

2015 No. 1815 (W. 260)

SOCIAL CARE, WALES

**The Care and Support (Direct
Payments) (Wales) Regulations
2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the circumstances when local authorities are either required or allowed to make direct payments under Part 4 of the Social Services and Well-being Act 2014 (“the Act”) as a way of meeting a person’s needs for care and support.

Regulation 2 sets out the circumstances when local authorities will be under a duty to make direct payments. The duty will apply in all cases when the conditions contained in sections 50, 51 or 52 of the Act are met except in cases to which regulation 14 applies. Regulation 3 provides that making direct payments discharges a local authority’s function (whether a duty or a discretion) to meet care and support needs.

Regulation 4 fulfils the requirement in section 53(5) of the Act that the Regulations include provision about steps a local authority must take to enable people to make informed choices about direct payments.

Regulation 5 sets out certain additional steps which must be taken by a local authority if the person for whose benefit the payments are to be made lacks capacity.

Regulation 6 sets out the circumstances when direct payments may be used to pay a person who is a relative and lives in the same household as the person for whose benefit they are made. Regulation 7 imposes a requirement requiring direct payments to be subject to conditions where the person for whose benefit they are made lacks capacity.

Regulation 8 gives local authorities discretion to make direct payments subject to conditions. Regulation 9 requires local authorities to decide whether to make payments as gross payments or net payments and to take a person’s financial

circumstances into account in making that decision. Regulation 10 sets out when a local authority can terminate the arrangements for direct payments and require repayment.

Regulation 11 creates requirements about the frequency of reviews and the people that the local authority must involve in the review.

Regulation 12 makes provision to comply with the requirement in section 53(7) of the Act that the Regulations must specify the benefits whose receipt qualifies a person to receive direct payments without being subject to any contribution.

Regulation 13 contains provision about the termination of direct payments if an adult to whom direct payments are made loses capacity.

Regulation 14 applies in relation to a range of persons who are subject to requirements made by orders in the criminal justice system or licence requirements following sentence and which relate to the person's drug or alcohol use. Local authorities are able to make direct payments to these persons but they can only do so on condition that payment is made to another person who is suitable and both persons agree to the arrangement.

Regulation 15 sets out the modifications which apply to persons whose entitlement is to after-care services under section 117 of the Mental Health Act 1983.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department for Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

2015 No. 1815 (W. 260)

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**The Care and Support (Direct
Payments) (Wales) Regulations
2015**

Made 21 October 2015

*Laid before the National Assembly
for Wales* 3 November 2015

Coming into force 6 April 2016

The Welsh Ministers, in exercise of the powers conferred by sections 50, 51, 52, 53 and 196(2) of the Social Services and Well-being (Wales) Act 2014(1)(2), make the following Regulations.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Care and Support (Direct Payments) (Wales) Regulations 2015.

(2) These Regulations come into force on 6 April 2016.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Social Services and Well-being (Wales) Act 2014;

“A” (“*A*”) is used to refer to a person whose care and support needs or support needs are being or will be met by making direct payments;

“P” (“*P*”) is used to refer to a person who is, or who it is proposed, will be a recipient of direct payments and who is a “suitable person”(3) for the purposes of section 50(4) of the Act or a person

(1) 2014 anaw 4.

(2) Sections 50 to 53 of the Act are modified in relation to persons to whom section 117 of the Mental Health Act 1983 applies by the provisions in Schedule A1 to the Act (inserted by section 75 of and Part 2 of Schedule 4 to the Care Act 2014 (c. 23)).

(3) “Suitable person” is defined in section 50(5) of the Act.

with parental responsibility⁽¹⁾ for A to whom direct payments may be made for the benefit of A under section 51 of the Act;

“direct payment” (*“taliad uniongyrchol”*) is defined in sections 50(7), 51(7) and 52(7) of the Act;

“relative” (*“perthynas”*) means—

- (a) a spouse or civil partner;
- (b) a person who lives with a person as if a spouse or civil partner;
- (c) parent, parent-in-law or step-parent,
- (d) son or daughter;
- (e) son-in-law or daughter-in-law;
- (f) stepson or stepdaughter;
- (g) brother or sister;
- (h) aunt or uncle;
- (i) grandparent; or
- (j) the spouse or civil partner of any person specified in sub-paragraphs (c) to (i).

(5) In these Regulations references to a person’s needs “for care and support” are to be read as a person’s “needs for support” where the person is a carer.

Duty to make direct payments

2. Where—

- (a) a local authority—
 - (i) is under a duty to meet a person’s needs for care and support under section 35, 37, 39, 40 or 42 of the Act; or
 - (ii) has decided to meet the needs of a person for care and support under section 36 or 38 of the Act or support in relation to a carer under section 45 of the Act;
- and
- (b) the conditions in section 50, 51 or 52 of the Act (as the case may be) are met,

a local authority must make direct payments towards the cost of meeting that person’s needs for care and support unless the person is a person to whom regulation 14 applies.

Effect of making payments

3. Where a local authority makes direct payments to a person, the making of the payments displaces the

(1) “Parental responsibility” is defined in in section 197(1) of the Act by reference to section 3 of the Children Act 1989 (c. 41).

local authority's duty or power to provide, directly or indirectly, to meet the needs, or that aspect of the needs, in relation to which the payments are made and for the duration of the period for which payments are made.

Steps to enable informed choices about direct payments

4.—(1) When a local authority—

(a) decides that it will meet the needs of A for care and support, and

(b) determines that making direct payments is an appropriate way of meeting A's needs,

it must provide information to A to ensure that A is able to make an informed choice about whether or not to consent to the making of payments.

(2) The information which a local authority provides must include—

(a) how it proposes to meet those needs if the needs are not met by the making of direct payments;

(b) confirmation of whether, in the local authority's view, direct payments are an appropriate way of meeting A's needs⁽¹⁾;

(c) information about the nature and the purpose of direct payments;

(d) information about different ways of managing direct payments;

(e) the amount of any payments which the person would be entitled to if a choice was made to have a direct payment and how the amount of the payment would be calculated;

(f) information about the support which is available to assist people to manage direct payments whether from the local authority or from any other person;

(g) information about the effect of financial assessment and whether, in the case of the needs in question any direct payments would be likely to be made as gross payments or net payments.

(3) Where A is an adult who does not have capacity, the local authority must instead provide the information to any person authorised under the Mental Capacity Act 2005⁽²⁾ to make decisions about A.

(1) One of the conditions for triggering a requirement or a discretion to make direct payments to meet a person's need for care and support is that the local authority is satisfied that direct payments are an appropriate way of meeting the person's needs – see sections 50(3)(c)(i), 50(4)(d)(i), 51(5)(a) and 52(5)(a) of the Act.

(2) 2005 c. 9.

(4) Where A is a child aged 16 or 17 who does not have capacity, or is a child below the age of 16 who does not have sufficient understanding to make an informed decision, the local authority must instead provide the information to a person with parental responsibility for A.

Duty to consult and take other steps for persons without capacity

5. Before considering whether direct payments are an appropriate way of meeting the needs of A where A is an adult without capacity, a local authority must—

- (a) consult—
 - (i) anyone named by A as someone to be consulted on the issue;
 - (ii) anyone engaged in caring for A or with a significant interest in A's welfare;
 - (iii) P; and
 - (iv) a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A's needs for care and support;
- (b) where A is an adult who previously had capacity, consider, so far as reasonably practicable—
 - (i) A's past and present views, wishes and feelings and, in particular, any relevant written statement made by A while still with capacity;
 - (ii) the beliefs and values which would be likely to influence A's decision; and
 - (iii) any other relevant factors that A would in the local authority's view be likely to consider, if able to do so; and
- (c) obtain an enhanced criminal record certificate issued under section 113B of the Police Act 1997(1) in respect of P where P is an individual but is neither a relative of A nor a friend of A who is involved in A's care.

Conditions about using direct payments to pay relatives

6.—(1) A local authority may authorise the use of direct payments to pay a relative of A who is living in the same household if it considers that it is necessary to promote the well-being of A.

(2) Payments may be authorised to pay the relative either—

(1) 1997 c. 50.

- (a) for provision of care and support to A; or
- (b) for help to A in managing the payments.

(3) In considering whether it is necessary to promote the well-being of A in accordance with paragraph (1) a local authority must take into account the views of A and the other persons mentioned in regulation 11(3).

(4) Where a local authority does not consider that it is necessary to promote A's well-being, it must impose a condition that direct payments are not to be used to pay a relative of A who is living in the same household.

Conditions requiring vetting

7.—(1) Where a local authority makes direct payments under section 50 of the Act to P because A lacks capacity, it must impose conditions as set out in this regulation.

(2) The conditions are that P—

- (a) acts in the best interests of A when securing the provision of care and support; and
- (b) notifies the local authority if P believes that A no longer lacks capacity.

(3) Where the circumstances in paragraph (4) apply the local authority must also impose a condition that P obtains—

- (a) an enhanced criminal record certificate issued under section 113B of the Police Act 1997 including suitability information relating to vulnerable adults (within the meaning of section 113BB of that Act) or children (within the meaning of section 113BA of that Act); or
- (b) verification that a satisfactory certificate of that sort has been obtained,

in respect of any person from whom a service is secured being a service for which the direct payments are made.

(4) The circumstances in which a local authority must impose the condition in paragraph (3) are that P is not—

- (a) a relative of A; or
- (b) a friend of A who is involved in the provision of care for A.

Further conditions which a local authority may apply to the making of direct payments

8.—(1) A local authority may make a direct payment subject to further conditions.

(2) Conditions imposed under paragraph (1) may, for example, include a requirement that—

- (a) the needs in respect of which payment is being made may not be met by a particular person;
- (b) the recipient of the payments must provide information reasonably required by the local authority for the purposes of ensuring that direct payments are an appropriate way of meeting A's needs.

(3) A condition imposed under paragraph (2)(a) must not require that A's needs may only be met by a particular person.

Net payments or gross payments

9.—(1) When a local authority decides to make direct payments, whether under regulation 2 or regulation 14 of these Regulations(1), it must decide whether to make them as net payments or gross payments.

(2) In deciding whether to make net payments or gross payments a local authority must take into account the effect on A having regard to A's financial circumstances.

Repayment of direct payments

10. A local authority may terminate its arrangements for making direct payments and may require repayment of all or part of the direct payments which it has made if it is satisfied either—

- (a) that the payments have not been used to meet the need to which they relate; or
- (b) that a condition imposed under regulation 6, 7, 8 or 14 has not been complied with.

Reviews

11.—(1) A local authority must review the arrangements for the making of direct payments and the use which is being made of them—

- (a) at intervals which the local authority determines appropriate at the point of starting to make direct payments to A, having regard to the circumstances in A's case;
- (b) when A or P call for a review;

(1) Before making a decision about whether to make direct payments a local authority will have carried out a financial assessment in accordance with regulation 6 of the Care and Support (Financial Assessment) (Wales) Regulations 2015 (S.I. 2015/1844 (W. 272)) and will have made a determination in accordance with regulation 20 of the Care and Support (Charging) (Wales) Regulations 2015 (S.I. 2015/1843 (W. 271)).

- (c) when the local authority calls for a review either because—
 - (i) it is concerned that the use being made of the direct payments is not meeting the needs of A;
 - (ii) it is concerned that a condition attached to the making of the payments is not being complied with; or
 - (iii) there is a significant change in A or P’s circumstances; and
- (d) in any event, at intervals not greater than—
 - (i) 6 months after the first payment is made; and
 - (ii) 12 months following the first review.

(2) Where A, P or the local authority call for a review under paragraph (1)(b) or (c), the period before the next review is due will be extended accordingly.

(3) When carrying out a review the local authority must involve—

- (a) A;
- (b) P (where payments are made to P);
- (c) any carer of A;
- (d)
 - (i) any person whom A asks the local authority to involve;
 - (ii) if A is an adult who lacks the capacity to decide who to involve, any person authorised under the Mental Capacity Act 2005 to make decisions about A’s needs for care and support;
 - (iii) if A is a child aged 16 or 17 who does not have capacity to decide who to involve—
 - (aa) any person authorised to make decisions about A’s needs for care and support under the Mental Capacity Act 2005; or
 - (bb) a person with parental responsibility for A;
 - (iv) if A is a child below the age of 16, A’s parent or other person in a parental role; and
- (e) any other person who the local authority considers to have sufficient involvement in the care or support arrangements for A.

(4) The requirement to involve a parent or other person in a parental role in a review under paragraph (3)(d)(iv) does not apply where, in the view of the local authority, involving that person would not be consistent with the child’s well-being.

(5) In this regulation “person in a parental role” (“*person mewn rôl rhiant*”) includes a parent, a person

with parental responsibility or other person who is looking after the child.

Direct payments for a child

12.—(1) Where A is a child and a local authority makes direct payments under section 51 of the Act towards the cost of meeting that child’s care and support needs, if the condition in paragraph (2) is met then the local authority must meet the requirements of paragraph (3).

(2) The condition in this paragraph is that either A or P are in receipt of—

- (a) income support under Part 7 of the Social Security Contributions and Benefits Act 1992⁽¹⁾;
- (b) any element of child tax credit other than the family element;
- (c) working tax credit;
- (d) income-based jobseeker’s allowance;
- (e) income-related employment and support allowance; or
- (f) universal credit.

(3) The requirements in this paragraph are that the local authority—

- (a) must make the payments at the rate which it estimates to be the reasonable cost of provision to meet the care and support needs in respect of which the payments are made; and
- (b) must not make the payments subject to any condition requiring either the child A or, the recipient of the payment P, to pay any amount to the authority by way of reimbursement.

(4) In this regulation—

- (a) “child tax credit” (“*credyd treth plant*”) is construed in accordance with section 8 of the Tax Credits Act 2002⁽²⁾ and “family element” (“*elfen deuluol*”) has the same meaning as in section 9(3) of that Act;
- (b) “working tax credit” (“*credyd treth gwaith*”) is construed in accordance with sections 10 to 12 of the Tax Credits Act 2002;
- (c) “income-based jobseeker’s allowance” (“*lwfans ceisio gwaith yn seiliedig ar incwm*”) has the meaning given in section 1(4) of the Jobseeker’s Act 1995⁽³⁾;

(1) 1992 c. 4.
(2) 2002 c. 21.
(3) 1995 c. 18.

- (d) “income-related employment and support allowance” (“*lwfans cyflogaeth a chymorth yn seiliedig ar incwm*”) means an income-related allowance under Part 1 of the Welfare Reform Act 2007(1) (employment and support allowance);
- (e) “universal credit” (“*credyd cynhwysol*”) is construed in accordance with Part 1 of the Welfare Reform Act 2012(2).

Direct payments for an adult who no longer has capacity

13.—(1) A local authority need not terminate the making of direct payments under section 50 of the Act in relation to A where A is an adult to whom paragraph (2) applies and one of the circumstances in paragraph (3) applies.

(2) This paragraph applies where A is an adult in relation to whom condition 1 in subsection (3)(b) of section 50 of the Act was met because A had capacity to consent to the making of payments at the time the arrangement started, but who subsequently loses capacity.

(3) This paragraph applies where either—

- (a) the local authority is satisfied that A’s loss of capacity to consent to the making of payments is temporary and either—
 - (i) the period or periods of loss of capacity are not likely to affect A’s ability to manage the payments; or
 - (ii) another person who appears to the authority to be capable of managing the payments is prepared to accept and manage the payments on behalf of A during the periods of A’s incapacity; or
- (b) condition 2 in subsection (4) of section 50 of the Act is met.

Persons subject to requirements imposed in relation to drug or alcohol use

14.—(1) This regulation applies to persons listed in the Schedule.

(2) A local authority may make a direct payment to a person to whom this regulation applies but only if it attaches conditions in the terms set out in paragraph (3) and the further condition in paragraph (4) is met.

(3) The conditions which must be attached are—

(1) 2007 c. 5.
 (2) 2012 c. 5.

- (a) that A agrees and remains in agreement that the payments are made to a person (“B”) to manage on A’s behalf; and
- (b) that B agrees and remains in agreement to receive the payments and to manage the payments to meet A’s needs for care and support.

(4) The further condition is that the local authority is satisfied that B is an appropriate person to receive and manage payments on A’s behalf.

Section 117 of the Mental Health Act 1983

15.—(1) Where a local authority is under a duty to provide after-care services for a person under section 117 of the Mental Health Act 1983⁽¹⁾ and the conditions in sections 50, 51 and 52 of the Act (as modified by Schedule A1) are met, then it must make direct payments to discharge its duty.

(2) These Regulations apply to direct payments made in discharge of a local authority’s duty under section 117 of the Mental Health Act 1983 with the following modifications.

(3) References in this regulation to “after-care” (“*ôl-ofal*”) or “after-care services” (“*gwasanaethau ôl-ofal*”) are to be construed in accordance with section 117 of the Mental Health Act 1983.

(4) In regulation 3 remove the words “meet the needs, or that aspect of the needs” and substitute “discharge its duty under section 117 of the Mental Health Act 1983 or that aspect of the duty”.

(5) (a) In regulation 4(1)(a) remove the words “meet the needs of A for care and support,” and substitute “provide after-care services under section 117 of the Mental Health Act 1983”;

- (b) in regulation 4(1)(b) remove the words “meeting A’s needs” and substitute “discharging its duty under section 117 of Mental Health Act 1983”;

- (c) in regulation 4(2)(a) remove the words “meet those needs” and substitute “discharge its duty”; and

- (d) omit regulation 4(2)(g).

(6) In regulation 5 remove the words “meeting the needs of” and substitute “discharging its duty towards”.

(7) In regulation 6(2)(a) remove the words “care and support” and substitute “after-care”.

(8) In regulation 7(2)(a) remove the word “care and support” and substitute “after-care services”.

(1) 1983 c. 20.

(9) (a) In regulation 8(2)(a) remove the words “needs in respect of which payment is being made may not be met” and substitute “after-care services in respect of which payments are made may not be provided”;

(b) in regulation 8(2)(b) remove the words “meeting A’s needs” and substitute “discharging its duty towards A”; and

(c) in regulation 8(3) remove “A’s needs can only be met” and substitute “after-care services may only be provided”.

(10) Omit regulation 9.

(11) In regulation 10(a) remove the words “meet the need” and substitute “provide the after-care service”.

(12) (a) In regulation 11(1)(c)(i) remove the words “meeting the needs of” and substitute “discharging its duty towards”;

(b) in regulation 11(3)(d)(ii) remove the words “care and support” and substitute “after-care”.

(13) Omit regulation 12.

(14) In regulation 14(3)(b) remove the words “meet A’s needs for care and support” and substitute “provide after-care services for A”.

Mark Drakeford

Minister for Health and Social Services, one of the
Welsh Ministers

21 October 2015

Adults whose needs the local authority
may meet by making direct payments
subject to certain conditions

This Schedule applies to a person if they are—

- (a) subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003⁽¹⁾, 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;
- (b) subject to an alcohol treatment requirement as defined by section 212 of the Criminal Justice Act 2003, 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⁽²⁾, Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Chapter 2 of the Crime (Sentences) Act 1997⁽³⁾, 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⁽⁴⁾ or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- (e) subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (f) 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⁽⁵⁾ or subject to a drug treatment and testing order within the meaning of section 234B of that Act; or

(1) 2003 c. 44.

(2) 1991 c. 53.

(3) 1997 c. 43.

(4) 2000 c. 6.

(5) 1995 c. 46.

- (g) released on licence under section 22 or 26 of the Prisons (Scotland) Act 1989⁽¹⁾ or under section 1 or 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993⁽²⁾ and subject to a condition that they submit to treatment for their drug or alcohol dependency.

(1) 1989 c. 45.
(2) 1993 c. 9.