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Chief Executives of Councils

Copy to: Directors of Social Work/Chief Social Work Officers  
Directors of Finance  
Convention of Scottish Local Authorities  
Association of Directors of Social Work  
Appropriate Professional and Voluntary Bodies  
Other holders of SWSG Circulars and Guidance Package  
(circular only) no enclosures

Dear Colleague

## **COMMUNITY CARE (DIRECT PAYMENTS) ACT 1996**

### **SUMMARY**

1. 'The Community Care (Direct Payments) Act 1996 ("the 1996 Act") will come into force on 1 April 1997. Enclosed with this circular are .

- an extract copy of the main provisions of the Act as it applies in Scotland;
- a copy of the Community Care (Direct Payments) (Scotland) Regulations 1997; and
- a copy of the policy and practice guidance on direct payments.

### **The 1996 Act**

2. The Scottish provisions of the 1996 Act amend the Social Work (Scotland) Act 1968 by inserting new sections 12B and 12C into the 1968 Act. A copy of these new sections is enclosed with this circular. The 1996 Act contains similar provisions for England and Wales. Separate, but similar, legislative provision is made for Northern Ireland.

3. The 1996 Act also amends section 13 of the 1968 Act by replacing the words "the last foregoing section" with the words "section 12 of this Act". This is a consequential amendment to ensure that the provisions of section 13 continue to relate to section 12 of the 1968 Act.

## Regulations

4. The Community Care (Direct Payments) (Scotland) Regulations 1997 will come into force on 1 April 1997. The Regulations specify the eligible group who will be able to receive direct payments, the group of people for whom direct payments may not be used to secure a service, and the maximum period of residential accommodation which may be purchased using direct payments. A copy of the Regulations is enclosed.

## Policy and Practice Guidance

5. A copy of the policy and practice guidance on direct payments also accompanies this circular. The policy guidance is issued under section 5(1) of the Social Work (Scotland) Act 1968 which local authorities are required to act under in the exercise of their social work functions. It sets out the Government's view of what local authorities should be doing when implementing the 1996 Act. The practice guidance contains advice on good practice which local authorities may wish to consider when implementing the Act. The policy and practice guidance are contained in one publication and should be read together.

## Contact Point

6. Enquiries about this circular should be addressed to Andrew McNaughton (Tel: 013 1-244-5454) at the above address.

## Note

7. Copies of the enclosures to this circular are available to other interested parties by contacting Carol-Ann Gray (Tel: 0131-244-5409) at the above address.

Yours faithfully

**G A ANDERSON**

**COMMUNITY CARE  
(DIRECT PAYMENTS)  
ACT 1996**

**POLICY AND PRACTICE  
GUIDANCE**

The Scottish Office  
Social Work Services Group

March 1997

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## COMMUNITY CARE (DIRECT PAYMENTS) ACT 1996

### POLICY GUIDANCE

#### **Purpose**

1. The aim of this policy guidance (which is issued under Section 5(1) of the Social Work (Scotland) Act 1968) is to set out the Government's view of what local authorities should do if they choose to exercise the power given to them by the Community Care (Direct Payments) Act 1996 ("the Act"). The Act inserts new Sections 12B and 12C into the Social Work (Scotland) Act 1968 ("the 1968 Act"). The Act gives local authorities the power to make direct cash payments to some individuals in lieu of the community care services they have been assessed as needing, to enable them to secure for themselves the relevant services. Direct payments are a different way of fulfilling existing community care responsibilities and the existing policy and practice guidance on community care also applies to the making of direct payments. This guidance is intended to supplement existing guidance to explain how the Government sees direct payments fitting into the wider community care arena.

2. The accompanying practice guidance advises on how local authorities might implement the Act. The two pieces of guidance should be read together.

#### **Context policy aims and objectives**

3. The Government's aim, in giving local authorities the power to make direct payments, is to increase users' independence by giving them more control over the way the community care services they receive are delivered. A direct payment is a payment made by a local authority to an individual whom it has assessed as needing community care services. The local authority makes the payment instead of arranging the services it has assessed the person as needing. The person then uses the payment to secure for himself or herself the relevant services. So long as the authority is satisfied that the person's assessed needs will be met through the arrangements he or she makes using the direct payment, the local authority is relieved of its responsibility to arrange those services for that person.

4. The aim of direct payments is to promote independence, and this is achieved most effectively when they are introduced in a spirit of partnership between the local authority and the user. Local authorities should seek to leave as much choice as possible in the hands of the individual. However, since direct payments are an alternative way of securing services which the local authority would otherwise arrange, and are public funds, the local authority needs to be satisfied that the person's assessed needs are being met, and that the money is being spent appropriately and cost-effectively.

5. Making a direct payment does not affect an authority's function of providing emergency assistance under Section 12 of the 1968 Act. If the authority considers the circumstances to be so exceptional as to require such assistance, they may so provide it in respect of the services to which the direct payment relates (see new Section 12C (3) of the 1968 Act).

### **Scope of the Act**

6. **The Act enables local authorities to make direct payments to some people (specified in regulations) whom it has assessed under Section 12A of the 1968 Act as needing community care services. Community care services are defined in Section 5A (4) of the 1968 Act.**

7. The Act gives local authorities a power to make direct payments. It does not give them a duty to do so. Each local authority may decide for itself whether to use direct payments to help meet the needs of its local population and, in each case, for which service or services to offer direct payments. Local authorities may arrange some services for someone as well as making direct payments to him or her. Local authorities should not treat people to whom they decide to offer direct payments any more or any less favourably than people who receive services. Furthermore, direct payments are not the only way in which local authorities can promote independence and give people more influence over the way the community care services they need are provided. Local authorities should continue to develop other ways of making their services more responsive to the needs and wishes of service users.

8. Direct payments may only be made by a local authority in lieu of community care services, so they may only be offered to people who are assessed as needing community care services. This means that local authorities should not offer direct payments to people who do not meet their usual eligibility criteria for community care.

9. The Act does not authorise any other body, such as a health board or a housing department, to make direct payments; nor does it enable direct payments to be used to purchase health or housing services. Direct payments may be made by the local authority in place of the social care element of jointly-commissioned services, but they cannot be made by health boards, or used to purchase the NHS element of jointly-commissioned services.

10. The, legislation does not authorise a local authority to make direct payments to people under 18, or to adults for the purpose of purchasing services for children or young people under the age of 18.

11. Users may ask carers or other third parties to help them manage direct payments and a third party acting as a user's agent in this way may, in fact, be the person who receives and handles the money. But the user must remain in control of the arrangements, and remains accountable for the way in which the direct payments are used. The Act does not allow local authorities to make payments to third parties to manage on behalf of the user where the user is not in control (see also paragraph 24). This is true even where the services provided to the user are intended specifically to assist the carer.

12. Not everyone who is eligible for community care services will be eligible for direct payments. Regulations made under new Section 12B (1)(b) of the 1968 Act specify which groups of people are eligible. Local authorities should check the current regulations but, as at 1 April 1997, under the Community Care (Direct Payments) (Scotland) Regulations 1997 the eligible group is certain persons in need under the age of 65 who are capable of managing direct payments. The regulations define a person in need by reference to the definition in Section 94 (1) of the 1968 Act, "person in need" . paragraph (b). This might therefore include people with any kind of impairment: for example, those with physical, including sensory disabilities, learning disabilities and people who are disabled by illness (for example those

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affected by mental illness, or by HIV/AIDS). Direct payments may not be made to people aged 65 or over, unless the person concerned has been receiving direct payments in the year before he or she reaches that age. Everyone to whom direct payments are made must be willing and able to manage them (alone or with assistance). The Government will review the eligible group when the Act has been in force for one year. Within the eligible group, authorities should not discriminate unfairly between people who request direct payments when considering their suitability.

13. The regulations in force at 1 April 1997 also specify that direct payments may not be offered to certain people whose liberty to arrange their care is restricted by certain mental health or criminal justice legislation as follows:

- (i) patients subject to after-care under a community care order under the mental health legislation;
- (ii) patients detained under mental health legislation who are on leave of absence from hospital
- (iii) patients subject to guardianship under the mental health or criminal justice legislation;
- (iv) restricted patients conditionally discharged under mental health or criminal justice legislation;
- (v) offenders serving a probation order subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency;
- (vi) offenders released on licence subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency; and
- (vii) people subject to equivalent mental health or criminal justice legislation applicable in England or Wales.

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14. People in these groups are required to receive specific community care services. Offering them direct payments in lieu of those services would not give a sufficient guarantee that the person would receive the services required.

15. The only community care service for which direct payments may not substitute is permanent residential care. Direct payments may be made to enable people to purchase for themselves short stays in residential accommodation, but regulations under new Section 12B (4) of the 1968 Act specify the maximum period. Again, local authorities should check the current regulations, but as of 1 April 1997 the regulations specify that where two periods of residential care are less than 4 weeks apart, they should be added together to make a cumulative total. If the two periods are more than four weeks apart they are not added together. The cumulative total, calculated in this way, cannot be more than four weeks in any twelve month period.

16. For example, someone might have one week of residential care every six weeks. Because each week in residential care is more than four weeks apart, they are not added together. The cumulative total is only one week and the four week limit is never reached. Another person might have three weeks in residential care, two weeks at home, and then another week in residential care. The two episodes of residential care are added together to make four weeks, so the person cannot use their direct payments to purchase any more residential care within a twelve-month period.

17. People can receive additional residential care once they have reached the four-week maximum. They cannot purchase the residential care using their direct payments, but if the local authority considers that further residential care is needed, the authority can still arrange and fund residential care for the person in the normal way.

### **Consultation and information**

18. Local authorities are required to seek the views of representatives of people who use community care services in preparing their community care plans. This should include representatives of people who receive or are likely to receive direct payments and their carers.

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Local authorities should also consult representatives of people who might wish to receive direct payments and others with an interest, including providers of community care services, when considering how to implement the Act locally. They should also, as with community care generally, listen to the views of users and carers as part of their overall monitoring and reviewing of the way in which they operate direct payments.

19. As with all local authority services, information about direct payments should be made readily available and accessible. It should be included in the information about the services available which local authorities already provide, even if fuller information about direct payments is available separately.

### **Assessment for direct payments**

20. Assessment is a crucial process. Getting the assessment right is the key to making direct payments work. Detailed policy and practice guidance on assessment already exists, and should be followed whether the person being assessed is likely to receive services or direct payments. In particular, it is important that the needs-led focus of the assessment is retained and that the user and, with the user's agreement, any informal carer, should be involved throughout the assessment process.

21. People who are already receiving services may wish to switch to direct payments. They may raise this possibility themselves, or the local authority may wish to suggest it; and the issue might arise at, or between, a person's reviews. This guidance applies equally to people with whom the authority is undertaking a community care assessment for the first time, and existing service users with whom the authority is discussing a switch to direct payments.

22. Direct payments can only be offered to someone who has been assessed as needing community care services. The decision to offer direct payments, like the decision of which services to arrange, therefore follows the assessment of an individual's needs. However, assessment of needs and decisions about how these needs should be met should be seen as part of one process. The local authority has discretion over whether or not to offer someone a direct payment. In addition to the authority's assessment of the person's needs, if the authority

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is considering offering the person direct payments then the process will need to include an assessment of whether direct payments are appropriate, and in particular of whether the person is able to manage them. The user also needs time to think through the implications of taking on direct payments and to consider whether this is what he or she wants. Authorities should ensure that, if they are considering offering direct payments, they build time into the assessment process for both their own assessment as to whether direct payments are appropriate, and the user's consideration. They should raise the possibility of direct payments with the person being assessed at an early stage to give him or her as much time as possible to think about this. Authorities should also give the person as much information as possible about what receiving direct payments will involve, before asking the person to make their decision (see also paragraphs 28 to 30).

23. Local authorities should only offer direct payments to people who they consider will be able to manage them, either alone or with assistance. Authorities have the discretion to refuse direct payments to anyone who they judge would not be able to manage them, but should avoid making blanket assumptions that whole groups of people will necessarily be unable to do so. The judgement as to whether someone is able to manage will need to be made on an individual basis, taking into account the views of the individual himself or herself. As with all community care assessments, health professionals should be involved where appropriate.

24. People may receive assistance with managing the money, but they remain accountable for the way it is spent. The payment may be made to a third party as agent for the user, but the person for whom the direct payment is made must retain the ultimate control over the money, and the final responsibility for how it is spent. This does not necessarily mean that the person for whom the direct payments are made must authorise every transaction. People may express a preference about how a service is to be provided, and delegate the details to an agent. However, it must be open to the individual to overrule any decisions made by the agent. Direct payments are intended to facilitate independent living, not to switch from dependence on the local authority to dependence on a third party. Local authorities should satisfy themselves that the relationship between the user and the agent has been discussed and agreed before direct payments begin.

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25. If the authority concludes that someone could only manage direct payments with help, it should satisfy itself that adequate help is available over a sustained period before deciding to offer direct payments. Users may for example choose to ask family or friends, advocacy or support groups to help them in this way. They might also choose to buy in assistance, eg using a payroll service. There is no restriction on who may help a user in this way, although the restrictions on paying relatives described in paragraphs 35 and 36 below will apply if the local authority has agreed that the direct payment can be used to pay someone to help in this way. Where significant help is being provided, the authority will need to ensure that any monitoring and review procedures involve direct contact with the individual for whom the payments are made, if necessary in the absence of the person who is helping him or her, to ensure that the user is content with the way in which the direct payment is being used. Both local authorities and users should also be aware of the potential conflict of interest if the user secures services from the same person who is helping him or her to manage the direct payment.

26. Some users who initially need help to manage their direct payments will in time be able to manage on their own. However, it is possible that not everyone will be able to do so. There is no restriction on the length of time over which the user may receive help to manage the direct payment; people who will be receiving help to manage their direct payments on a permanent or indefinite basis still come within the eligible group of people to whom local authorities are permitted to offer direct payments.

27. Local authorities should ensure that they handle sensitively discussions with the user about the user's ability to manage direct payments. This is particularly important where the authority decides not to offer someone direct payments because it does not consider that, even with assistance, the individual will be able to manage them.

### **Consent**

28. The Act authorises local authorities to make direct payments only with the consent of the person concerned. Direct payments give users greater control and independence, but this increased freedom is inevitably accompanied by increased responsibilities. When users

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consent to direct payments, they take on the responsibility for purchasing the services to which the payments relate. This involves ensuring that they receive the appropriate services to an acceptable quality. It may also involve taking on legal responsibilities (e.g. as an employer, or by contracting with an agency). The user is also accountable to the local authority for the way in which the money is spent. These responsibilities involve a substantial commitment in terms of time and energy, and should not be underestimated. Local authorities will wish to establish that each person understands what is involved and believes that he or she would be able to manage the direct payment (whether alone or with help). Local authorities should not make direct payments to a person unless they are satisfied that he or she understands and accepts the responsibilities involved.

29. Local authorities should explain what is involved as fully as they can to people who wish to consider receiving direct payments. They should not expect people to commit themselves to accepting direct payments before full information is available- for example before the person has been informed how much money they would receive or what information they would be expected to record for monitoring purposes (see also paragraph 48).

30. In particular, authorities should draw people's attention to the fact that any contract they make for the provision of services will involve legal responsibilities, and that if the person contracts directly with an individual they may be regarded as an employer. Authorities should make clear to each user that it is his or her own responsibility to ensure that he or she is aware of, and complies with, any legal responsibilities.

31. The local authority should also make clear that it will arrange services in the normal way if someone decides not to accept direct payments. Having offered someone a direct payment, the authority should not pressurise him or her to accept direct payments. It should be made clear at every stage that people have the option of withdrawing their consent to receive direct payments at any time, and local authorities should discuss with people who are to receive direct payments what they should do if they no longer wish to receive direct payments.

32. Situations may arise where people will refuse to accept direct payments because they object to a specific aspect of the terms on which the payments are offered, for example the amount or the conditions attached. If it is not possible to resolve these matters through discussion, local authorities should advise people in this situation of their right to use the complaint procedure.

### **Carers' assessments**

33. Local authorities are reminded that it is important to involve carers. This is the case irrespective of whether the person being assessed is likely to be offered direct payments or services after the assessment. There should be discussion with the user and the carer about how the assessment should be performed, and how the carer might be involved in this. In this guidance the term 'carers' is being used in the same way as in the Carers (Recognition and Services) Act 1995 (which amended Section 12A of the 1968 Act); it does not therefore include people who the user pays to provide care using the direct payment. Under the Carers (Recognition and Services) Act 1995, authorities also have a duty, on request by the carer, to offer carers who are providing, or intend to provide, substantial and regular care a separate assessment of their ability to care and continue caring. The results of the carer's assessment should be taken into account when the local authority is making decisions about services to be provided to the user. This duty is not affected by the possibility that the user may be offered direct payments instead of services, or that the user may receive direct payments for services which specifically reflect the results of the carer's assessment. Carers' rights under the Carers (Recognition and Services) Act 1995 apply equally to carers of direct payments recipients and carers of service recipients.

### **Deciding how direct payments are to be used**

34. In order to satisfy itself that the person's assessed needs will be met, each local authority should discuss with anyone to whom it proposes to offer direct payments how he or she intends to secure the services he or she has been assessed as needing. Local authorities should make clear to people, before they start to receive direct payments, what the money may or may not be spent on and how much flexibility the person has over the way the money is

spent. It is up to the local authority to decide how much flexibility to allow people, but it will wish to bear in mind that the aim of the policy is to give people more choice and control over the services they are assessed as needing. Local authorities should also make clear to people before starting to make direct payments the procedure to be followed if they wish to depart from the agreed arrangements.

35. As of 1 April 1997, regulations under new Section 12B (3) of the 1968 Act prevent people using direct payments to secure services from their partner (ie. the other member of a married or unmarried couple) or a close relative living in the same household. A close relative in this context is a parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, step son or daughter, brother, sister or the spouse or partner of any of the foregoing.

36. In addition, local authorities should not allow people to use direct payments to secure services from a close relative living elsewhere or from someone else living in the same household as the direct payment recipient. This restriction is not intended to prevent people using their direct payments to employ a live-in personal assistant (provided that that person is not someone who would be excluded automatically by the regulations). The restriction applies where the relationship between the two people is primarily personal rather than contractual, eg if the people concerned would be living together regardless of any employment relationship. A local authority may decide that an exception to this general rule is justified, if it is satisfied that that is the only appropriate way of securing the relevant services.

37. Local authorities need to be satisfied, on an ongoing basis, that the person's assessed needs are being met, and that the money is being spent appropriately. They may set conditions on the direct payment to ensure this but they should not set conditions which are not necessary for the successful implementation of the Government's policy in relation to direct payments or the discharge of local authority responsibilities (eg to ensure the proper use of public funds). In particular, they should not set a condition that someone who receives direct payments may only use certain providers. Apart from the prohibitions set out in the

regulations or this guidance, local authorities should allow people to purchase services from any provider who is able to provide an adequate service to meet the user's assessed needs.

38. Direct payments cannot be used to purchase any local authority services as local authorities are not permitted to sell their services in this way. However, an individual could receive both direct payments and services provided by the local authority in the normal way within his or her care package.

39. Local authorities are reminded of existing guidance which states that services to be provided or arranged and the objectives of any intervention should be agreed in the form of a care plan, a written copy of which should be given to the user. This guidance applies equally where direct payments are provided in lieu of services.

### **Cost effectiveness**

40. A local authority should not make direct payments unless they are at least as cost-effective as the services which it would otherwise arrange. In any comparison between the cost of a direct payment and the cost of a service, the local authority should use the full cost of each, taking account of any administrative costs and other overheads. Local authorities may, if they choose, make direct payments at a greater cost than the cost of arranging the equivalent service, provided they are satisfied that this is still at least as cost-effective as arranging the services, ie that the increased cost is justified by the greater effectiveness arising from enabling the person to manage his or her own services and live independently.

### **Calculating the amount of a direct payment**

41. It is up to each local authority to decide on the amount of a direct payment and on what it is supposed to cover. The Government is not setting any limit on the maximum or minimum amount of a direct payment, either in the amount of care it is intended to purchase, or on the value of the direct payment. The Act requires local authorities to make direct payments at a rate which, taken with any financial contribution from the person concerned (see paragraph 45 below), is equal to the authority's estimate of the reasonable cost of his or her securing the

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provision of the service concerned. This means that direct payments must be sufficient to enable the recipient legally to secure a service of a standard which the local authority considers adequate to fulfil the needs for which the payment is made. Local authorities should consider the arrangements which each individual proposes to make when deciding on the value of a direct payment, but the authority cannot be required to make direct payments to cover specific costs where there is a more cost-effective way of securing the service (whilst still enabling the user to meet any legal requirements).

42. There may be cases where an individual thinks that the total value of the direct payment should be greater than the local authority proposes and/or that his or her contribution should be less than the local authority proposes. In such cases, the local authority is under no obligation to increase the amount offered above the level which it considers reasonable to enable the recipient to secure the relevant services, taking account of the individual's contribution. The authority may decide to increase the amount nevertheless so as to enable the person to secure his or her preferred service if it is satisfied that the benefits of doing so outweigh the costs and that it is still cost-effective in comparison with services arranged by the local authority. Where these cases cannot be resolved through discussion, local authorities should advise the individual that he or she may pursue the matter through the authority's complaints procedure.

43. The local authority should give individuals as much notice as possible of the value of a direct payment, and the contribution they will be expected to make to the cost of their care package (see paragraph 45), before the payment begins, or its level is changed. This gives an opportunity for any dispute over the level to be resolved before the payment begins or the change takes effect. If that is not possible, then while any complaint is being considered, users may choose either to manage on the amount of direct payments being offered, without prejudice to their complaint that it is inadequate, or to refuse to accept the direct payments, in which case the local authority must arrange the relevant services instead. If the local authority is satisfied that it would be a proper and cost-effective use of its resources, it may decide to pay a direct payment at a higher rate than it had originally intended, until the dispute is resolved. This is entirely the local authority's decision; as always, it is up to the authority to decide on the appropriate level of a direct payment.

44. Direct payments recipients can use their own resources to purchase additional, or better quality, services to those in their care plan if they wish to do so.

**“Charging” for direct payments**

45. The Act enables the local authority to require the individual to make a financial contribution to the cost of his or her care, by making direct payments of less than its estimate of the reasonable cost of securing the provision of the service concerned. The direct payment is therefore made’ net of the contribution which the individual is expected to make. This is equivalent to local authorities’ power to levy a charge for services which they arrange under Section 87 of the 1968 Act. In considering whether, and if so how, to ask individuals to make a financial contribution to the cost of their care package, local authorities should treat people who receive direct payments as they would have treated them under the authority’s charging policy if those people were receiving the equivalent services. The principle which local authorities should follow is that there should be fair and equitable treatment between service users and direct payments recipients.

**Monitoring and reviews**

46. When a person consents to receive direct payments, he or she takes on the responsibility for securing services to a standard which both he or she and the local authority consider is adequate. The local authority is relieved of its responsibility to arrange services for that person, so long as it is satisfied that the needs to which the payments relate will be met through the arrangements he or she makes with the payments. If it is not satisfied that those arrangements will be adequate, its responsibilities towards the user are the same as if no payment has been made. It follows that the local authority will need to set up monitoring arrangements so as to satisfy itself that people’s arrangements are meeting their needs.

47. The fact that the local authority is making direct payments rather than arranging services itself does not affect its responsibility to review people’s care package at regular intervals. As with all community care services, the projected timing of the first review should be set when direct payments begin. People should be made aware that they may request a

review sooner if their circumstances change. The purpose of the review remains to establish whether the objectives set in the original care plan are being met. It should cover both the question of whether the person's needs have changed and how he or she is managing direct payments.

48. Each local authority should also set up financial monitoring arrangements for audit purposes, to fulfil its responsibility to ensure that public funds are spent on the intended services. CIPFA are intending to produce guidance for local authorities on this point. Before people decide to accept direct payments, local authorities should discuss with them the information they will be expected to provide and the way in which monitoring will be carried out. Direct payments should not begin until the recipient has agreed to any conditions which are necessary for monitoring purposes.

49. For direct payments to work, it is essential that these two forms of monitoring are co-ordinated. If they are not to be carried out by the same person, local authorities should ensure that information is exchanged and that all those involved understand the purpose of direct payments, and the role that the authority's monitoring plays in the successful operation of the policy. In particular, information from both forms of monitoring should be considered in any decision to change the level of, or to stop, a direct payment.

### **When difficulties arise**

50. Local authorities should discuss with each person what arrangements he or she will make for emergencies, to ensure that the person receives the care he or she needs when the usual arrangements break down, eg through sickness of one of the person's personal assistants. It is reasonable for a local authority to expect the person to have contingency plans, but if a local authority becomes aware that someone is unable to secure services to meet his or her needs, then its responsibility to arrange services for that person is the same as if it had not made any direct payments. The local authority will need to be prepared to respond in these circumstances just as it would with any other service user. It may decide to step in and arrange the necessary services, but it should first consider providing assistance to enable the person to continue to manage his or her own care.

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### **When to seek repayment**

51. The Act enables local authorities to require some or all of the money they have paid out to be repaid if they are not satisfied that it has been used to secure the provision of the service to which it relates. They may also require repayment if the person has not met any condition which the authority has properly imposed, including that described in paragraph 36 above and those imposed by the regulations. Local authorities which decide to require repayment by someone who they know is also receiving payments from the Independent Living Funds (ILFs) should inform the ILFs as soon as possible and should seek to agree if possible a common approach if the ILFs are also seeking recovery.

52. It is up to the local authority to decide when it is appropriate to seek recovery, but local authorities should bear in mind that this power is intended to enable them to recover money which has been diverted from the purpose for which it was intended, or which has simply not been spent at all. It is not intended to be used to penalise honest mistakes. Local authorities should be satisfied, before they start to make direct payments, that people who receive direct payments understand all of the conditions they will be required to meet. Additional conditions should only be imposed insofar as they are necessary to ensure that the objectives of the 'Government's policy in relation to direct payments are met and that the local authority's responsibilities (eg to monitor the use to which public funds are put) are discharged. Local authorities should take into account hardship considerations in deciding whether to seek repayments. When considering whether to recover unspent funds, authorities should also bear in mind that there may be legitimate reasons, which may involve outstanding legal liabilities, for a direct payment recipient to build up an apparent surplus (eg to pay their employees' quarterly PAYE, or to pay outstanding bills from a care agency).

53. Local authorities should discuss with users, before direct payments begin, the circumstances in which the authority might wish to consider seeking repayment.

**Discontinuing direct payments**

54. Either the authority or the individual may decide at any time that they no longer wish to continue with direct payments. However, the authority should not automatically assume when problems arise that the solution is to discontinue direct payments. If the local authority does decide to withdraw direct payments then it will need to arrange the relevant services instead, unless the withdrawal was following a reassessment after which the authority concluded that the services were no longer appropriate.

55. The authority should inform people as soon as possible if it is considering discontinuing direct payments, and if appropriate give them an opportunity to demonstrate that they can continue to manage direct payments. Authorities should set a minimum period of notice which will normally be given before direct payments are discontinued, and include it in the Information to be provided to people who are considering direct payments. It may be necessary in exceptional circumstances to discontinue direct payments without giving notice. Local authorities should explain to people, before they begin to receive direct payments, the circumstances in which this might occur and discuss with them the implications this has for the arrangements that users might make.

**Complaints procedure**

56. Local authorities are required to operate a procedure for considering any representations (including any complaints) which are made to them with respect to the discharge of their social services functions or about any failure to discharge those functions. People who receive, or consider receiving, direct payments are entitled to have access to this procedure in the same way as anyone else for whom the social work department has a power or a duty to provide a service. It is important to ensure that people are aware of the complaints procedure, particularly when they are informed of a decision they may not welcome. People may make complaints about any action, decision or apparent failing of the local authority, but not about services which they have secured from independent providers (including people they employ directly) using direct payments. People will need to address any complaints about the services they receive to the service providers.

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**Resources**

**57.** Direct payments are an alternative to community care services which would otherwise be arranged by the local authority, so local authorities which choose to offer direct payments will need to do so within their existing overall resources.

**COMMUNITY CARE (DIRECT PAYMENTS) ACT 1996**

**PRACTICE GUIDANCE**

**Introduction**

1. The Community Care (Direct Payments) Act 1996 (“the Act”) gives local authorities the power for the first time to make cash payments for community care direct to individuals. Direct payments are a major step forward for community care, and present an opportunity to bring about improvements in the quality of life of people who would like to manage their own care. It is inevitable that local authorities’ control over this money is less direct than where they provide or purchase services directly, and there are risks involved. On the other hand, day-to-day control of the money and care package is passing to the person who has the strongest incentive to ensure that it is spent properly on the necessary services, and who is well placed to judge how best to match the available resources to needs – the user himself or herself. Users have consistently asked for greater influence over the way in which services are provided and, in particular, younger disabled people have expressed the desire to receive direct payments so they can manage their own care.

2. This practice guidance should be read together with the accompanying policy guidance.

3. This practice guidance draws on the experience of several of the schemes which some local authorities have been operating in recent years to support independent living. It aims to give advice to enable local authorities to make the most of this new power to make direct payments whilst minimising the risks involved. Operating direct payments effectively can involve handling some complex issues, and it is worth taking time to think through all the areas covered in this guidance and the accompanying policy guidance before beginning to take the first steps towards making payments locally. The aim should be to set up simple but effective systems, which contain safeguards but are not unnecessarily bureaucratic or time-consuming. Local authorities may find it helpful to designate a contact point within the

authority with responsibility for answering queries and for identifying and addressing any problems which arise.

4. The purpose of direct payments is to put more control in the hands of people who need community care services. That is a process which needs to start right at the beginning. It is important that local people should be consulted fully as local arrangements for making direct payments are set up. Local authorities will wish to take care to avoid focusing on one group of potential users to the exclusion of other groups and should not make the assumption that organised groups necessarily represent all users or carers in the locality. In particular, care should be taken to include people with different kinds of impairment, people from different ethnic backgrounds and people of different ages. The views of informal carers and of potential providers will also be important. Whatever form consultation takes, it is important that people who have been consulted receive feedback about what has happened, and how their views were taken into account. It is also important that the lines of communication remain open, so that the local authority remains responsive to users' views over time.

### **Scope of the Act**

5. The Act enables local authorities to make direct payments to people so that they can purchase some or all of the community care services which the authority has assessed them as needing. Local authorities can make direct payments for any community care service, except permanent residential care. Local authorities have the discretion to decide for which services they wish to offer direct payments. Existing independent living initiatives have enabled disabled people to secure assistance with personal and domestic tasks inside and outside the home, such as getting in and out of bed, dressing, having a bath, preparing a meal, doing housework and laundry, going shopping etc. Other examples have included assistance to enable an informal carer to take a break and enabling a deafblind person to secure the services of a guide-communicator.

6. The Act also allows local authorities to make direct payments to enable people to purchase for themselves aids and adaptations which come within the legal definition of community care services and so would otherwise be provided by the social work department.

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Direct payments cannot be used to purchase services or equipment that would otherwise be arranged by other authorities (e.g. the NHS or housing departments). Direct payments are not a substitute for Improvement Grants for adaptations for disabled people). It is up to the local authority to decide whether to make direct payments to allow people to purchase equipment. If they do so, they will need to bear in mind the specialist expertise that may be needed to ensure that equipment purchased is safe and appropriate, and the question of whether making a direct payment is a cost-effective way of purchasing such equipment. Authorities would also need to clarify, with the user, the ownership of any equipment, and where responsibility lies for its ongoing care and maintenance. For these reasons the Department considers that direct payments are unlikely to be appropriate for purchasing complex and expensive pieces of equipment, although they may well make sense for smaller, less specialised items.

7. The restriction in regulations on the length of time for which people may use direct payments to pay for residential accommodation is intended to prevent direct payments being used to pay for permanent residential accommodation. Within the limit set by the regulations, someone might use their direct payments to secure, for example, one week in six, or periodic weekends, in residential accommodation. This does not affect the local authority's power to arrange residential accommodation itself on behalf of people who are receiving direct payments for the rest of their care package (and there is no restriction on the length of time for which the local authority may arrange residential accommodation for each person).

### **Who is eligible for direct payments?**

8. Direct payments may only be offered to people who are eligible to receive community care services. Local authorities will also need to bear in mind the limits on eligibility for direct payments set by the regulations. Within these limits, it is up to each local authority to decide to whom to offer direct payments.

### **Information about direct payments**

9. Making information about direct payments readily available might include, where appropriate, providing information in formats which are accessible to people with different

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forms of disability and to people whose first language is not English. In cases where there is a strong possibility that direct payments may be offered, it may also be helpful to put people in touch with a support group or local centre for independent living, or people who already manage direct payments, before their needs are assessed. The Government would expect to see information about direct payments in local authority community care plans.

### **Assessment for direct payments**

10. The accompanying policy guidance identifies a number of key points which are essential to a successful assessment for direct payments: involving the user in the assessment; enabling the user to think through whether or not he or she would like to receive direct payments; and assessing the user's ability to manage direct payments.

11. If someone whom the local authority is considering offering direct payments is also seeking funding from the Independent Living Fund (ILF), or is already receiving ILF money, the local authority will need to keep in touch with the ILF (just as they would do if arranging services for that person).

#### (a) Involving the user

12. Direct payments involve the user taking over the day-to-day control of his or her care package. The greater ownership the user has of the process by which his or her needs are assessed, and by which the decision is reached on the areas for which a direct payment will be made, the more likely it is that direct payments will be a success. Taking time to discuss with the user what assistance he or she needs and for what a direct payment is to be provided can avoid problems with direct payments at later stages.

13. Some users may already have clear views about the activities with which they need assistance. Others may need help and encouragement to play a more active part in the process. This may mean practical assistance, such as providing interpreters for those who are unable or find it difficult to communicate in spoken English, more intensive advocacy support to help people to think through and ask for what they need, or simply allowing them more

time. In some areas, self-assessment forms designed by user groups, have been used to prompt users to think through the tasks with which they need assistance before their needs are assessed by the local authority.

(b) Helping the user decide

14. In order to make an informed decision, people will need to understand what is involved in managing direct payments. The Department is producing a guide to managing direct payments. It may be helpful to give people a copy of this guide, or of locally-produced information, at this stage. If someone is not sure whether he or she would be able to manage direct payments, or what would be involved, it may also be helpful for the local authority to put him or her in touch with a local support group or centre for independent living, which may be able to advise on ways in which potential problems may be overcome, or to give the user an opportunity to meet people who already manage their own care. Some users may also want time after the assessment to think about the local authority's offer of direct payments before making a decision.

(c) Assessing the user's ability to manage

15. The judgement as to whether someone is able to manage direct payments, and how much help is appropriate, can sometimes be difficult and will need to be made on an individual basis. The local authority may find it helpful to ask the following questions. It should be emphasised that these questions are intended as an aid to, not a replacement for, the authority's judgement and decision in each individual case.

Does the person understand the nature of direct payments?

Can the person express preferences (with assistance to communicate their views if necessary) between different types of service?

Does the person currently take other important decisions for himself or herself?

- Will the person be able to keep the necessary records?
- Does the person understand the legal responsibilities that may arise if he or she becomes an employer, and can he or she cope with them?
- Will the person be able to ensure that he or she receives services he or she has paid for?
- Is the person likely to be able to manage direct payments on an ongoing basis (as opposed to having a fluctuating or deteriorating condition which may affect his or her ability to manage)?

16. If the answer to either of the first two questions is “No”, then that person is unlikely to be able to manage direct payments. Negative answers to the remaining questions may raise ~-doubts, but local authorities should consider what assistance would enable the person to manage that aspect, rather than taking it as an automatic indication that the person is unable to manage. For example, the Government envisages that people might receive assistance with keeping records, management of day-to-day relationships with staff or operation of PAYE. If someone needs help to manage but does not have access to the help he or she needs on an ongoing basis, the local authority may wish to consider facilitating the provision of that assistance. It may also wish to consider offering training to assist direct payments recipients to manage.

17. If the necessary assistance is available, the local authority will need to consider whether the person concerned would be in control of the money. Local authorities should take care to avoid the danger that control may pass to the third party, either with or without the consent of the user. This may need delicate negotiation, particularly where the third party is a close relative or friend who may be making sacrifices in order to provide assistance, or who might have their own interest in the way direct payments are used. It is a key principle of direct payments that it is the user who controls the money. Allowing more time for the assessment process may help the authority to ascertain whether it is really the user’s own choice to receive direct payments, and whether they would really be in control. Ensuring that the authority

talks to the user on their own, or if an interpreter is needed that he or she is not the person who would be helping to manage the direct payment, is also likely to aid this decision.

18. Local authorities will need to consider how to treat someone with a fluctuating condition which affects his or her ability to manage direct payments. In many cases, people with such conditions may nevertheless be able to cope with direct payments if a friend, relative or some other third party is willing to provide greater assistance when their condition worsens. If the person's condition is likely to deteriorate to the point where he or she is unable to manage even with assistance, the local authority might consider ways of enabling him or her to receive direct payments while he or she is able to manage, with a back-up system controlled by the local authority to be triggered during periods when he or she loses that capacity. In the absence of such arrangements, it is unlikely to be appropriate to offer direct payments to people who are only able to manage periodically. Equally, local authorities might decide to offer direct payments to people whose condition means that they are likely, at some point in the future, to lose the ability to manage permanently, but they will still need to satisfy themselves that safeguards are in place to ensure that direct payments do not continue when such people are no longer able to manage. People whose condition is likely to fluctuate or deteriorate permanently should be given an opportunity to explore any worries they may have about their ongoing ability to manage direct payments, and care should be taken to avoid their feeling under pressure to accept direct payments.

19. There may be cases where the local authority has doubts about a person's ongoing ability to manage although he or she appears to understand clearly what is involved and be willing to take it on. It is the local authority's decision whether to offer a direct payment in such cases. It may be appropriate to set up a formal trial period to give people the opportunity to demonstrate their ability to manage. However, the fact that the person cannot count on receiving the payments beyond the trial period may make it more difficult for them to manage. For example, he or she may have difficulty recruiting staff for a short period.

20. Refusing direct payments to someone who cannot take on the responsibility for managing the money may lead to disappointment for some, but the responsibility for the way in which direct payments are spent should not be underestimated. There is nothing to be

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gained and much to be lost, not least for the person concerned, from passing this responsibility to people who are not able to cope with it. It may be helpful to discuss with users and carers general criteria by which the local authority might assess someone's ability to manage, although it still remains the local authority's judgement and decision in each individual case.

21. If the local authority concludes that someone would not be able to manage direct payments, it is good practice to discuss with him or her the reasons for the decision, particularly if he or she disagrees. Although the person may continue to be unhappy with the decision, the offer of an explanation is an important indication that the matter has been considered seriously. The authority should also make the individual aware that they can use the complaints procedure to challenge the local authority's decision not to offer direct payments.

### **Deciding how direct payments are to be used**

22. Local authorities will need to consider carefully how much flexibility to allow each individual over how to spend direct payments and what conditions to attach to ensure that the arrangements direct payments recipients make are satisfactory. Authorities may wish to seek legal advice in deciding on appropriate conditions. They will need to bear in mind the regulations which prevent people from using direct payments to secure services from their spouse, partner or a close relative living in the same household and the further restrictions contained in paragraph 36 of the accompanying policy guidance.

23. Some people may already have ideas about how they would use direct payments, and may have discussed these with the care manager at the assessment stage. Other people may need advice or advocacy to help them think through the alternatives. The local authority could help people to obtain accurate information about local services which they might purchase. If it has not already done so, it might also consider at this stage whether there is a local support group with which it could put the person in touch. If there is a local register of approved providers, and those providers are willing for their details to be passed on, the

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authority should bring the register to the attention of the individual, but it would not be appropriate to require the individual only to contract with providers from the register.

24. In considering whether people's proposed arrangements will be adequate, local authorities should not be constrained by existing patterns of service provision. By exploring innovative and creative options, it may be possible to identify alternatives which both cost less and meet the user's needs more effectively. Where the user's needs fluctuate over time, it will be important to discuss in advance how the direct payments will be used to secure a package of assistance which varies according to need. Local authorities may also wish to consider offering someone a combination of direct payments and services, whether for an initial trial period or on a longer term basis.

25. Many people will prefer to use direct payments to take on their own personal assistants as direct employees. This option gives them the most direct control over the assistance they receive, but it also carries the most responsibility (for example, to pay tax, national insurance contributions and statutory sick and maternity pay), so it will not be everyone's choice. Others may choose to contract with self-employed individuals or with independent agencies. People will not be able to use direct payments to purchase local authority services, as local authorities are not permitted to sell community care services in this way, but they may continue to receive those services direct from the local authority.

26. It may be difficult to make direct payments for the community care element of an integrated service, for example the support element of supported housing, or the care element of integrated education packages. However, it may be possible for bodies other than the social work department to provide their services separately, allowing the individual to receive a direct payment to secure the community care element for himself or herself.

27. Care plans in relation to direct payments will need to cover all the areas discussed between the authority and the user and set out clearly what has been decided. The care plan should make clear to the user what the money may or may not be spent on, how much flexibility he or she has in the way in which the money is spent, the type of variations to the care package which the local authority would expect to be asked to approve in advance, the

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information the user will be expected to provide for audit purposes and any other conditions which the local authority has set. The Annex to this guidance (page 37) contains a checklist of points which should be sorted out before direct payments start and which should be covered in the care plan.

### **Calculating the amount of a direct payment**

28. It is up to the local authority to decide on the amount of a direct payment but it must be enough, taking into account any contribution which the individual is expected to make to the cost of his or her care package, to enable the recipient legally to secure the relevant service to a standard which the local authority considers is acceptable (see paragraph 41 of the policy guidance). In deciding on the level of a direct payment, local authorities will need to discuss with the user the arrangements that he or she is planning to make and the costs that may be associated with this (eg National Insurance, sick pay, maternity pay, employers' liability insurance, public liability insurance, VAT). However, the particular costs involved will depend on the way in which the user secures the service, and the local authority is not obliged to fund the particular~ costs associated with the user's preferred method of securing the service if the service can in fact be secured more cheaply (but still to a quality which the authority considers is acceptable) in another way. Nor is the local authority obliged to fund particular costs which are incurred by the user on a discretionary basis, which are not therefore essential in order to secure the service. Local authorities have discretion to decide whether to include an amount in the direct payment to cover costs which they are not obliged to cover.

### **“Charging” for direct payments**

29. In seeking to apply their charging policies fairly and equivalently to people who receive services and people who receive direct payments, local authorities may find it helpful to refer to the Department's Circular No: SWSGI/97: Charging for Adult Non-residential Sector Care.

**Consent**

30. People may need some time to consider the implications of taking on direct payments and the responsibilities involved. Local authorities may therefore want to give people the opportunity to reconsider a decision not to accept direct payments or to stop receiving direct payments, particularly if they change their minds as a result of a change in their circumstances. If someone who had initially expressed an interest in receiving direct payments decides not to accept them, the local authority may wish to discuss with him or her the reasons for that decision. Any such discussion should be handled sensitively.

**Making payments**

31. It is up to local authorities to decide how frequently payments should be made and whether in advance or arrears. Local authorities will need to set up mechanisms which enable them to monitor payments which are made and which minimise the risk of money being misspent. In considering what procedures to put in place, local authorities should bear in mind the likely effect of different alternatives on the circumstances of people who are likely to receive direct payments. Making payments in advance will ensure that people are in a position to pay for services as they are received. On the other hand, requiring the production of invoices before payments are made in arrears may help reduce the risk of money being misspent. In, either case the arrangements for payment will need to be reliable, as late or incorrect payments may put at risk users' ability to secure the services they need. The local authority may also need to set up procedures for making additional payments in emergencies, for example if needs change or regular payments go astray. Local authorities should tell users, before direct payments begin, how and when the payments will be made.

**Support services**

32. Experience with independent living projects suggests that direct payments will work best where people who receive the payments have access to support as they manage the money, particularly in the early stages. The Government encourages local authorities to arrange for people to whom they make direct payments to have access to such support. This might be by providing a service directly, in partnership with a local voluntary organisation, or by some other means.

33. One of the most valuable resources a support service can offer is to provide someone to act as a single point of contact who is able to help users with any problems which arise. The experience of users on existing independent living schemes is that they find it easier to seek advice from someone who is independent of the local authority. Authorities will need to consider carefully how to ensure that all people receiving direct payments feel comfortable with any support service being offered and are able to access its services. This may mean contracting-in the services of people with particular skills, eg language skills, to provide assistance to clients with particular needs. People who have experience of managing direct payments themselves are well placed to advise and help others as they begin to receive direct payments. In many areas, people who are managing their own care meet regularly to support one another and to discuss any difficulties which have arisen. This can be an effective way of sharing experience.

34. Users may also find it helpful to refer to written materials. The Government is producing a national guide for people who receive direct payments. Local authorities may find it helpful to supplement this with local information.

35. People who receive direct payments may need particular support when they first take on responsibility for managing their own care. People who are becoming employers for the first time may benefit from having access to someone with expertise in employment issues, or to a payroll service which will assist them with tax, national insurance or other matters. A support service may also be able to provide practical assistance, for example by holding a list of local agencies, helping people to draft advertisements, job descriptions and contracts, providing rooms for interviews and assistance with interviewing, or by acting as an address for responses to advertisements. A support service might also arrange training, for example in budgeting or assertiveness skills.

36. People who receive direct payments may also find it helpful to have access to advocacy support. A support service may be well placed also to act as an advocate for local users as a

group when the local authority is considering changes to the scheme, but it may well be preferable to separate any support role from an advocacy role on behalf of individuals, to avoid any conflict of interest.

37. Local authorities should also consider whether it would be helpful for other people to have access to any support service. For example, informal carers of people who are receiving direct payments may need advice about how direct payments work, particularly if they are assisting their friend or relative with managing the payments. It may also be helpful for employees of people receiving direct payments to have access to training or support.

### **Monitoring and reviews**

38. Monitoring arrangements should be consistent both with the requirement of the local authority to be satisfied that the person's needs are being met and with the aim of the policy to increase user choice and independence. Local authorities should seek to focus on whether the person's needs are being met, rather than on the service being delivered in a certain way. The authority should discuss with users what steps it intends to take to fulfil its responsibilities in this area, and may also wish to discuss how it might support them in securing adequate quality care. It should be prepared to consider variations to what it proposes. Some independent living schemes have found spot checks helpful for this purpose and as a means of guarding against fraud (by the user, their employees, or any person providing assistance to the user to manage the direct payment). However, local authorities which are thinking of using spot checks will need to consider this very carefully and to bear in mind the need to respect the privacy of people who receive direct payments.

39. Each authority will need to ask itself how it would know if someone was experiencing difficulty with managing their direct payments. It may be appropriate to rely on someone who has been managing their own care for some time to ask for extra help if he or she needs it, but authorities should not assume this will be an adequate safeguard, particularly when someone begins to receive direct payments for the first time. Where an authority wishes to ask the user whether he or she is satisfied with the services he or she is securing, it should ensure that it communicates directly with the user wherever possible. In particular, it may need to use a

different interpreter if the user may wish to comment on the services of his or her usual interpreter. Local authorities should not make assumptions that someone who is not receiving services to their satisfaction cannot manage direct payments. Authorities should seek to ensure that users do not feel inhibited from expressing reservations about the services they are purchasing, or about any other problems they are having in managing their direct payments, by a concern that their direct payments will be stopped automatically or arbitrarily.

40. Local authorities should follow existing guidance on carrying out reviews. It may be helpful to consider first whether the person's needs have changed, before moving on to review how he or she is managing direct payments and how well direct payments are working. Following the review, the amount of direct payments may need to be increased or reduced.

41. In order to audit direct payments, it is important to be able to identify the direct payments money separately from any other money used for similar purposes. For example, people may use their direct payments to employ a personal assistant, and then pay the assistant to work additional hours from their own resources or using funding from the Independent Living Funds. Local authorities will wish to bear in mind this possibility when discussing audit arrangements with people to whom they offer direct payments.

42. Local authorities should aim to keep audit arrangements as simple and easy to understand as possible. It is worth taking time to discuss with users what is required so as to avoid being needlessly intrusive.

### **When difficulties arise**

43. Difficulties can be minimised by good assessments, clarity (eg about what the money can be used for), monitoring, effective support arrangements (where these are necessary) and by discussing potential areas of difficulty, and how they will be handled, with the user before direct payments begin.

44. Examples of contingency plans which people who receive direct payments might make include making arrangements with independent agencies for emergency cover, or recruiting

personal assistants who are prepared to work additional shifts at short notice when necessary. However, it remains possible that difficulties will arise which have not been anticipated and which cannot be covered by the arrangements the individual has made. In these circumstances, it will be helpful if the direct payment recipient knows they can contact a named individual in the local authority or support service whom they can ask for help.

45. If the authority's monitoring or review process reveals that the person's needs are not being met, or if the person contacts the authority to seek emergency assistance, the authority will need to consider what action it should take. Good communication between the different parts of the authority involved will be very important at this stage. This may mean helping people to make other arrangements, or it may mean arranging services directly until they are able to make their own arrangements once more.

46. When difficulties arise, the authority will wish to ask itself the following questions:

*Have the person's needs changed?* If so, the person's needs should be reassessed and the level of direct payment should be reviewed.

*Is the amount of money sufficient to enable the person to secure the relevant services?* It may be that experience shows that there are other costs which were not taken into account when the cost was calculated initially, or that anticipated costs have not, in fact, arisen. It may be necessary to review the level of direct payment.

*Is the person still able to manage direct payments?* Local authorities need to continue to be satisfied that people can manage direct payments. However, difficulties will not necessarily mean the person cannot manage. There is inevitably a learning process when people begin to receive direct payments and people may make mistakes, but still be capable of managing direct payments in the longer term. Even experienced direct payments recipients may have problems at times but, with some support, be capable of overcoming them.

*Does the person wish to continue receiving direct payments?* As long as the authority considers direct payments are appropriate, it should attempt to enable people to overcome

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difficulties and prevent them becoming discouraged when they experience difficulties, but if someone has decided that he or she no longer wishes to receive direct payments, then the authority should enable him or her to switch to services.

*Has all the money been spent on the services for which it was intended?* If the money has been diverted to other purposes there may be a case for considering seeking repayment. There may be a case for requiring repayment of some of the money even where the person has secured services to meet his or her needs, for example if he or she has secured the service for less than the expected cost and so there is a surplus (although the authority should bear in mind that there may be a good reason for a direct payment recipient to build up a surplus, eg to pay his or her employee's quarterly PAYE). The local authority should explain before someone begins to receive direct payments the circumstances in which it would seek repayment.

*Have services for which the user has paid been received?* If not, then it is the responsibility of the user to seek a refund from the service provider. If the local authority has made further provision for services to meet the same needs or if the services were not received because they were no longer required, then it may wish to consider requiring repayment of the direct payment from the user.

*Has the money been spent wisely?* If not, the person may need more support to enable him or her to manage, or the authority may decide that he or she is not capable of continuing to manage direct payments and should receive services instead.

47. During the consultation on this guidance, some local authorities expressed concern that they might be perceived as being liable for the actions of the user (eg the way in which the user treats their employees). Local authorities which are concerned about this issue should discuss it, and how it might be handled, with users and carers as part of their overall planning, monitoring and reviewing of the way in which they operate direct payments. Authorities which are concerned about legal liability should also discuss this with their legal advisers.

**Discontinuing direct payments**

48. Either the authority or the individual may decide at any time that they no longer wish to continue with direct payments. For example, the authority may decide this because it is not satisfied that the person's needs are, in fact, being met, because the person is no longer able to manage direct payments, because the authority has had cause to seek repayment of funds and has reason to fear that further payments may be misspent, or because direct payments are no longer the most cost-effective option. Clearly, wherever possible, the decision to discontinue should follow discussion with the user and any carer, and the authority should, in any case, keep the individual informed throughout the process. The authority may also need to keep in touch with the Independent Living Funds (ILFs) and share information where appropriate in cases where the individual is also receiving ILF funding.

49. There may be circumstances in which the local authority wishes to discontinue direct payments temporarily. Examples might be when a user does not require assistance for a short period (because he or she is in hospital, or because his or her condition improves), or when a user is temporarily unable to manage direct payments (perhaps again due to fluctuation in his or her condition or the support available). In these cases, the authority will need to discuss with the user how best to manage. The aim should be to enable the user to resume responsibility for his or her own care after the interruption, if that remains his or her wish. The authority, might decide to take over the management of the user's arrangements in the interim. In considering whether it is practical, desirable and cost-effective to maintain the user's arrangements, the authority should bear in mind any contracts into which the user has entered. How this situation is handled is an issue which the authority should discuss with the user before starting to make direct payments.

50. Where direct payments are discontinued, some people may find themselves with ongoing contractual responsibilities or having to terminate contracts for services (including possibly making employees redundant). The local authority will wish to discuss this with people before they begin to receive direct payments and agree how this would be handled. Authorities should also consider how to recover unspent direct payments if the recipient dies, eg if someone wishes to pay an agency in advance for its services, the local authority should

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bear in mind that it may be difficult to recover money paid for services which were not in fact delivered. Authorities should also consider, if the direct payment recipient does leave unspent funds to be recovered, that before his or her death, the direct payment recipient may have incurred liabilities which should legitimately be paid for using the direct payment (eg he or she received services for which payment had not been made at the time of death).

### **Monitoring direct payments as a whole**

51. As well as monitoring how well direct payments are meeting the needs of individuals, local authorities will wish to monitor how direct payments are working overall. In doing so, authorities should actively seek the comments and suggestions of people who receive direct payments or who have considered receiving them.

**CHECKLIST FOR CARE PLAN FOR DIRECT PAYMENTS**

- What are the person's needs, as identified in the assessment?
- To which of these needs do the direct payments relate?
- How will the person secure the appropriate services?
- What variations to the way in which the direct payments are used does the LA expect to be asked in advance to approve?
- What support (if any) does the user need to manage their direct payments?
- How will this support be made available to the person?
- What arrangements has the person made to cover emergencies?
- How much money does the LA consider necessary to secure the appropriate services?
- How much of this total will the LA contribute in direct payments, and how much is the person expected to contribute?
- How often and in what form will payments be made?
- What arrangements does the LA propose for monitoring? What information should the person provide? What access will be required to the person's home?
- What information does the LA require for audit purposes, and when?

- What, if any, other conditions are attached to the direct payment?
- When will the next review take place?
- What should the person do if he or she wants to stop receiving direct payments?
- In what circumstances will the LA consider discontinuing direct payments (permanently or temporarily)?
- How will the LA and user handle any temporary gap in direct payments being made?
- How much notice will be given if the LA discontinues?
- How will any outstanding commitments be handled if direct payments are discontinued?
- In what circumstances would direct payments be withdrawn with no notice?
- In what circumstances would the LA seek repayment?

## PRACTICE GUIDANCE

### Further information

Lothian Centre for Integrated Living  
8 Lochend Road  
Edinburgh  
EH6 8BR

(Telephone: 0131 553 6999).

Centre for Independent Living  
117-127 Brook Street  
Bridgeton.  
Glasgow  
G40 3AP

(Telephone: 0141 550 4455).

National Centre for Independent Living  
250 Kennington Lane  
London  
SE11 5RD

(Telephone: 0171 587 1663).

Local authorities may also find the following publications useful sources of additional information:

- *Cashing in on Independence: comparing the costs and benefits of cash and services* .Gerry Zarb and Pamela Nadash, pub. British Council of Disabled People.
- *Commissioning Independent Living: a guide to developing personal assistance schemes and support services* .E d'Aboville, pub. King's Fund.
- *Devising and resourcing personal care packages* .  
Flora Gathorne-Hardy, pub. The Disablement Income Group.

- Facilitating and supporting independent living: a guide to setting up personal assistance support schemes .Fidelity Simpson with Jane Campbell, pub. The Disablement Income Group.
- Recruiting and employing a care worker .The Disablement Income Group.
- Controlling your own personal assistance scheme .British Council of Disabled People.

**PRACTICE GUIDANCE**

**New Sections 12B and 12C of the Social Work (Scotland) Act 1968 inserted by the Community Care (Direct Payments) Act 1996**

Direct payments in respect of community care services.

12B.- (1) Where, as respects a person in need .

(a) a local authority have decided under section 12A of this Act that his needs call for the provision of any service which is a community care service within the meaning of section 5A of this Act, and

(b) the person is of a description which is specified for the purposes of this subsection by regulations, .

the authority may, if the person consents, make to him, in respect of his securing the provision of the service, a payment of such amount as, subject to subsection (2) below, they think fit.

(2) If

(a) an authority pay under subsection (1) above at a rate below their estimate of the reasonable cost of securing the provision of the service concerned, and

(b) the person to whom the payment is made satisfies the authority that his means are insufficient for it to be reasonably practicable for him to make up the difference,

the authority shall so adjust the payment to him under that subsection as to avoid there being a greater difference than that which appears to them to be reasonably practicable for him to make up.

(3) A payment under subsection (1) above shall be subject to the condition that the person to whom it is made shall not secure the provision of the service to which it relates by a person who is of a description specified for the purposes of this subsection by regulations. .

(4) Regulations may provide that the power conferred by subsection (1) above shall not be exercisable in relation to the provision of residential accommodation for any person for a period in excess of such period as may be specified in the regulations.

## PRACTICE GUIDANCE

(5) If the authority by whom a payment under subsection (1) above is made are not satisfied, in relation to the whole or any part of the payment

(a) that it has been used to secure the provision of the service to which it relates, or

(b) that the condition imposed by subsection (3) above, or any condition properly imposed by them, has been met in relation to its use,

they may require the payment or, as the case may be, the part of the payment to be repaid.

(6) Regulations under this section shall be made by the Secretary of State and may

(a) make different provision for different cases; and

(b) include such supplementary, incidental, consequential and transitional provisions and savings as the Secretary of State thinks fit.

### **Further provisions relating to direct payments**

(1) Except as provided by subsection (2) below, the fact that a local authority make a payment under section 12B(1) of this Act shall not affect their functions with respect to the provision of the service to which the payment relates.

(2) Subject to subsection (3) below, where an authority make a payment under section 12B(1) of this Act they shall not be under any obligation to the person to whom it is made with respect to the provision of the service to which it relates as long as they are satisfied that the need which calls for the provision of that service will be met by virtue of the person's own arrangements.

(3) The fact that an authority make a payment under section 12B(1) of this Act shall not affect their functions under section 12 of this Act in relation to the provision, to the person to whom the payment is made, of assistance, in exceptional circumstances constituting an emergency, in cash in respect of the service to which the payment under section 12B(1) relates.

**COMMUNITY CARE (DIRECT PAYMENTS)  
(SCOTLAND) REGULATIONS 1997**

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