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Summary of the Direct Payments Guidance 2011

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This is a summary of *Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Guidance 2011*. This summary is for a more general audience than the full Guidance, which was written for local authorities.

This is not a legal document. Only the full Guidance is a legal document.

We suggest that you read this alongside the full Guidance. This summary uses the paragraph numbers from the full Guidance to make it easier for you to check out the full, legal, wording.

This summary was written by Social Interface on behalf of the Welsh Government.

<http://www.socialinterface.co.uk>

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Glossary

Words and phrases listed in the Glossary are in **bold** in this summary document.

Best interests

The Mental Capacity Act 2005 gives this phrase a special meaning. It is the principle of how others must make a decision for someone who **lacks capacity** to make that decision. It does not mean doing what *you* think is in someone's best interests. It means thinking about what is important to the person and how the person themselves might have made the decision if they could. Paragraphs 6.39-6.42 (p32) lists the principles used to make a **best interests** decision.

Capacity and lacks capacity

The Mental Capacity Act 2005 assumes that everyone has the **capacity** to make decisions, unless it can be shown otherwise. If there is doubt, someone's **capacity** can be checked on a decision-by-decision basis. This is very important for direct payments as only someone with **capacity** can choose direct payments. Since April 2011, if someone **lacks capacity** to make a decision about direct payments, then someone else can be appointed to make that decision for them. There is a four-stage test to check if someone **lacks capacity**. If the answer to any of these questions is "no", even after all reasonable help and support is given, then the person **lacks capacity** to make this particular decision:

- Do they understand what they need to decide and why?
- Do they understand what may happen if they do or do not make this decision?
- Can they understand and weigh up information to help them make the decision?
- Can they communicate their decision (with help from family, a friend or a professional if necessary)?

If a person **lacks capacity**, this may be permanent or it may be temporary. Some people have fluctuating **capacity**. **Capacity** should not be confused with capability – which is whether someone has the ability to manage direct payments alone or with support.

Duty and power

In law, a **duty** means something *must* be done. A **power** means something *may* be done. There are times when a local authority has a **duty** to offer direct payments. In other circumstances they have a **power** to offer them, but are not obliged to.

Full Guidance

The full Guidance is called *Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Guidance 2011*. The Guidance is statutory. This

means that local authorities MUST fulfil all the duties of the Regulations and Measures, as interpreted in the Guidance. Usually they do this by following everything in the Guidance. If they do not follow everything in the Guidance and someone complains, they would have to demonstrate to a court of law that they were doing everything required but just doing it by an alternative means.

Outcomes

This is what you hope will happen as a result of getting the right help and support. Care plans must focus on **outcomes** rather than services. Getting help and support does not count as an outcome. Examples of an **outcome** might be more confidence, playing an active part in your community, or being able to stay in your own home.

Power of attorney and Deputy

If someone has **capacity**, they can appoint someone else to be in charge of their finances and property. Before 2005, the person they appointed was given “enduring power of attorney” (EPA). Any EPAs are still valid. After the 2005 Mental Capacity Act, the person was given “lasting power of attorney” (LPA) for finances and property. The Mental Capacity Act also introduced two new appointments. Someone with **capacity** can appoint someone else to take over personal welfare decisions if at any time they lose **capacity** to make their own decisions. This is called “lasting power of attorney” for personal welfare. If someone **lacks capacity** to make most or all decisions, the Court of Protection can be asked to appoint someone as their **deputy** who has the same legal power to make decisions on behalf of that person as if they were the person themselves. A deputy can look after property and affairs, personal welfare or both.

Safeguard and promote welfare

This is a phrase from children’s law. Local authorities have a **duty** to do this for anyone under the age of 18. The phrase includes keeping children safe from abuse or neglect, making sure nothing has a bad impact on the child’s health or development, making sure the child grows up being well cared for, and giving children a chance to make the most of their lives.

Social care

This means support or help for someone to live their everyday life. It can mean anything from help getting up in the morning to support for leisure activities.

Suitable person

Only someone who has **capacity** can receive and control direct payments, so if the person needing social care **lacks capacity** they can only benefit from direct payments if someone with **capacity** agrees to receive the direct payments for them. This is called the **suitable person**. The **suitable person** is appointed by the local authority. The **full Guidance** explains who can be a **suitable person** and what their responsibilities are. In addition, *Direct Payments: ‘Suitable Person’ Guidance* is available to help local authorities.

Background

Social care means support or help to live your everyday life. Some people who need social care are eligible for help from their local authority. They can usually choose whether to use direct payments or services arranged by the local authority. Direct payments means getting money from the local authority to arrange your own support.

The Welsh Government believes in people having as much control and choice over their lives and services as possible, and being as independent as possible. Direct payments are important because they can provide all these things.

The **full Guidance** tells local authorities how to obey the law in the way they deliver direct payments. This 2011 **full Guidance** replaces the 2004 Guidance on direct payments.

1. Introduction

The legal basis for direct payments (paragraphs 1.3-1.9)

Direct payments started in 1996. Over the years, more groups of people have been allowed to use direct payments. Since 11th April 2011, adults who **lack capacity** can have a **suitable person** to use direct payments on their behalf. Also, the local authority now has the **power** to give direct payments to some people who have to get help under mental health laws.

The rules about charging and asking people to contribute to the cost of their social care also changed on 11 April 2011.

Scope of direct payments laws (paragraphs 1.10-1.15)

Direct payments can be used by:

- Adults and young people over the age of 16 who have **capacity**.
- A person with parental responsibility for a disabled child, or a disabled parent needing support to care for their child.
- Carers aged 16 or older.
- A **suitable person** for someone who **lacks capacity**.

Usually a local authority has a **duty** to give direct payments to these people if they:

- Want direct payments.
- Have **capacity** to make that decision *and*
- Can manage direct payments.

Annex B and C explain when the local authority does *not* have this **duty**.

In every case, direct payments are given to meet a person's needs for social care. The local authority will have carried out an assessment of these needs, against a set of eligibility criteria.

Overview of direct payments (paragraphs 1.16-1.24)

As a general rule, local authorities should allow the person to decide for themselves the best way to meet their needs. This is because the aim of direct payments is to give people more control, choice and independence over their support and services.

Local authorities must check if they have a **duty** or a **power** to provide direct payments to a person who is entitled to help with social care. No-one has to use direct payments, and no-one can use direct payments to buy a local authority service. People can use a mixture of direct payments and services arranged by the local authority.

The local authority must make sure they:

- Run a scheme that is fair to everyone, wherever they live and whatever their needs, and that complies with equality and anti-discrimination laws.
- Do not try to influence people's choice about whether or not to use direct payments for some or all of their needs.
- Do not put people off direct payments by a lack of information, advice or support.
- Still **safeguard and promote welfare** for any child, and still make sure people's needs are being met.

The person who gives their consent to receiving direct payments is legally accountable to the local authority for how the direct payments are used. Section 3 explains who can give consent.

2. Developing direct payments services locally

Consultation (paragraphs 2.1-2.3)

Consultation needs to happen over time, not just as a one-off activity. Local authorities need to make sure everyone has an equal chance to have their say and be listened to. This may mean thinking carefully about the best way to consult people who find it hard to use direct payments.

Commissioning (paragraphs 2.4-2.5)

Local authorities need to be good at finding out what kind of services people need and want in their local area, and then either providing them or encouraging others to provide them.

Local authorities cannot refuse or delay the start of direct payments by saying they do not have the right systems in place.

Support services (paragraphs 2.6-2.14)

People need good, easy to understand information and support to help them make decisions about direct payments. They must be able to get information and support when they need it.

Local authorities need a good local support service if direct payments are going to be a success. The support scheme can be provided by the local authority alone, by the local authority in partnership with a local voluntary organisation, or in another way.

The local authority needs to give the local support service enough money to do its job well, so that direct payments can be a realistic option for more people. For example, local support services need specialist knowledge (on things such as dementia, sensory impairment or severe learning disabilities) and the ability to communicate with people who want to use their services (such as Welsh speakers and Deaf people).

Local support services need to offer a wide range of services, including support to be an employer and support to manage direct payments. They may need to support both a disabled young person and their parent, especially during transition to adulthood.

A support service might offer things like:

- A list of local provider agencies.
- Support and advice in setting up and running a direct payments scheme, including financial management.
- Help for people to draft advertisements, job descriptions and contracts.
- Help in explaining the safeguards needed when employing people to work with children or vulnerable adults.

- Rooms for interviews and help with interviewing.
- An address for responses to advertisements.
- Support and advice about the legal responsibilities of being an employer.
- Support and advice about being a good manager of staff.
- Support and advice around issues of equality and diversity, including issues of culture and ethnicity (including advice about equality laws).
- Information about income tax and national insurance.
- A payroll service.
- Advice on health and safety issues, including moving and handling.
- Regular training – for example, on assertiveness, budgeting skills.
- Some emergency cover support.
- Signposting to other services such as welfare benefits and advocacy.
- Advice about user-controlled trusts.

Independent advocacy (paragraphs 2.15)

Many people who receive direct payments find it helpful to have access to independent advocacy support. “Advocacy” means someone to speak up on the person’s behalf. “Independent” means this person does not have a vested interest in the decision that needs to be made. Independent advocacy is important, especially for some older people, people with learning disabilities, people with mental health issues and people who **lack capacity**.

Local support schemes can have a role in speaking on behalf of direct payments users (or potential users) as a whole, especially when the local authority is thinking about changes to the way direct payments are arranged locally.

Support for young disabled people (paragraphs 2.16-2.18)

Disabled young people aged 16 or 17 can get direct payments in their own right, *or* their parents can receive direct payments on their behalf. The local authority needs to decide if the young person is ready to manage direct payments for themselves, if that is what the young person wants. If the local authority decides the young person is ready, then the local authority has a duty to provide direct payments, even if the young person’s parents disagree. They must tell the young person how to complain if they disagree with the local authority’s decision.

Complaints procedure (paragraphs 2.19-2.20)

The local authority must have a complaints procedure that can be used to complain about social services. This includes complaints about direct payments. There are new rules (see Annex D) that apply if there is a disagreement about how much money an adult must contribute towards their support.

3. Consent, capacity and ability to manage

Consent (paragraphs 3.1-3.5)

A person does not have to agree to use direct payments. Some people prefer to have their social care arranged by the local authority. Others start using direct payments, but then change their minds, and decide that they no longer want to receive direct payments. Local authorities can give direct payments to:

- The person who needs social care, if that person has **capacity** and is aged 16 or older.
- A **suitable person** if the person who needs social care **lacks capacity**.
- Someone with parental responsibility for a disabled child under 16 (to meet the child's needs).
- A disabled parent with a child under 16 (to meet the child's needs)
- a carer who is aged 16 or older (to meet their own needs as a carer).

In each case the person has to agree to receive the direct payments.

The person receiving the direct payments needs to understand the responsibilities they are taking on. They can choose to have the payments made to someone else on their behalf. But they, not the person physically receiving the money, are still accountable to the local authority for how the money is used.

Capacity (paragraphs 3.6-3.9)

The local authority needs to be sure that someone has the **capacity** to consent before they can give them direct payments. The law says that the local authority must provide all reasonable support and help to someone before they can decide the person **lacks capacity** to consent to direct payments.

Assessing capacity (paragraphs 3.10-3.13)

The starting point is to assume that someone aged 16 or older has **capacity**. The local authority may need to ask a doctor or other professional to help if there is doubt about someone's **capacity**.

The Mental Capacity Act says that a person is unable to make their own decision if the answer to one or more of these questions is "No":

- Can they understand information given to them?
- Can they retain that information long enough to be able to make the decision?
- Can they weigh up the information available to make the decision?

- Can they communicate their decision? This could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

Professional help may be needed if:

- The assessor and the person being assessed disagree about whether the person being assessed has **capacity**.
- Family, friends, carers and/or professionals disagree about the person's **capacity**.
- The person being assessed is telling different people different things, for example they may be telling people what they think the person wants to hear rather than what they personally want.

If the local authority believes a person **lacks capacity** to consent to direct payments, they must keep a written record of how they made that decision, and why they think it is a reasonable decision.

Fluctuating capacity (paragraphs 3.14-3.18)

A person who had **capacity** may lose it long term (for example, because of an accident or dementia). A person who **lacked capacity** may gain it long term (for example, as a result of a new treatment or learning a new skill). Or a person may have **capacity** at some times but not at others (for example, someone with early dementia or bipolar disorder).

This means the local authority may need to check, from time to time, whether a person's **capacity** has changed. The local authority has to make sure a person who **lacks capacity** has as much control as possible over decisions that affect them.

If someone has a **suitable person** and gains long-term **capacity**, the local authority has to find out what the person his/herself wants and put that in place. Once any changes are in place, the **suitable person** will stop getting the money and will stop being responsible for the person's direct payment.

If there are good reasons to think the person has only gained **capacity** for a short time, the **suitable person** can carry on being responsible, but must make sure the person has as much control over their support as possible.

Ability to manage (paragraphs 3.19-3.23)

The local authority must be sure that anyone who receives direct payments will be able to manage them (with support if necessary), and that the person's needs will be met. The person needs to know that they can ask someone else to manage the direct payments for them. They also need to know that they are still accountable to the local authority for how they use the money, even if someone else is doing the managing.

If the local authority decides someone cannot manage direct payments, they need to explain their decision to the person (and any family or friends if appropriate). If the person disagrees, they should be able to use independent advocacy to make sure their arguments are listened to. The person can use the local authority complaints procedure.

The local authority needs to make sure people have as much information and support as possible to understand what managing direct payments might mean. People need this information and support as early as possible.

Advice on making decisions about the ability to manage (paragraphs 3.24-3.28)

If the local authority thinks someone may not be able to manage direct payments, they need to keep a written record of why they think this. They may need to ask other professionals for advice. They will need to take into account what support may be available to help the person manage direct payments.

Some people are unsure if they can manage. This should not be taken to mean they cannot manage. The local authority may need to put services in place until the person decides whether they want to use direct payments. It may be useful to suggest that someone in this position uses a mix of direct payments and services from the local authority until they feel more confident.

Local authorities need to look at ways people can be supported to manage direct payments in the long term. The person giving consent to direct payments can use a trust to manage the direct payments and employ staff.

Long-term considerations (paragraphs 3.29-3.31)

It is a good idea for the local authority to talk with the person about what they want to happen if their condition gets worse, they lose their ability to manage direct payments or they lose **capacity**. They may want to choose who they would want to be their **suitable person** if they lost **capacity**. Even if someone knows they will lose **capacity** in the future, that is no reason for the local authority to stop them getting direct payments now.

Enduring and lasting powers of attorney and deputies (paragraphs 3.32-3.36)

*Enduring and lasting **powers of attorney** and **deputy** are explained in the Glossary.*

If the court has appointed a **deputy**, or someone has **lasting power of attorney** for personal welfare, that person would be expected to become the **suitable person**. However, if they do not want to take on that role, the **suitable person** can be someone else.

Not all **attorneys** or **deputies** wants to take on managing direct payments.
Social Services need to help them make an informed decision about whether they
want to take on this role.

4. Using direct payments

Support for people with communication difficulties (paragraphs 4.1-4.3)

People can only make an informed choice if they understand how their support is provided now, and how direct payments works. The local authority needs to make sure people have the information, support and opportunities they need to be able to make informed choices.

Local authorities need to think carefully how to make sure each person gets the information they need. No single way of giving information will work for everyone.

Some people need help to communicate what they want. They should get that help from people who know them well, and who know how they communicate.

Setting up direct payments (paragraphs 4.4-4.9)

The first step is agreeing a care plan that focuses on the **outcomes** that the person wants, and how the person could use their direct payments to achieve those **outcomes**.

Local authorities need to be open to people's unusual or creative ideas about how they want to meet their needs. If a child is involved, the local authority has to be happy the direct payments will **safeguard and promote** that child's welfare. In all cases, the local authority will need to be sure that the persons' needs will be met.

Some people have times when they need more support, and times when they need less. This needs to be covered in the plan.

Local authorities can put conditions on how direct payments can be used, but have to remember that the aim of direct payments is to give people more control and choice. Restrictions, if any, need to be kept as few as possible, and monitoring needs to be as simple as possible.

Local authorities need to think about the support, information and training that is available if someone chooses to use their direct payments to employ their own personal assistants. Many people get most control and choice by employing their own personal assistants, but doing this also carries the most responsibility.

Assessment and care plans (paragraphs 4.10-4.15)

An assessment is a way to find out someone's needs and what **outcomes** they want to achieve. The assessment is the same whether someone plans to use direct payments or services arranged by the local authority services.

The aim of the care plan is to improve the person's situation, not just stop it getting worse. Getting the right support quickly may also save costly support in the future.

People need to make their own informed choices, including choices about risk. Both the local authority and the person need to be clear about any risks, possible consequences and how to reduce the risks. Discussions about risk need to be written down accurately.

Everyone should always have a care plan and be given a written copy of it. The care plan needs to say how the person will achieve their **outcomes** but not be so detailed that the person has little or no choice or control over their support arrangements.

Short-term needs (paragraphs 4.16-4.18)

Some people only need direct payments for a short time, for example, to help them regain their independence when they come out of hospital. Local authorities need a way to put direct payments in place quickly for these people. The care plan will also need to say how the direct payments will finish when they are no longer needed.

Parents of a disabled child can use direct payments for short breaks. Some voluntary organisations have foster families and/or residential homes. Parents can buy a short break from them, or they can make their own arrangements.

Short-term care in a registered care home (paragraphs 4.19-4.21)

Direct payments can be used to buy an adult a short break in a care home, but not longer term care. Short break means no more than four weeks in any twelve month period. However, there are special rules that apply to the calculation of the four week period. These mean an adult can use their direct payment to buy a short break in a care home for longer than four weeks in some circumstances. These special rules are explained in the **full Guidance**.

For children, direct payments can be used to buy more than four weeks of foster or residential care at a time, and no more than 120 days within any twelve months.

Since April 2011, local authorities do not have to carry out a financial assessment to work out how much an adult must pay towards their stay in a care home for short term breaks using a direct payment.

People living in residential care (paragraph 4.22)

If someone lives in residential care, they cannot use direct payments to pay for the residential care. But they *can* use direct payments for things like trying out independent living before officially leaving the care home, or for day-time activities.

Equipment (paragraphs 4.23-4.30)

Direct payments can be used to buy equipment for social care. Direct payments cannot be used for equipment that the NHS has to provide or work that can be paid for by a Disabled Facilities Grant.

For major pieces of equipment, the local authority will need to be sure that the person has specialist advice so that the equipment is safe and right for them and they know how to use it properly.

A direct payments agreement for buying equipment must include name and address of user, any conditions, payment arrangements (including any contribution from the user), proof of sale, warranty, reviewing, ownership, looking after the equipment and what to do if the person no longer needs the equipment.

Equipment can be an important part of making an overall package of support work well, for example buying a pager or mobile phone for personal assistants.

Calculating the amount of direct payments (paragraphs 4.31-4.37)

It is up to each local authority to decide on the amount of direct payments. By law, the amount given in direct payments must be equal to what the local authority thinks it would reasonably cost to provide the service. There is no maximum or minimum value for direct payments.

Direct payments should be enough to make sure the person can buy a suitable standard of service which will meet their needs. The local authority does not have to pay any costs above the level it thinks is reasonable to buy the service.

The local authority needs to say how much they will give in direct payments, and how much the person is expected to contribute *before* the person starts to get direct payments.

Disagreements about the person's contribution can be reviewed under the Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011. While this is being done, either the person needs to accept the money being offered or the local authority needs to arrange the service.

Financial contributions (paragraphs 4.38-4.51)

There are new regulations (listed in Annex A) that say:

- Which services must be free.
- That the local authority must offer a means test assessment.
- The maximum that a person can be asked to contribute.
- What income and capital must be ignored when working out how much someone must contribute.

Direct payments can be paid gross or net. Gross means the local authority gives the full direct payments, and then claims back any contribution the person has to pay. Net means the local authority only gives the person the local authority's share of the cost as direct payments. It is up to the local authority to decide which payment system it wants to operate, but they are expected to discuss this with people receiving direct payments first.

Making payments (paragraphs 4.52-4.53)

The local authority:

- Decides when and how often to make payments.
- Must give the person full information about the arrangements.
- Must make sure the payment system is reliable *and*
- Must have a back-up system for emergency extra payments.

As long as someone is achieving what it says in their care plan, they can control when they spend the money. For example, they are allowed to “bank” some of the money to use later.

Swapping to direct payments from using services (paragraph 4.54)

At, or just after, the next review of their care plan, each person eligible for support from the local authority should be asked if they want to:

- Swap to direct payments.
- Swap to a mix of direct payments and services provided by the local authority.
- Stay with services provided by the local authority.

Direct payments cannot be used to buy local authority services.

People do not have to wait until the next review of their care plan if they want to switch to direct payments. They can ask at any time.

Monitoring payments (paragraph 4.55)

Local authorities need to check whether a person’s direct payments are being used properly. This is explained below in Section 7.

5. Specific delivery issues

Choice and risk (paragraphs 5.1-5.6)

The local authority needs a policy that covers choice, giving people the power to make decisions and managing risks. People are allowed to take risks, but the local authority needs to make sure the person understands the risks and has thought of ways to reduce the risk. This includes explaining the use (and limits) of CRB checks in employing people who are suitable.

Some people only need the local authority to carry out a quick check to make sure everything is going well. Others (for example someone who has a **suitable person**) may need more frequent, face-to-face checks to prevent problems or catch problems before they become serious.

Health and safety (paragraphs 5.7-5.10)

Local authorities need to be happy that a person understands their responsibilities for health and safety. People should be encouraged to make sure they have safe and legal methods for tasks like lifting, handling and using equipment. People receiving direct payments have a common law duty of care to the person helping them. If they employ the person, they also have legal health and safety duties under employment laws.

The Health and Safety Executive (HSE) has guidance on lifting and handling. Its guidance says that policies should not put unreasonable limits on someone's choice, privacy or dignity.

Local authorities should give people a copy of any risk assessments that were carried out during their care assessment, so they can show it to whoever they pay to provide help.

Close relatives (paragraphs 5.11-5.12)

Usually, a person *cannot* use direct payments to pay for services from a close family member. "Close family member" means:

- Husband, wife, civil partner or person they live with as a partner.
- Close relative who lives with them, or that relative's husband, wife, civil partner or any person that the relative lives with as a partner.

There may be exceptions, but only if a local authority really thinks it is the best way to meet a person's needs or promote a child's welfare.

Direct payments recipients as employers (paragraphs 5.13-5.17)

People may welcome support to become an employer, to recruit a self-employed assistant or to choose an agency. The local authority may want to include a payroll service in the local support services.

By law, a person using direct payments must give a written contract to anyone they employ within two months of them starting work. www.direct.gov.uk and www.businesslink.gov.uk have advice about employment law.

Local authorities should explain the responsibility of being an employer, without making it sound more complicated than it is so that people are put off unnecessarily.

The local authority still keeps its **duty** to make sure that the person's needs are being met, so local authorities may want to:

- Tell carers and personal assistants about training.
- Let them have a place on any suitable local authority courses.

Legal advice is needed before making a contract with a 16 or 17 year old, because contracts are not always legally binding on someone under 18.

Criminal Records Bureau (CRB) checks and employing someone suitable

Children and young people (paragraphs 5.18-5.22)

The local authority:

- Needs to work in partnership with parents to **safeguard and promote the welfare** of the child or children.
- Needs to be sure that the parents will use direct payments to **safeguard and promote welfare** before they agree to give the parents direct payments.

When a CRB check has been asked for, the local authority should suggest that a child continues to get services from their current provider or a registered agency until the CRB checks are back for any potential employee.

A clean CRB check does *not* mean someone is suitable to work with children, and local authorities need to make sure parents know this. The local authority cannot agree to a parent using direct payments to employ someone if the CRB check shows the person is unsuitable.

The local authority will countersign the application for a CRB check. The applicant will usually pay the fee his/herself. The local authority may include money to cover the fee in someone's direct payments so the successful candidate can be reimbursed.

Adults (paragraphs 5.23-5.25)

CRB checks on potential employees should be recommended by the local authority but are not compulsory if the employer is:

- An adult with **capacity**.
- A **suitable person** who is a close family member or friend.

Any other **suitable person** is required by law to get a CRB check for anyone they want to employ using the direct payments.

The local authority must keep up to date on the law about CRB checks.

Annex F has more about employing people.

The Vetting and Barring Scheme (paragraphs 5.26-5.28)

Current arrangements stay in place until this new scheme starts. The new scheme will not start until after early 2012.

Local authorities will need to make sure they give people up to date legal information about on checking if staff are suitable, and have up to date policies of their own.

6. Where additional support is required

Parents and children (paragraphs 6.1-6.2)

By law, local authorities must provide information about local services for children and families. It is essential that families have information about the full range of services, including the option of direct payments. Parents, the local authority and other professionals must work together and take into account what children and their families think and want.

Direct payments to disabled parents to meet their child's needs (paragraphs 6.3-6.5)

Disabled people with parental responsibility may need direct payments for their personal needs, to help them with parenting or to meet the needs of the family as a whole. Adult and children's services will need to work together well. Advocacy services can help families make the best use of direct payments.

The needs of the whole family need to be considered together, even if these needs are assessed under more than one law,. Any assessments need to be coordinated, so families do not end up with a lot of separate assessments.

Direct payments to the parent of a disabled child (paragraphs 6.6-6.12)

The local authority keeps all its responsibilities to the child and family even if the parent opts for direct payments.

When considering direct payments, some parents will need advice about their child's need for extra support or protection. Other parents may need support to let their disabled child take risks, including (for 16 or 17 year olds) the chance to manage their own support using direct payments.

Local authorities should tell parents clearly what steps to take to make sure anyone they employ is suitable, alert them to any risks of abuse and check they know how to minimise the risk of abuse.

Parents should make sure that any childcare they pay for is registered with Care and Social Services Inspectorate Wales (CSSIW). This applies to childcare for children under 8 and is to make sure that childcare meets certain standards.

Parents should be encouraged and supported to help their disabled child get the same kind of opportunities as any other child.

Intimate care for a disabled child using direct payments (paragraph 6.13)

Parents can use direct payments to pay for intimate care. Parents should be encouraged to listen to their child, particularly if the child finds it hard to communicate.

Childcare and childminding (paragraph 6.14-6.16)

Parents of disabled children need to know that anyone who cares for a child under 8 for over two hours a day and for payment has to register as a childminder, unless they are providing care in the parent's own home. Local authorities should have a list of local registered child minders and childcare.

Working parents may be able to get help with childcare costs through Working Tax Credits. This weblink lets you check <http://taxcredits.hmrc.gov.uk/HomeNew.aspx>

Transition from children's to adult services (paragraphs 6.17-6.26)

Transition is not a one-off event that happens on someone's 18th birthday; it is a process.

A 16 or 17 year old may want to use direct payments as part of making more decisions for themselves and having more control over their lives. They can use direct payments to overcome disabling barriers to social and leisure opportunities.

One way for young people to learn to manage direct payments is to let them start by using direct payments for a small part of their care and gradually build it up until, ideally, by the age of 18 they are ready to manage all their care using direct payments. Young disabled people can have help to manage their direct payments. This can include having a user-controlled trust.

Until the young person is 18, the local authority has a **duty** to make sure the way direct payments are used is **safeguarding and promoting the welfare** of the young person.

When a young person becomes 18, it is still important for local authorities to recognise and respect the views of parents who have been managing their child's support.

If an 18 year old **lacks capacity**, the parent can choose to continue (or start) to get direct payments on behalf of the young adult as their **suitable person**.

Local authorities need to plan for transition to avoid gaps in support after someone's 18th birthday.

Direct payments for adults lacking mental capacity to consent (paragraphs 6.27-6.30)

Since April 2011, adults who **lack capacity** have been able to benefit from direct payments by having a **suitable person** who consents to receive and manage direct payments on their behalf.

Appointing a suitable person (paragraph 6.31-6.38)

The local authority has to put the person's **best interests** above any other consideration when thinking about a **suitable person**.

The local authority needs to check if the person has appointed an attorney or if a court has appointed a **deputy**. If so, that person needs to be asked first if they agree to be the **suitable person**.

If the person doesn't have an **attorney** or **deputy** (or if they have one but that person doesn't want to be the **suitable person**), the local authority can look for someone else. If the **attorney** or **deputy** has the legal power to make welfare decisions for the person, they must agree to someone else becoming the **suitable person**.

Whatever the situation, the local authority needs (if practical and appropriate) to consult and taken into account the views of:

- Anyone the person said they wanted consulted *before* they lost **capacity**.
- Anyone caring for the person or with an interest in the person's welfare.
- The person themselves (as far as possible), including any relevant written statement they made before they lost **capacity**.
- Any attorney or deputy, even if they do not want to be the **suitable person**.

Conditions to be met by the suitable person (paragraphs 6.39-6.42)

A local authority must be satisfied that a person's needs can be met through direct payments, in the same way as when someone with **capacity** wants to use direct payments.

The **suitable person** must:

- Be able to manage direct payments.
- Act in the **best interests** of the person.
- Not use direct payments to employ a close relative.

There is extra *Direct Payments 'Suitable Person' Guidance* available to help local authorities appoint a **suitable person**.

The basic principles of **best interest** in the 2005 Mental Capacity Act are:

- Helping the person to have as much of a role as possible in making choices and decisions.
- Trying to take into account what the person would have taken into account if they were making the decision for themselves.
- Not making assumptions about what is in the person's best interests based on their age, how they look, their condition or their behaviour.
- Working out if the person may now have **capacity**.
- Consulting others about decisions, including anyone caring for the person, their family and friends, and anyone who has power of attorney or who has been appointed as deputy.
- Keeping a record of how the decision was made.

Where disputes arise (paragraphs 6.43-6.44)

It is up to the **suitable person**, supported by the local authority, to balance different opinions and make a **best interests** decision using the principles of the 2005 Mental Capacity Act. Wherever possible, the person who **lacks capacity** should be involved in the discussions.

Advocacy (paragraph 6.45)

It may be helpful for a person who **lacks capacity** to have an independent advocate. This is particularly important if:

- The person has no close family or friends who take an interest in their welfare.
- Family members disagree among themselves or with professionals about what is in the person's **best interests**.
- The person has already had contact with an advocate.
- There are worries about whether the person is adequately protected.

Approaches to risk (paragraphs 6.46-6.47)

People who **lack capacity** have a lot to gain from direct payments. However, people who **lack capacity** can be more vulnerable to abuse and less able to speak up if they are abused. Local authorities need to take this into account and may need to hold frequent face-to-face reviews, particular when starting to use direct payments. They should consider involving other people, particularly anyone consulted about who should be the **suitable person** and an independent advocate.

Safeguarding (paragraphs 6.48-6.50)

Unless the **suitable person** is a close relative or a friend who already provides care, the local authority must get a CRB check on the **suitable person**.

It is now a criminal offence to willfully neglect or ill-treat someone who **lacks capacity**, or for someone in a position of responsibility (like a **suitable person**) to take advantage of their position to get money from the person. The local authority needs to make this clear to someone before they become a **suitable person**.

The local authority can put conditions onto a **suitable person** if they think this is in the person's **best interests**.

Direct payments to people subject to mental health legislation (paragraphs 6.51-6.57)

Most people with mental health needs have exactly the same rights to direct payments as anyone else.

Until April 2011, some people were excluded from direct payments because they needed services under certain parts of mental health law. These people are no longer excluded. Instead, the local authority has a **power** but not a **duty** to give them direct payments for the services that are listed in Annex B. It is possible that someone may need services listed in Annex B *and* have other needs as well. This means the local authority may have the **power** to provide direct payments for some of the person's needs but a **duty** to provide direct payments for the other needs.

Local authorities need to be prepared to support a person to take up direct payments wherever possible, even if they only have the **power** to provide direct payments. Local authorities will want to think about what support this person already has, and how to make that support stronger (including, if appropriate, independent advocacy). The care plan needs to include how to check if the person is using services that they have been told they must use, and if the person is achieving the **outcomes** written in their care plan.

If a local authority decides not to let someone use direct payments, they have to keep a written record of why and let the person see what they have written. They should also tell the person how to complain if they are not happy about the decision.

Annex C has a list saying when someone is excluded from direct payments because of court orders to do with drug or alcohol misuse. For people on that list, the local authority must provide services to meet their eligible needs, but not through direct payments.

Direct payments for carers (paragraph 6.58)

Local authorities must offer carers direct payments if they are eligible for help as a carer. Receiving direct payments does not affect the carer's entitlement to Carers Allowance or other benefits.

Young carers (paragraphs 6.59-6.61)

Carers aged 16 or 17 can use direct payments. Very few young carers aged 16 or 17 should be providing substantial care. Usually it would be more helpful for them to

receive direct payments so they can arrange for someone else to take on the caring role while they concentrate on with their education.

It may be appropriate for a 16 or 17 year old to take on a more substantial caring role if they are looking after a terminally ill relative, and direct payments may help them get a break from caring.

Local authorities need to take into consideration how much extra responsibility direct payments may put on a young person who is already caring for someone. Local authorities need to think about:

- Ways to the young person could be supported to manage direct payments.
- The legal position of having a contract with someone under the age of 18.

7. Monitoring and review

General (paragraphs 7.1-7.7)

This Guidance does not change existing laws and guidance on reviewing care plans.

When someone chooses direct payments, they take on responsibility for meeting their own needs. Monitoring has to reassure the local authority that the **outcomes** from the care plan are being achieved, while promoting the person's choice and independence.

Local authority monitoring needs to:

- Make it as easy as possible for the person to give them the information that is needed to check how the direct payments are being used.
- Spot if someone is finding it hard to manage their direct payments.

The local authority needs to make sure people know that it is safe to say that they are not happy with their support, and that telling the local authority this will not mean their direct payments will automatically stop.

People may need more monitoring when they start using direct payments, if they get direct payments for a child or if they may find it hard to manage direct payments. Others may only need a check once or twice a year.

Reviews for adults who lack capacity (paragraphs 7.8-7.10)

Arrangements for the **suitable person** need to be reviewed within the first year, and at least once a year after that. **Suitable persons** need to know that the local authority can ask for information at any time about how they are spending the direct payments.

Local authorities must always be happy that the **suitable person** is using the direct payments in the person's **best interests**. Local authorities must carry out a review if someone tells them that the **suitable person** is not managing direct payments well or using them to do what the care plan says.

Rules about monitoring need to include what happens if someone tells the local authority that the person has gained (or regained) **capacity**.

Financial monitoring (paragraphs 7.11-7.15)

Each local authority must set up a financial monitoring system, because they have a **duty** to account for how public funds are spent. Financial monitoring involves different teams and departments in the local authority. They all need to understand the purpose and flexibility of direct payments, together with each others' roles and responsibilities.

The system for monitoring direct payments needs to be as simple and easy to understand as possible so people are not put off direct payments unnecessarily by difficult paperwork.

Local authorities should explain to a person what information they will need to provide and how checks will be done *before* that person agrees to use direct payments. This includes telling the person that they need to keep a clear “paper trail” of what they have done with their direct payments.

Monitoring local implementation (paragraphs 7.16-7.17)

Local authorities need to check how well direct payments are working overall. They need to know that everyone is getting a fair chance to use direct payments, whichever client group they belong to and whatever their age or ethnicity.

They should go out and listen to:

- People who use direct payments.
- People who have thought about using direct payments.
- People who have been put off the idea of direct payments.

Local authorities may also want to check how well direct payments support services are working. This will mean listening to the people who use them.

8. Troubleshooting

When difficulties arise (paragraphs 8.1-8.8)

The local authority needs to step in if:

- Someone is not using direct payments in a way that meets their needs (or the needs of the person on whose behalf they get direct payments), or the local authority can see that this will happen soon.
- Someone **lacks capacity** for a short time – in which case the local authority can ask someone to take over the direct payments for that short time.
- An emergency occurs that the person hasn't planned for or cannot sort out on their own.

There are less likely to be problems if everyone is clear about what the person needs, how those needs can be met and how the direct payments can be used. The local authority needs to tell people:

- The person's responsibility to plan for emergencies, like their personal assistant phoning to say he or she is ill.
- Who to contact if they need help if they have an emergency with their direct payments or the services that they buy with their direct payments.

The local authority may also want to tell people about **lasting power of attorney** and how this can help if the person using direct payments loses **capacity**.

Regular, good checking and support cut down on problems, as does talking about things that could go wrong before they happen.

Annex G lists questions that is it useful for the local authority to ask when there are problems.

Local authorities need to take legal advice about any liability they may have for what a person does with their direct payments, for example how the person treats their employees. Worries about liability are not a reason to refuse direct payments.

When to ask for money back (paragraphs 8.9-8.13)

Local authorities can ask for money back if they have reason to believe direct payments are not being used for the purpose they were given, or the person is not keeping to any conditions that were imposed by the local authority. If the person also gets money from the Independent Living Fund (ILF), the local authority will need to think about telling the ILF and any data protection implications of doing this.

The local authority has to decide if they should ask for money back if it has not been spent at all, or if it was spent on totally the wrong thing. The local authority should not ask for money back if someone makes an honest mistake or has been the victim of fraud.

The local authority needs to be happy that the person understands all their responsibilities and any conditions they must meet (including when they might be asked to pay back money) *before* they start using direct payments.

Local authorities can ask for money back from a **suitable person** but not from the person who **lacks capacity**. Local authorities need to make sure the **suitable person** knows this when they agree to become a **suitable person**.

Local authorities may want to think if asking for money back would cause hardship, or if there is a good reason why money is unspent (such as quarterly payment of PAYE or outstanding bills from an agency).

Stopping direct payments

Reasons (paragraphs 8.14-8.20)

Direct payments can stop if:

- The person getting them does not want to continue getting them.
- The local authority does not believe the person is capable of managing direct payments, even if they get help.
- The local authority is not happy that the person's needs are being met.
- The local authority's **duty to safeguard and promote welfare** is not being met using direct payments.
- They were given for a need that the person no longer has (for example, they just needed help for a short time when they came out of hospital).
- The local authority was providing direct payments because they had a **duty** but now they only have the **power** to give direct payments. Annex B has a list of when this happens.

Direct payments can also be increased or reduced if a person's needs are different at different times.

The local authority may stop direct payments for a short time if a person's needs change for a short time. The local authority will need to talk with the person how best to manage any short gaps in receiving direct payments.

Direct payments must stop if:

- The direct payments are not being used properly.
- The person is no longer legally allowed to use direct payments. Annex C has a list of people who cannot get direct payments.

Any decision to stop direct payments needs to be made in discussion with the person and others such as their mental health worker. The person needs to be told why the decision has been made. If direct payments are stopped, the local authority

needs to have a plan to make sure there isn't a gap between getting services using direct payments and getting directly provided services.

Stopping direct payments if the person loses capacity (paragraphs 8.21-8.22)

If the person loses **capacity**, the local authority should stop paying money to that person. If it is only for a short time, the local authority can make informal arrangements for someone else to get the money on the person's behalf. If it is for a longer time, the local authority must look for a **suitable person** to take over the direct payments. While doing this, the local authority must arrange suitable services. As far as possible they should arrange for the services bought using direct payments to continue, such as the same staff or personal assistants.

Stopping direct payments to the suitable person (paragraphs 8.23-8.24)

Direct payments must be stopped if the local authority has reason to believe the **suitable person** is not acting in the person's **best interests** or is not using the direct payments properly. The local authority may want to look for another **suitable person**.

If the person regains **capacity** long term, the local authority must stop making payments to the **suitable person**, and deal with the person his or herself instead. If it is only a temporary change, the **suitable person** can continue to get the direct payments as long as they give the person control over the support they get.

How to stop direct payments (paragraphs 8.25-8.28)

If the local authority is thinking about stopping someone's direct payments, they need to talk with the person, their carers and the **suitable person** (if there is one) about extra support to manage direct payments *before* finally deciding to stop direct payments. They should not stop direct payments just because someone is finding it hard to manage them.

Unless the person no longer qualifies for help with social care, the local authority needs to make sure support is in place *before* they stop direct payments. All this should be explained before someone starts using direct payments.

If the local authority stops direct payments to someone who also gets payments from the Independent Living Fund (ILF), the ILF may need to be told.

If direct payments stop, the person may still have legal responsibilities such as a contract with an agency or making someone redundant. Local authorities need to make people aware that this could happen.

Annex A

Examples of questions to be answered in a care plan for a person who gets direct payments

- What does the assessment say about the person's needs?
- What is important to the person? What outcome does the person want to achieve by having their needs met?
- Can the person achieve these outcomes using direct payments?
- How will the person use the direct payments to arrange their support?
- What changes can they make in how they use their direct payments before they have to ask the local authority for approval?
- Does the person need support to manage direct payments? If so, what support do they need and how will they get that support?
- What arrangements has the person made to cope with emergencies?
- How much money does the local authority think that the person reasonably needs to buy the support they need to meet their needs?
- How much of this money will come from the local authority, and how much (if anything) is the person expected to contribute?
- If the person is expected to contribute, will the local authority give the person the full direct payments and claim the person's contribution back, or will they give the person the local authority's contribution towards the cost?
- When and how will payments be made?
- How will the local authority do their checking? What information does the person need to keep, and will the local authority need to be able to go into the person's home as part of their checking?
- How will the local authority make sure they are happy that the direct payments are being used to **safeguard and promote the welfare** of a disabled child/young person?
- How will the local authority know that the direct payments are being used in the **best interests** of a person who **lacks capacity**?
- What information is needed for the local authority's financial monitoring, and when?
- Are there any conditions attached to the payments? If so, what?
- When will the next review take place?
- What does the person need to do if they want to stop getting direct payments?
- When and why will the local authority think about stopping direct payments (completely, or for a short time)?
- What will happen if there is a short gap in payments being made?

- If the local authority decides to stop a person's direct payments, how much notice will the local authority usually give?
- If direct payments stop, how will any outstanding commitments be met?
- When and why would direct payments be stopped without notice?
- When and why would the local authority ask for money to be paid back?

Annex B

Power to make direct payments

The *Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011, Schedule 2, Regulations 8 and 9* gives local authorities the **power** to make direct payments if a person has been conditionally discharged from hospital under mental health law.

This is a list of circumstances in which the local authority has the **power** (but not the **duty**) to make direct payments:

- Supervised community treatment, guardianship or on leave of absence from a hospital in which they are detained under the Mental Health Act 1983.
- The supervision of a social worker or the Probation Service as a result of a supervision order made under the Criminal Procedure (Insanity) Act 1964.
- An offender released on licence under the Criminal Justice Act 1991, which includes a requirement to accept treatment for a mental health condition.
- An offender on a community rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for a mental health condition.
- An offender on a community order or serving a suspended prison sentence under the Criminal Justice Act 2003, which includes a requirement to accept treatment for a mental health condition.
- The Scottish equivalent of any of the laws listed above.

Someone may need services covered by the list above AND other services. The rules about when a local authority has a **duty** to offer and make direct payments will still apply to these other services.

Annex C

Exclusions to direct payments

The *Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011, Schedule 1, Regulations 3, 4 and 5* excludes some people from direct payments.

A person cannot get direct payments if the court has put conditions or requirements on them about drug and/or alcohol dependency in one of the circumstances listed below:

- An offender on a community order, or serving a suspended prison sentence, under the Criminal Justice Act 2003, if that includes a requirement to accept treatment for drug or alcohol dependency.
- An offender on a community rehabilitation order or a community punishment and rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, if that includes a requirement to accept treatment for drug or alcohol dependency.
- An offender released from prison on licence under the Criminal Justice Act 1991, the Criminal Justice Act 2003 or the Crime (Sentences) Act 1997 who is also required to undergo treatment for drug or alcohol dependency.
- A person sentenced under one of the equivalent Scottish laws. This includes people who are subject to Community Payback Orders (CPO) under the Criminal Justice and Licensing (Scotland) Act 2010, if the CPO includes mental health, alcohol or drug treatment requirements.

Annex D

Further information

Relevant earlier legislation

- The Mental Health Act 1983.
- Local Authority Social Services Act 1970.
- The Health and Social Care Act 2001.
- The Children Act 1989.
- The Carers and Disabled Children Act 2000.
- The Health and Social Care Act 2008.
- The Mental Capacity Act 2005.

New legislation

- Social Care Charges (Wales) Measure 2010.
- The Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011.
- The Social Care Charges (Means Assessment and Determination of Charge (Wales) Regulations 2011.
- The Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement of Contribution) (Wales) Regulations 2011.
- The Social Care (Review of Charging Decisions) (Wales) Regulations 2011.

Organisations offering further information

National Centre for Independent Living (NCIL)

NCIL, Unit 3.40, Canterbury Court, 1–3 Brixton Road, London SW9 6DE

Tel: 020 7587 1663 **Fax:** 020 7582 2469 **Textphone:** 020 7587 1177

Website: www.ncil.org.uk **Email:** info@ncil.org.uk

Publications available from NCIL:

- NCIL (2008), *Everything you need to know about direct payments*.
- Sian Vasey (2000), *The Rough Guide to Managing Personal Assistants*, Independent Living Institute.
- NCIL, *Direct Payments: a beginner's guide* – a 30-minute DVD which covers the essential aspects of managing a PA set-up, including recruitment, supervision and contracts.
- Pauline Heslop (2007), *Direct Payments for Mental Health Service Users/Survivors: a guide to some key issues*, NCIL.

- Rowen Jade (2003), *Creating Independence and Inclusion – Youth Personal Assistance Support Scheme*, National Youth Agency and West of England Centre for Inclusive Living.

Values into Action (VIA)

VIA, Oxford House, Derbyshire Street, London E2 6HG

Tel: 020 7729 5436 **Fax:** 020 7729 7797

Website: www.viauk.org **Email:** general@viauk.org

Publications available from VIA:

- Catherine Bewley with Andrew Holman (2nd edition, 2002), *Pointers to Control* – information on direct payment issues such as consent, control, money management, employment and eligibility.
- Andrew Holman with Catherine Bewley (1999), *Funding Freedom 2000: people with learning difficulties using direct payments* – supporting the use of direct payments by people with learning difficulties.
- Stephanie Beamer with Mark Brooks (2001), *Making Decisions: best practice and new ideas for supporting people with high support needs to make decisions*.
- Andrew Holman and Catherine Bewley (2001), *Trusting Independence: a practical guide to independent living trusts*.
- Catherine Bewley and Lindsay McCulloch (2004), *Helping Ourselves* – findings of a study into the importance, availability and quality of peer support for people using direct payments.
- VIA (2007), *Mission Possible* – DVD and booklet about the Mental Capacity Act 2005 made by and for people with learning difficulties – accessible story-based information about making your own choices and decisions.

Department of Health

Department of Health, Richmond House, 79 Whitehall,
London SW1A 2NS

Website: www.dh.gov.uk

Email: dhmail@dh.gsi.gov.uk

Tel: 020 7210 4850

Publications available from the Department of Health:

- DH (2006), *Direct payments for people with mental health problems: a guide to action*.
- DH (2004), *Direct Choices: what councils need to make direct payments happen for people with learning disabilities*.
- DH (2007), *Independence, choice and risk: a guide to best practice in supported decision making*.

Scope

Scope, 6 Market Road, London N7 9PW

Tel: 020 7619 7100 for switchboard, or 0808 800 3333 for Scope Response, which offers confidential advice and information

Text: SCOPE, plus your message to 80039

Website: www.scope.org.uk

Email: response@scope.org.uk

Publications available from SCOPE:

- SCOPE (2004), *My money, my way: a young person's guide to direct payments.*
- SCOPE (2004), *In the driving seat: direct payments for your child.*
- SCOPE (2002), *Good Practice Guide for Support Workers and Personal Assistants Working with Disabled People with Communication Impairments.*
- SCOPE (2002), *A Lot to Say! A guide for social workers, personal advisors and others working with disabled children and young people with communication impairments.*

Joseph Rowntree Foundation (JRF)

Joseph Rowntree Foundation, The Homestead,
40 Water End, York YO30 6WP

Tel: 01904 629241 **Minicom:** 01904 615910

Website: www.jrf.org.uk **Email:** info@jrf.org.uk

Publications available from JRF:

- Frances Hasler with Angela Stuart (2004), *Making Direct Payments Work: identifying and overcoming barriers to implementation.*
- Heather Clark, Helen Gough and Ann Macfarlane (2004), *'It Pays Dividends': direct payments and older people.*
- Karen Newbigging with Janice Lowe (2005), *Direct Payments and Mental Health: new directions.*

Other publications and resources

- All-Wales Direct Payments Forum, in conjunction with the Welsh Assembly Government (2011), *Direct Payments 'Suitable Person' Guidance.*
- *Sustainable Social Services for Wales: A Framework for Action*, Welsh Assembly Government (2011).
- Welsh Assembly Government (2011), *The Provision of Community Equipment: National Minimum Standards Good Practice Guidance Wales.*

- Social Interface (2008), *A survey on the Implementation of the current Direct Payments Scheme in Wales*, published by the Welsh Assembly Government.
- Welsh Assembly Government (2007), *Mental Capacity Act 2005 Code of Practice*.
- Commission for Social Care Inspection (2004), *Direct Payments: what are the barriers?*
- Janet Leece and Joanna Bornat (eds) (2006), *Developments in Direct Payments*, Policy Press.
- Teresa Poole (2006), *Direct Payments and Older People*, King's Fund

CIPFA has a number of publications about direct payments,
<http://secure.cipfa.org.uk/cgi-bin/CIPFA.storefront/EN/product/PUBBV028>

Users with queries about being an employer may find it helpful to consult HM Revenue and Customs' **New Employer Helpline** on 0845 60 70 143. Calls are charged at the local rate.

Annex E

Contacts

Age Cymru

Age Cymru, Ty John Pathy, 13/14 Neptune Court,
Vanguard Way, Cardiff CF24 5PJ.

Website : www.ageuk.org.uk/cymru

Tel: 029 20431555

All Wales People First

All Wales People First, Stebonheath Centre, Stebonheath Terrace, Llanelli,
Carmarthenshire, SA15 1NE

Website www.allwalespeople1st.co.uk

Tel: 01554 784905

Alzheimer's Society Wales

Alzheimer's Society Wales, 16 Columbus Walk,
Atlantic Wharf, Cardiff CF10 4BY

Website: www.alzheimers.org.uk

Tel: 029 20480593

ASBAH Cymru

ASBAH Cymru, PO Box 325, Bridgend, CF31 9LD

Website: www.ASBAH.org

Tel: 01656 864102

Autism Cymru

Autism Cymru, 6 Great Darkgate Street,
Aberystwyth

Website: www.awares.org

Tel : 01970 625256

AWETU

AWETU, 3rd Floor, 307-315 Cowbridge Road East,
Canton, Cardiff, CF5 1JD

Website : www.awetu.org.uk

Tel: 029 2036 8899

Carers Wales

Carers Wales, River House, Ynsbridge Court,
Gwaelod-y-Garth, Cardiff CF15 9SS

Website : www.carerswales.org

Tel : 029 20811370

Chartered Institute of Public Finance and Accountancy (CIPFA)

CIPFA, 3 Robert Street,
London WC2N 6RL

Website: www.cipfa.org.uk

Tel: 020 7543 5602

Children in Wales

Children in Wales, 25 Windsor Place,
Cardiff, CF10 3BZ

Website: www.childreninwales.org.uk

Tel: 02920 342434

Children's Society

Children's Society, Edward Rudolf House,
Margery Street, London WC1X 0JL

Website: www.childrenssociety.org.uk

Tel: 0845 300 1128

Contact a Family

Contact a Family, 33-35 Cathedral Road,
Cardiff, CF11 9HB

Website: www.cafamily.org.uk

Tel: 029 2039 6624

Crossroads

Crossroads, 3rd Floor, 33-35 Cathedral Road,
Cardiff, CF11 9HB

Website: www.crossroads.org.uk

Tel : 029 20090087

Deaf Association Wales

Deaf Association Wales, British Sign Language Cultural Centre,
47 Newport Road, Cardiff, CF24 0AD

Website: www.bda.org.uk

Textphone: 0845 1302853

Disability Wales

Disability Wales, Bridge House, Caerphilly Business Park,
Van Road, Caerphilly CF83 3GW

Website : www.disabilitywales.org

Tel :029 20887325

Down's Syndrome Association Wales

Down's Syndrome Association Wales, Suite 1,
206 Whitchurch Road,

Heath, Cardiff, CF14 3NB

Website : www.downs-syndrome.org.uk

Tel : 029 2052 2511

Hafal

Hafal, Suite C2, William Knox House, Britannic Way,
Llandarcy, Neath SA10 6EL Website : www.hafal.org

Tel: 01792 816 600

Headway

Headway, Bradbury House, 190 Bagnall Road,
Old Basford, Nottingham, NG6 8SF

Website : www.headway.org.uk

Tel : 0115 924 0800

Journeys

Journeys, Alexandra Gate Business Centre,
Ffordd Pengam, Cardiff, CF24 2SA

Website: www.journeysonline.org.uk

Tel: 029 20692891

Learning Disability Wales

Learning Disability Wales, 41 Lambourne Crescent,
Cardiff Business Park, Llanishen, Cardiff, CF14 5GG

Website : www.learningdisabilitywales.org.uk

Tel: 029 2068 1160

MDF the BiPolar Organisation Cymru

MDF, 22-29 Mill Street, City of Newport,
South Wales, NP20 5HA

Website : www.mdfwales.org.uk

Tel: 01633 244244

Mencap Cymru

Mencap Cymru, 31 Lambourne Crescent,
Cardiff Business Park, Llanishen, Cardiff, CF14 5GF

Website : www.mencap.org.uk

Tel: 029 20 747588

Mind Cymru

Mind Cymru, 3rd Floor, Quebec House, Castlebridge,
5-19 Cowbridge Road East, Cardiff CF11 9AB

Website : www.mind.org.uk

Tel : 029 2039 5123

National Autistic Society Wales

NAS Cymru, 6-7 Village Way, Greenmeadow
Springs Business Park, Tongwynlais, Cardiff CF15 7NE

Website: www.autism.org.uk

Tel: 02920 629312

National Children's Bureau

NCB, 8 Wakley Street, London EC1V 7QE

Website: www.ncb.org.uk

Tel: 020 7843 6000

Office of the Public Guardian - Customer Services

The Office of the Public Guardian and the Court of Protection,
PO Box 15118, Birmingham B16 6GX

Website: www.publicguardian.gov.uk

Tel: 0845 330 2900

Textphone: 020 7664 7755

Fax: 020 7664 7551

Princess Royal Trust for Carers

Princess Royal Trust for Carers, Victoria House,
250 Cowbridge Road East, Cardiff, CF5 1GZ

Website: www.carers.org

Tel: 02920 221439

RNIB Cymru

RNIB Cymru, Trident Court, East Moors Road,
Cardiff, CF24 5TD

Website: www.rnib.org.uk

Tel : 029 20450440

RNID Cymru

RNID Cymru, 16 Cathedral Road,
Cardiff CF11 9LJ

Website : www.rnid.org.uk

Tel : 029 20333034

Scope

Scope Cymru, The Wharf, Schooner Way,
Cardiff, CF10 4EU

Website: www.scope.org.uk

Tel: 02920 461 703

Sense Cymru

Sense Cymru, Ty Penderyn, 26 High St,
Merthyr Tydfil, CF47 8DP

Website : www.sense.org.uk

Tel : 0845 127 0090

United Kingdom Disabled People's Council (UKDPC)

UKDPC, DIAL House, Hamilton Place,
Chester CH1 2BH

Website: www.ukdpc.net

Tel: 01773 746698

Wales Council for the Blind

Wales Council for the Blind, 3rd Floor, Shand House,
20, Newport Road, Cardiff CF24 0DB

Website : www.wcb-ccd.org.uk

Tel : 029 20 473954

Wales Council for Deaf People

Wales Council for Deaf People, Glenview House,
Courthouse Street, Pontypridd CF37 1JY

Website www.wcdeaf.org.uk
Tel : 01443 485687

Annex F

Advice about employing someone using direct payments

General advice for everyone getting direct payments:

- Be careful. If you have any doubts about the applicant, do not employ them.
- Always ask for two written references and check them carefully. It is often good to follow up the written reference with a phone call.
- Ask all the questions that are important to you – for example, about smoking and eating habits or what their hobbies are. If you are employing someone to look after your child, you need to find out where they might take your child, and any other people the child might have contact with when being cared for.
- It is better to discover that the person is unsuitable before you employ them.
- Get a friend, parent or someone you trust to spend some time with you and your new personal assistant when the personal assistant first starts work.
- Make sure that the personal assistant puts your support and welfare, or that of your child, first at all times.
- If you are unhappy with the person caring for you, look for advice and try to find a new person.

Advice if the employer is 16 or 17, or the person is being employed to look after a child:

- Make sure any CRB check was done in the last month.
- Take note and listen to everything that your child is communicating about the care they receive. Especially with non-verbal children, take note of unusual or regressive behaviour.
- Try to spend time making sure that your child is able to settle with the new person.
- Do not employ someone under the age of 16 to undertake a paid caring role as people under 16 are unlikely to be sufficiently mature to take on such a responsibility.
- You need clear, easy to understand information about the risk of a child being treated badly. The information must not make people unnecessarily anxious.

Advice if a *suitable person* is employing someone on behalf of a adult who *lacks capacity*:

- If you must ask (or choose to ask) for a CRB check, make sure the check was done in the last month.
- As far as is reasonable, take note and listen to everything that the person lacking capacity is communicating about the care they receive. Consult family members, friends and carers who might have particular experience of communicating with the person.
- Contact your local authority or the Office of the Public Guardian, or seek advice through the Community Legal Service if you think someone may be abusing an adult who **lacks capacity**.

Annex G

Questions to ask

If there are problems, the local authority may like to ask these questions to help them decide what to do.

- **Have the person's needs changed?**
If so, re-assess the person's needs and make any changes that are needed to amount of direct payments.
- **Has the person's *capacity* to agree to direct payments changed?**
If so, review the arrangements, make sure they are still legal and discuss any changes that need to be made (for example finding a **suitable person** or switching direct payments to the person his/herself).
- **Can the person get the services they need with the money they are being given?**
If not, perhaps costs have gone up or there are some unexpected extra costs. It may be necessary to think again about the amount of direct payments being given.
- **Can the person still manage direct payments, alone or with help?**
Problems do not always mean the person cannot manage. Starting to use direct payments is a learning process, and people may make mistakes. Even experienced users of direct payments can have problems, but may be able to overcome them with the right support.
- **Does the person still want to get direct payments?**
The local authority needs to look at ways to help the person overcome problems with their direct payments. But if the person decides they want to stop getting direct payments, the local authority needs to think about other ways to arrange for the person to get the services they need.
- **Has all the money been spent on doing what the care plan says?**
If the person has spent the money on other things, the local authority may want the money paid back. Before the person starts getting direct payments, the local authority should explain when the person might have to pay the money back.
- **Has the person been given the services they paid for?**
If not, then it is the responsibility of the person receiving direct payments to ask for a refund from the service provider, and the person may need support to do this. If the local authority has to provide services when they had already provided direct payments to meet that need, they can ask for the money to be paid back to them. The local authority can also ask for money back if the person did not get a service they had paid for because they didn't need that service any more.

- **Has the money been spent wisely?**

If not, the person may need more support to manage their direct payments.

- **Is the *suitable person* acting in the *best interests* of the person who *lacks capacity*?**

If the local authority thinks the answer may be “no”, the arrangement should be reviewed immediately. It may be that the **suitable person** needs more support to manage, or it may be in the person’s **best interests** for the local authority to stop direct payments and take over the responsibility for arranging services.