection under section 16(2)(b) of the 2005 Act but who lacks authority to make decisions on behalf of the patient in relation to matters in respect of which direct payments may be made;

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(a) See section 35 of the Mental Capacity Act 2005 (c. 9). Section 35 has been amended by paragraphs 1 and 3 of Part 1 of Schedule 9 to the Mental Health Act 2007 (c. 12).

(b) See section 130A of the Mental Health Act 1983 (c. 20), inserted by section 30(1) and (2) of the Mental Health Act 2007 (c. 12).

- (c) any donee of a lasting power of attorney within the meaning of section 9 of the 2005 Act in respect of the patient but who lacks authority to make decisions on behalf of the patient in relation to matters in respect of which direct payments may be made;
  - (d) the persons mentioned in paragraph (2)(a)(iii) to (viii); and
  - (e) anyone named by the patient when the patient had capacity as a person to be consulted for this purpose.
- (4) Before deciding whether to make a direct payment in respect of a patient to the representative of the patient, the Secretary of State or after-care PCT—
- (a) may require the representative to provide information relating to any bank, building society, post office or other account into which the direct payment may be made; and
  - (b) must be satisfied that the representative is capable of managing a direct payment by themselves or with the assistance that may be available to them.
- (5) When deciding whether to make a direct payment in respect of a patient to a representative, the Secretary of State or after-care PCT may, in particular, consider—
- (a) whether the patient has in the past when the patient had capacity expressed in writing, or by other means which are understandable, a wish for direct payments to be made to them or for their benefit;
  - (b) so far as reasonably ascertainable, the beliefs and values that would be likely to influence the patient's decision as to whether or not to consent to receive a direct payment if the patient had capacity; and
  - (c) any other factors that the patient would be likely to consider on the issue of whether to consent to receive a direct payment if the patient were able to do so, including the patient's wishes and feelings.
- (6) Before deciding whether to make a direct payment in respect of a patient to a nominee, the Secretary of State or an after-care PCT may—
- (a) consult the persons mentioned in paragraphs (2)(a) and (3)(a) to (c) and, where relevant, (e);
  - (b) require a patient with the necessary capacity or competence to provide information relating to the patient's state of health or any health condition in respect of which the direct payment is contemplated;
  - (c) require the nominee to provide information relating to any bank, building society, post office or other account into which the direct payment may be made; and
  - (d) require the nominee to apply for an enhanced criminal record certificate issued under section 113B of the Police Act 1997 (enhanced criminal record certificates)(a) including suitability information relating to vulnerable adults under section 113BB of that Act (suitability information relating to vulnerable adults)(b), where the nominee is an individual living in the same household as the patient, a family member mentioned in paragraph (8) or a friend involved in the provision of the patient's care.
- (7) Before deciding whether to make a direct payment in respect of a patient to a nominee the Secretary of State or an after-care PCT must—
- (a) be satisfied that the nominee is capable of managing a direct payment by themselves or with the assistance that may be available to them;
  - (b) where the nominee is an individual and not a person mentioned in paragraph (6)(d), require the nominee to apply for an enhanced criminal record certificate issued under

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(a) 1997 c. 50. Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15) and was amended by paragraph 14(1) and (3) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47), by paragraph 149 of Schedule 16 to the Armed Forces Act 2006 (c. 52), by sections 79(1) and 80 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), by sections 97(2) and 112(2) of and Part 8 of Schedule 8 to the Policing and Crime Act 2009, (c. 26) and by S.I. 2009/303.

(b) Section 113BB of the Police Act 1997 was inserted by paragraph 14(1) and (4) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 and is subject to the modifications set out in S.I. 2009/2610.

section 113B of the Police Act 1997 including suitability information relating to vulnerable adults under section 113BB of that Act; and

- (c) where the nominee is a body corporate or an unincorporated body of persons, require that the individual whom the nominee has decided will, on behalf of the nominee, have overall responsibility for the day-to-day management of the patient's direct payments, applies for an enhanced criminal record certificate issued under section 113B of the Police Act 1997 including suitability information relating to vulnerable adults under section 113BB of that Act.

(8) The family members are—

- (a) the spouse or civil partner of the patient;
- (b) a person who lives with the patient as if their spouse or civil partner;
- (c) a person who is the patient'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 or civil partner of any person specified in sub-paragraph (c); and
- (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner.

(9) In deciding whether a patient, representative or nominee is capable of managing a direct payment, the Secretary of State or after-care PCT may, in particular, consider whether—

- (a) the patient, representative or nominee would be a suitable person to employ another as an employee to provide any services secured by means of direct payments for the patient;
- (b) the patient, representative or nominee has not been able to manage a direct payment or a direct payment to secure relevant services for social care under the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009(a); or
- (c) the patient, representative or nominee is capable of preventing fraudulent use of the direct payment.

(10) If the Secretary of State or after-care PCT considers making a direct payment to a patient in accordance with this regulation and decides not to make such a payment, they must inform the patient and any representative or nominee in writing of the decision, and state the reasons for the decision.

### **Care plan and care co-ordinator**

**11.—**(1) Before the Secretary of State or an after-care PCT may make a direct payment, the Secretary of State or the after-care PCT must—

- (a) prepare a care plan in respect only of the services to be secured for a patient by way of direct payments;
- (b) advise the patient, representative or nominee of significant potential risks arising in relation to the making of direct payments in respect of the patient, the potential consequences of the risks and any proportionate means of mitigating the risks;
- (c) agree with the patient, representative or nominee the procedure for managing any significant potential risk, and include the agreed procedure in the care plan; and

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(a) S.I. 2009/1887.

- (d) be satisfied—
  - (i) that the health needs identified in the care plan of the patient can be met by the services specified in the care plan, and
  - (ii) that the amount represented by the direct payments will be sufficient to provide for the full cost of each of the services specified in the care plan.
- (2) The risks mentioned in paragraph (1)(b) may in particular include—
  - (a) risks to the patient’s health;
  - (b) medical or surgical risk arising from the procurement of a particular type of service;
  - (c) risks arising from the employment relationship where direct payments are used to secure services from an employee;
  - (d) risks arising from a provider of services secured by means of direct payments operating under an inadequate or no procedure for the investigation of complaints arising from the provision of the services;
  - (e) risks arising from a provider of services secured by means of direct payments operating under inadequate or no insurance or indemnity cover for the services to be provided; or
  - (f) a risk that monies paid by way of a direct payment may go missing, be misused or be subject to fraud.
- (3) The Secretary of State or an after-care PCT must nominate a care co-ordinator who is to be responsible for the following functions in respect of the patient—
  - (a) managing the assessment of the health needs of the patient for the care plan;
  - (b) ensuring that the patient or their representative has agreed the matters listed in paragraph (8);
  - (c) monitoring or arranging for the monitoring of—
    - (i) the making of the direct payments, and
    - (ii) the health conditions of the patient in respect of which the direct payments are made;
  - (d) arranging for review of the direct payments; and
  - (e) liaising between the patient or the representative or nominee and the Secretary of State or after-care PCT in relation to direct payments.
- (4) The Secretary of State or an after-care PCT must in the care plan specify—
  - (a) the health needs to be met by services secured by means of direct payments, and the health outcomes intended to be achieved through the provision of the services;
  - (b) the services to be secured by means of direct payments that the Secretary of State or after-care PCT considers necessary to meet the health needs of the patient;
  - (c) the amount to be paid by way of direct payments, and the intervals at which monies are to be paid;
  - (d) the name of the person who is the care co-ordinator in respect of the patient;
  - (e) who is to be responsible for monitoring each health condition of the patient in respect of which direct payments may be made;
  - (f) the anticipated date of the first review mentioned in regulation 17(2)(a), and how it is intended to be carried out; and
  - (g) the period of notice that is to apply if, following a review under regulation 17, the Secretary of State or after-care PCT decides to reduce the amount of the direct payments or to stop making the direct payments.
- (5) The services that may be secured by means of direct payments exclude services—
  - (a) which consist of the supply or procurement of alcohol or tobacco;
  - (b) which consist of the provision of gambling services or facilities; or
  - (c) to repay a debt otherwise than in respect of a service specified in the care plan.

(6) The Secretary of State or an after-care PCT may specify in a care plan that a service may be secured in respect of a patient from a person mentioned in regulation 10(6)(d) (whether or not a nominee), only if the Secretary of State or the PCT is satisfied that to secure a service from that person is necessary—

- (a) to meet satisfactorily the patient's need for that service; or
- (b) to promote the welfare of a patient who is a child.

(7) If the Secretary of State or an after-care PCT has considered including a particular service in the care plan as a service to be secured by means of direct payments but decides not to include that service—

- (a) the patient, representative or nominee may request the Secretary of State or after-care PCT to inform them of the reason for the decision; and
- (b) the Secretary of State or after-care PCT must inform them of the reason for the decision.

(8) Before the Secretary of State or an after-care PCT may make a direct payment the patient or their representative must agree—

- (a) that the patient's specified health needs can be met by the services specified in the care plan;
- (b) that the amount of the direct payments is sufficient to provide for the full cost of each of the services specified in the care plan; and
- (c) that the patient's requirements may be re-assessed in accordance with regulation 17(2).

#### **Information, advice and other support**

**12.—**(1) The Secretary of State or an after-care PCT must make arrangements for a patient, representative or nominee to whom direct payments are made to obtain information, advice or other support in connection with the making of direct payments.

(2) The arrangements for information, advice or other support mentioned in paragraph (1) may include provision for—

- (a) advocacy services, whereby a third party assists a patient, representative or nominee in relation to the terms of a care plan, or the management of any contract under which services secured by means of direct payments are provided, or otherwise;
- (b) commissioning services, whereby a person assists the patient, representative or nominee in procuring services that may be secured by means of direct payments; or
- (c) payroll, training, sickness cover or other employment related services to assist a patient, representative or nominee where an employee provides services secured by direct payments for the patient.

(3) If the care plan specifies a requirement for information, advice or other support, that support may be a service in respect of which direct payments may be made.

#### **Conditions applying to the making of direct payments by the Secretary of State or an after-care PCT**

**13.—**(1) Where the Secretary of State or an after-care PCT has decided to make direct payments to or in respect of a patient, the Secretary of State or an after-care PCT may only make the payments into an account approved by the Secretary of State or after-care PCT for the benefit of the patient if they are satisfied that the requirements in paragraphs (2), (3) and (5) are met.

(2) The account mentioned at paragraph (1) must be capable of—

- (a) providing for monies paid into the account to be held only for the purposes of securing services by means of—
  - (i) direct payments under these Regulations,
  - (ii) direct payments to secure relevant services for social care,

- (iii) payments made by the Independent Living Fund (2006)(a), or
- (iv) other payments to secure relevant services for a disabled person; and
- (b) being audited (by reference to statements setting out the source of monies deposited and the destination of monies withdrawn) by—
  - (i) the Secretary of State or after-care PCT, or
  - (ii) anyone authorised in writing by the Secretary of State or after-care PCT.
- (3) The account mentioned in paragraph (1) must be—
  - (a) accessible only by named persons approved by the Secretary of State or after-care PCT;
  - (b) used only to hold monies paid into the account by way of the payments mentioned in paragraph (2)(a).
- (4) The Secretary of State or an after-care PCT may require a patient, representative or nominee to provide the Secretary of State or the after-care PCT with access to information about an account into which a direct payment is, or may be, made.
- (5) The Secretary of State or after-care PCT must ensure that an account mentioned in paragraph (1) is subject to arrangements or procedures that the Secretary of State or after-care PCT considers adequate to—
  - (a) enable the monitoring and review mentioned in regulation 17(1)(a) and (6)(c) to be carried out; and
  - (b) ensure that direct payments paid into it will be used only for services agreed in a patient’s care plan.

**Conditions to be complied with by the patient, representative or nominee**

- 14.—(1) A patient, representative or nominee must—
- (a) use the direct payments to procure services specified in the care plan;
  - (b) only use the direct payments in accordance with the patient’s care plan, in particular, to secure the provision of the whole of a service specified in the care plan.
- (2) A patient, representative or nominee must make enquiries before securing services from a provider—
- (a) to ascertain that the provider—
    - (i) if carrying on a regulated activity, is registered as a service provider in respect of that activity with the Care Quality Commission,
    - (ii) has complied with any obligation that the provider has to be registered as a member of a profession regulated by a body mentioned in section 25(3) of the 2002 Act (the Council for Healthcare Regulatory Excellence)(b), and
  - (b) with a view to ascertaining whether the provider must operate under insurance or indemnity cover, and if so whether the insurance or indemnity cover under which the provider operates is—
    - (i) proportionate to the risks involved in providing the service, and
    - (ii) otherwise appropriate in relation to the services provided to the patient.
- (3) If a patient, representative or nominee requests that the Secretary of State or after-care PCT be responsible in place of that person for ensuring that the enquiries mentioned in paragraph (2)(a) or (b) have been carried out in respect of any particular provider of services, the Secretary of State or after-care PCT must make the enquiries mentioned.

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(a) The Independent Living Fund (2006) is an Executive Non-Departmental Public Body of the Department for Work and Pensions set up as a national resource dedicated to the financial support of disabled people. It provides discretionary cash payments directly to disabled people. Its operations are governed by a Deed dated 10th April 2006 between the Secretary of State for Work and Pensions and the Original Trustees, amended by Deeds dated 21st August 2007, 1st October 2007, 31st March 2008 and 31st March 2009 and from time to time by the Secretary of State for Work and Pensions.

(b) Section 25(3) of the 2002 Act has been amended by paragraphs 17(1) to (3) of Schedule 10 to the Health and Social Care Act 2008 (c. 14).

(4) A patient, representative or nominee may use direct payments to secure a service in respect of the patient from a person mentioned in regulation 10(6)(d) only if the care plan specifies, pursuant to regulation 11(6), that the service may be secured from that person.

(5) A patient, representative or nominee must on request, or at intervals specified by the Secretary of State or after-care PCT, provide the Secretary of State or after-care PCT with information or evidence relating to—

- (a) the state of health or any health condition of the patient in respect of which the direct payment is made; or
- (b) the health outcomes expected from the provision of any service.

(6) If the patient, representative or nominee considers that it is reasonable to do so, the patient, representative or nominee must notify the Secretary of State or after-care PCT when the state of health or other relevant circumstances of the patient change substantially.

(7) A patient, representative or nominee must ensure that the account approved by the Secretary of State or after-care PCT into which direct payments are paid is—

- (a) used only for the purposes of securing services by means of—
  - (i) direct payments under these Regulations,
  - (ii) direct payments to secure relevant services for social care,
  - (iii) payments made by the Independent Living Fund (2006), or
  - (iv) other payments to secure relevant services for a disabled person; and
- (b) accessible only by named persons approved by the Secretary of State or after-care PCT.

(8) A patient, representative or nominee must, on request, or at intervals specified by the Secretary of State or after-care PCT provide the Secretary of State or after-care PCT with information or evidence relating to—

- (a) the account mentioned in paragraph (7); or
- (b) the services secured by means of the direct payments.

(9) The Secretary of State or an after-care PCT may impose on a patient, representative or nominee either or both of the following conditions in connection with the making of a direct payment, that—

- (a) the recipient, whether the patient, or the representative or nominee in respect of the patient, must not secure a service from a particular person; or
- (b) the patient, the representative or the nominee must provide information that the Secretary of State or after-care PCT considers necessary other than as described at paragraph (5) or (8) or regulations 10(2)(b), (4)(a) or (6)(c).

(10) If information or evidence requested from a person referred to in paragraph (8) is within the control of another person referred to in that paragraph then it must be provided by that other person.

### **Provision of information**

**15.** Information provided under regulations 10(2)(b), (4)(a) or (6)(c), 14(5), (8) or (9) or 17(8)(d)(ii) must be—

- (a) legible;
- (b) accompanied with the relevant authorisation enabling the taking of copies or making of extracts, where appropriate;
- (c) if so requested by the Secretary of State or an after-care PCT, accompanied by—
  - (i) an explanation by the information provider of anything which has been provided, or
  - (ii) a statement to the best of the knowledge and belief of the information provider as to where information or evidence that the person has failed to provide is held.

### **Amount of direct payment**

16.—(1) The Secretary of State or an after-care PCT must ensure that the amount of the direct payments paid to or in respect of a patient is sufficient to provide for the full cost of each of the services specified in the care plan.

(2) Where the Secretary of State or after-care PCT is notified, or becomes aware, that the state of health of the patient has changed significantly, but in the view of the Secretary of State or after-care PCT a review mentioned in regulation 17 is not necessary, the Secretary of State or after-care PCT must be satisfied that the amount of the direct payments continues to be sufficient in accordance with paragraph (1).

(3) The Secretary of State or an after-care PCT may at any time increase or reduce the amount of the direct payments if satisfied that the new amount is sufficient in accordance with paragraph (1).

(4) The Secretary of State or after-care PCT may reduce the amount paid by way of direct payments by an amount not exceeding the amount due in respect of a period for which payment falls to be made where—

- (a) direct payments have accumulated and remain unused; and
- (b) the Secretary of State or after-care PCT considers that it is reasonable to offset the monies accumulated against the outstanding amount to be paid for that period.

(5) Where the Secretary of State or after-care PCT decides to reduce the amount of the direct payments, the Secretary of State or after-care PCT must provide reasonable notice in writing to the patient, representative or nominee stating the reasons for the decision.

### **Monitoring and review of direct payments**

17.—(1) The Secretary of State or an after-care PCT must monitor—

- (a) the making of direct payments to or in respect of a patient; and
- (b) the health conditions of the patient in respect of which direct payments are made.

(2) The Secretary of State or an after-care PCT must review the making of direct payments to or in respect of the patient at appropriate intervals and—

- (a) at least once within the first three months of the direct payments being made; and
- (b) subsequently, at intervals not exceeding twelve months.

(3) Where the Secretary of State or an after-care PCT is notified, or becomes aware, that the state of health of the patient has changed significantly, the Secretary of State or an after-care PCT must consider whether a review is appropriate.

(4) Where the Secretary of State or an after-care PCT becomes aware that direct payments have not been sufficient to secure the services specified in a care plan, the Secretary of State or an after-care PCT must carry out a review.

(5) When carrying out a review the Secretary of State or an after-care PCT must—

- (a) review the care plan to establish whether it continues to provide appropriately for the health needs of the patient;
- (b) consider whether the direct payments have been used effectively;
- (c) consider whether the amount of the direct payments paid to or in respect of the patient is sufficient to provide for the full cost of each of the services specified in the care plan; and
- (d) consider whether the patient, representative or nominee has complied with the obligations imposed on them by or under regulation 14.

(6) When carrying out a review the Secretary of State or an after-care PCT may—

- (a) re-assess the health needs of the patient for services to be secured by way of direct payments;
- (b) consult any of the persons mentioned in regulation 10(2)(a) or (3)(a) to (c) or, where relevant, (e);

- (c) review receipts, bank statements or other information relating to the use of the direct payments;
- (d) consider whether the direct payments have been effectively managed, including whether any provider of services secured by means of the direct payments—
  - (i) if carrying on a regulated activity, is registered as a service provider in respect of that activity with the Care Quality Commission,
  - (ii) has complied with any obligation that the provider has to be registered as a member of a profession regulated by a body mentioned in section 25(3) of the 2002 Act, or
  - (iii) operates under insurance or indemnity cover which is proportionate to the risks involved in providing the service and otherwise appropriate in relation to the services provided to the patient.

(7) If a patient, representative or nominee requests the Secretary of State or after-care PCT to review the making of direct payments—

- (a) the Secretary of State or after-care PCT must decide whether to carry out a review, taking into account relevant local practices and circumstances; and
- (b) if the Secretary of State or after-care PCT decides to carry out a review, they must carry out the review in accordance with this regulation.

(8) Following a review, the Secretary of State or after-care PCT may, having regard to the purposes of the care plan and the consultations and enquiries under regulation 10—

- (a) amend the care plan;
- (b) substitute the patient for the nominee or representative of the patient, or substitute a representative or nominee for the patient, as the person to whom the direct payments are made;
- (c) increase, maintain or reduce the amount of the direct payments;
- (d) impose on the patient, representative or nominee either or both of the following conditions in connection with the making of direct payments, that—
  - (i) the recipient, whether the patient, their representative or their nominee, must not secure a service from a particular person, or
  - (ii) the patient, their representative or their nominee must provide information that the Secretary of State or after-care PCT considers necessary other than as described at regulations 10(2)(b), (4)(a) or (6)(c), or 14(5), (8) or (9); or
- (e) take other action that the Secretary of State or after-care PCT considers appropriate.

(9) Where, following a review, the Secretary of State or after-care PCT decides to reduce the amount of or stop making the direct payments the Secretary of State or after-care PCT must give reasonable notice in writing to the patient and any representative or nominee, stating the reasons for the decision.

(10) On receipt of a notice under paragraph (9), a patient, representative or nominee may require the Secretary of State or after-care PCT to undertake a further review and may provide evidence or relevant information for the Secretary of State or after-care PCT to consider as part of that review.

(11) The Secretary of State or after-care PCT must give written notice to the patient and any representative or nominee of the decision on any further review, stating the reasons for the decision.

(12) The Secretary of State or after-care PCT may not be required to undertake more than one further review following a decision under paragraph (9).

### **Repayment of direct payments**

**18.—**(1) The Secretary of State or an after-care PCT may require that part or all of a direct payment must be repaid to the Secretary of State or the after-care PCT, if satisfied that it is appropriate to require repayment having regard in particular to whether—

- (a) the care plan has changed substantially;

- (b) the patient's circumstances have changed substantially;
- (c) a substantial proportion of the direct payments received by a patient, representative or nominee have not been used to secure services specified in the care plan and have accumulated;
- (d) the direct payments have been used otherwise than for a service specified in the care plan;
- (e) theft, fraud or another offence may have occurred in connection with the direct payments;  
or
- (f) the patient has died.

(2) Where the Secretary of State or an after-care PCT decides under paragraph (1) that a sum must be repaid, the Secretary of State or after-care PCT must give reasonable notice in writing to the patient and any representative or nominee, stating—

- (a) the reasons for the decision;
- (b) the amount to be repaid;
- (c) the time within which the sum must be repaid; and
- (d) identifying the person who must repay.

(3) In the case of a patient who has died, the notice mentioned in paragraph (2) must be given to the personal representatives of the patient.

(4) On receipt of a notice under paragraph (2), a patient, personal representative, representative or nominee may require the Secretary of State or after-care PCT to re-consider the decision, and may provide evidence or relevant information for the Secretary of State or after-care PCT to consider as part of that deliberation.

(5) The Secretary of State or after-care PCT must inform the patient and any personal representative, representative or nominee in writing of the decision on a re-consideration, stating the reasons for the decision, the amount to be repaid, if any, the time within which any sum must be repaid and identifying the person who must repay, if any.

(6) The Secretary of State or after-care PCT may not be required to undertake more than one re-consideration following a decision under paragraph (1).

(7) The Secretary of State or after-care PCT may waive any requirement pursuant to a decision under paragraph (1) or (4) for part or all of a direct payment to be repaid.

### **Recovery of amounts due as a civil debt**

19.—(1) Where a sum must be repaid to the Secretary of State or an after-care PCT pursuant to regulation 18 and the reason for the decision to require repayment is that theft, fraud or another offence may have occurred in connection with a direct payment, that sum may be recovered summarily as a civil debt.

(2) Paragraph (1) does not affect any other method of recovery.

### **Stopping direct payments**

20.—(1) The Secretary of State or an after-care PCT must stop making direct payments—

- (a) in the case of a patient, other than a child, who has capacity to consent to the making of direct payments, when the patient does not, or has withdrawn, consent to the making of the payments;
- (b) in the case of a child or a patient who lacks capacity to consent to the making of direct payments, when the representative has withdrawn consent to the making of the payments and there is no other representative who consents pursuant to regulation 8(1)(d) or (7)(b);  
and
- (c) in the circumstances mentioned in regulation 8(8)(b).

(2) The Secretary of State or an after-care PCT may stop making direct payments if satisfied that it is appropriate to do so and in particular if—

- (a) a person in respect of whom a direct payment is made is not a patient;
- (b) the Secretary of State or after-care PCT does not consider that the representative or nominee is a suitable person to receive direct payments in respect of the patient;
- (c) the nominee does not agree to receive the direct payments in respect of the patient;
- (d) the person who has nominated the nominee pursuant to regulation 9(1) has withdrawn the nomination;
- (e) the direct payments have been used otherwise than for a service specified in the care plan;
- (f) the Secretary of State or after-care PCT considers that theft, fraud or another offence may have occurred in connection with the direct payments;
- (g) the Secretary of State or after-care PCT considers that the health needs of the patient cannot be, or are not being, met by services secured by means of direct payments; or
- (h) the patient has died.

(3) Where the Secretary of State or an after-care PCT decides under paragraph (1) or (2) to stop making direct payments, the Secretary of State or after-care PCT must give reasonable notice in writing to the patient and any representative or nominee, stating the reasons for the decision.

(4) In the case of a patient who has died, the notice mentioned in paragraph (3) must be given to the personal representatives of the patient.

(5) On receipt of a notice under paragraph (3), a patient, personal representative, representative or nominee may require the Secretary of State or after-care PCT to re-consider the decision, and may provide evidence or relevant information for the Secretary of State or after-care PCT to consider as part of that deliberation.

(6) The Secretary of State or after-care PCT must inform the patient and any personal representatives, representative or nominee in writing of the decision on a re-consideration, stating the reasons for the decision.

(7) The Secretary of State or after-care PCT may not be required to undertake more than one re-consideration following a decision under paragraph (1) or (2).

(8) The Secretary of State or after-care PCT may stop making direct payments following reasonable notice even though a decision under paragraph (1) or (2) is being re-considered.

(9) Any right or liability of the patient, personal representatives, representative or nominee to a third party acquired or incurred in respect of a service secured by means of a direct payment shall transfer to the Secretary of State or after-care PCT when the Secretary of State or after-care PCT stops making direct payments pursuant to paragraph (1) or (2).

(10) The transfer of any liability under paragraph (9) is binding on the third party, even though, apart from this paragraph, it would have required the consent or concurrence of that party.

## PART 4

### Partnership Arrangements

#### **Amendment of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000**

**21.—**(1) The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000<sup>(a)</sup> are amended as follows.

- (2) In regulation 5 of those Regulations (functions of NHS bodies), after paragraph (b), insert—  
“**(bb)** the functions of making direct payments under—

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<sup>(a)</sup> S.I. 2000/617 (“the 2000 Regulations”). Following the consolidation of enactments relating to the health service by the National Health Service Act 2006 (c. 41), the 2000 Regulations have effect as if made under section 75 of that Act, by virtue of paragraph 1 of Part 1 of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006 (c. 43).

- (i) section 12A(1) of the National Health Service Act 2006 (direct payments for health care)(a); and
- (ii) regulation 2(7) of the National Health Service (Direct Payments) Regulations 2010”.

Signed by authority of the Secretary of State for Health

25th March 2010

*Phil Hope*  
Minister of State,  
Department of Health

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(a) 2006 c. 41.

## SCHEDULE

Regulation 7(2)(c) and 8(1)(c)

### PERSONS EXCLUDED FROM DIRECT PAYMENTS

A person referred to in regulation 7(2)(c) or 8(1)(c) is a person who is—

- (a) subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003 (drug rehabilitation requirement)(a), imposed by a community order within the meaning of section 177 (community orders) of that Act(b), or by a suspended sentence of imprisonment within the meaning of section 189 of that Act (suspended sentences of imprisonment)(c);
- (b) subject to an alcohol treatment requirement as defined by section 212 of the Criminal Justice Act 2003 (alcohol treatment requirement), imposed by a community order, within the meaning of section 177 of that Act, or by a suspended sentence of imprisonment, within the meaning of section 189 of that Act;
- (c) released on licence under Part 2 of the Criminal Justice Act 1991 (early release of prisoners)(d), Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release on licence) or Chapter 2 of the Crime (Sentences) Act 1997 (life sentences)(e) subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour;
- (d) required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 (community rehabilitation orders) or a community punishment and rehabilitation order within the meaning of section 51 of that Act (community punishment and rehabilitation orders)(f);
- (e) subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000 (drug treatment and testing orders)(g);
- (f) subject to a youth rehabilitation order imposed in accordance with paragraph 22 (drug treatment requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008(h) (“the 2008 Act”) which requires the person to submit to treatment pursuant to a drug treatment requirement;
- (g) subject to a youth rehabilitation order imposed in accordance with paragraph 23 of Schedule 1 to the 2008 Act (drug testing requirement) which includes a drug testing requirement;
- (h) subject to a youth rehabilitation order imposed in accordance with paragraph 24 of Schedule 1 to the 2008 Act (intoxicating substance treatment requirement) which requires the person to submit to treatment pursuant to an intoxicating substance treatment requirement;

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(a) 2003 c. 44. Section 209 was amended by paragraph 88 of Schedule 4 to the Criminal Justice and Immigration Act 2008 (c. 4) and by S.I. 2008/912.

(b) Section 177 was amended by paragraph 82 of Part 1 of Schedule 4 to the Criminal Justice and Immigration Act 2008 (c. 4).

(c) Section 189 was amended by S.I. 2005/643.

(d) 1991 c. 53.

(e) 1997 c. 43.

(f) 2000 c. 6. Sections 41 and 51 were repealed, with savings, by Schedule 37 to the Criminal Justice Act 2003 (c. 44) (“the 2003 Act”).

(g) Section 52 was repealed, with savings, by Schedule 37 to the 2003 Act.

(h) 2008 c. 4.

- (i) required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a probation order within the meaning of sections 228 to 230 of the Criminal Procedure (Scotland) Act 1995 (probation orders) or subject to a drug treatment and testing order within the meaning of section 234B of that Act (drug treatment and testing order)(a); or
- (j) released on licence under section 22 (release on licence of persons serving determinate sentences) or section 26 of the Prisons (Scotland) Act 1989 (release on licence of persons sentenced to imprisonment for life, etc.)(b) or under section 1 (release of short-term, long term and life prisoners) or section 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (release of certain sexual offenders)(c) and subject to a condition that they submit to treatment for their drug or alcohol dependency.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations enable the Secretary of State for Health to make pilot schemes in accordance with which direct payments may be made to secure the provision of certain health services under the National Health Service Act 2006 or the Mental Health Act 1983.

Part 2 (Pilot Schemes) provides for the making and review of pilot schemes. Functions relating to direct payments under a scheme may be delegated to a Primary Care Trust (regulation 2(6)). After-care services which a Primary Care Trust must provide under section 117 of the Mental Health Act 1983 (after-care) may be provided under a pilot scheme (regulation 2(7)). Regulation 3 makes provision about the pilot proposal that initiates a scheme. Regulation 4 describes the powers of the Secretary of State in relation to a scheme. Regulation 5 sets out how a scheme may be reviewed.

Part 3 (Direct Payments) deals with the making of direct payments. Regulations 7 and 8 specify the persons for whom direct payments may be made, and regulation 9 provides for nominees. A decision to make direct payments must be made in accordance with regulation 10.

Regulation 11 sets out the requirements in relation to the preparation of a care plan for a patient and regulation 12 provides for information, advice or other support. The conditions that apply to the making of a direct payment are set out in regulation 13 and regulation 14 sets out conditions to be complied with by the patient and any representative or nominee. Regulation 16 contains provisions relating to the amount of a direct payment.

Monitoring and review of direct payments is provided for in regulation 17. Regulations 18 to 20 provide for the repayment, recovery and stopping of direct payments.

Part 4 contains an amendment to the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 providing for the making of direct payments to be an NHS function for the purposes of partnership arrangements under those Regulations (regulation 21).

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- (a) 1995 c. 46. Section 228 was amended by paragraph 21 of Schedule 1 to the Crime and Punishment (Scotland) Act 1997 (c. 48), by paragraph 1 of Schedule 6 to the Crime and Disorder Act 1998 (c. 37), by paragraph 122 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43), by sections 42(11) and 89 of the Criminal Justice (Scotland) Act 2003 (asp 7) and by S.I. 1998/2327, S.I. 2001/919, S.I. 2001/1149, S.I. 2003/288 and S.I. 2008/912. Section 229 was amended by section 49(4) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6). Section 229A was inserted by sections 12(2) and 24 of the Management of Offenders etc (Scotland) Act 2005 (asp 14) (“MOSA”) and amended by S.S.I. 2006/48. Section 230 was amended by Schedule 6 to the Adults with Incapacity (Scotland) Act 2000 (asp 4), by sections 135, 331 and 333 and paragraph 8 of Schedule 4 and Part 1 of Schedule 5 to the Mental Health (Care and Treatment) Scotland Act 2003 (asp 13) and by S.S.I. 2005/161 and S.I. 2009/1182. Section 234B was inserted by section 89 of the Crime and Disorder Act 1998 and amended by S.I. 1998/2327.
  - (b) 1989 c. 45. Sections 22 and 26 were repealed, with savings, by Schedule 7 to the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9).
  - (c) 1993 c. 9. Section 1 was amended by paragraph 98 of Schedule 8 to the Crime and Disorder Act 1998, by section 1(2) of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7) and by section 15(2) of MOSA. Section 1AA was inserted by section 15(3) of MOSA.

A full impact assessment of the effect of this instrument is available in pages 67 to 72, 77 to 78 and 83 to 89 of “Impact Assessments for the Health Bill, Updated for the House of Commons, May 2009” at [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_093305](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_093305) or from Dr. Alison Austin at the Department of Health, telephone: 0207 210 4947 or email: [Alison.austin@dh.gsi.gov.uk](mailto:Alison.austin@dh.gsi.gov.uk).

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STATUTORY INSTRUMENTS

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**2010 No. 1000**

**NATIONAL HEALTH SERVICE, ENGLAND**

The National Health Service (Direct Payments) Regulations  
2010

£5.50