

**Date:** Wednesday 23 June 2004  
**Venue:** Committee Room, National Assembly for Wales  
**Title:** The Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004

**Purpose:**

1. To seek the Committee's views on The Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004.

**Summary:**

2. The regulations require Welsh Local Authorities to offer Direct Payments to eligible persons in order that they may, if they wish, make their own arrangements for the provision of personal social care needs. A copy of the draft Regulations is attached at Appendix 1. The main features of the proposed Instrument are to:

- require local authorities in Wales to make direct payments to certain persons for them to secure the provision of certain social care services;
- prescribe the categories of persons who may receive direct payments in respect of certain services;
- confer powers, duties and conditions on local authorities in relation to direct payments;
- provide for the circumstances in which a local authority shall, or may, terminate direct payments;
- sets out the categories of persons to who direct payments may not be made.

**Background:**

3. Direct Payments offer individuals more flexibility in how to meet assessed care needs, by offering a cash payment to service users to purchase their own care. Currently all local authorities in Wales have the discretion to offer a Direct Payment to eligible individuals who have had a care needs assessment and who qualify for services. Direct Payments can presently be offered to a number of client groups encompassing disabled 16/17 year olds; young carers (including 16/17 year old carers); people with parental responsibility for a 16/17 year old disabled child; disabled people aged 18 to 64 and disabled people aged 65 or over. All 22 local authorities presently offer a Direct Payment scheme but most do not cover the entirety of the existing eligible client groups. At 1 August 2003 there were 359 people receiving Direct Payments in Wales.

3.1 The Regulations are made under sections 57 and 64 of the Health and Social Care Act 2001 and section 17 of the Children Act 1989 and their intention is:

- From November 2004, to extend the eligible groups of people to include disabled persons with parental responsibility for a child;

- From November 2004, to place a duty on local authorities to offer direct payments to all people who are now potentially eligible to receive them; and
- From March 2005, to extend the groups of people eligible to receive direct payments and place a duty on local authorities to offer direct payments to people potentially eligible to receive them to include all people aged 65 or over.

4. The implementation of the current discretionary arrangements means that there is little consistency or equity in the coverage of local direct payments schemes across Wales. This is a constraint to enabling those people who wish to do so to have greater independence by having a right to choose how their care services are best provided to suit their individual needs and circumstances. Since direct payments were first introduced in 1997, the take up in Wales has been gradual and has been conditioned by when local authorities made local direct payments schemes available and the coverage of those schemes.

5. Draft policy and practice guidelines have also been developed to support the implementation of the new Direct Payments scheme arrangements and these are at Appendix 2. A draft Regulatory Impact Assessment has also been prepared and this is at Appendix 3. The effects of the regulations are summarised in its covering Explanatory Notes.

#### **Consultation :**

6. Consultation on the draft regulations, policy and practice guidance and regulatory impact assessment took place between January and April 2004. A summary of the consultation responses is at Appendix 4. These responses have been taken fully into account in finalising the draft Regulations and Policy and Practice Guidance.

#### **Financial Implications**

7. I have already made available to local authorities (through the RSG) £0.7 million per annum from 2004-05 to support the further development of the direct payment scheme. These resources are to meet the extra administrative and support scheme costs of implementing the proposed changes. It is possible that some authorities may encounter some transitional costs in implementing the new direct payments arrangements as they continue to offer a direct service, while at the same time dis-investing in services to release resources to fund direct payments. Which authorities will be affected and what costs may be incurred cannot presently be quantified as this will depend on (for each authority) the take up of direct payments, the services affected and the impact of any forward planning initiated as part of an authority's commissioning strategy. Any transitional local authority costs that may be identified, if significant, will need to be addressed through normal RSG/ESG process, which would then be used to inform future Budget Planning Rounds.

#### **Timetable for Implementation**

8. Following the Committee's consideration of the Regulations I intend to seek my Cabinet colleagues agreement to dis-apply Business Committee and Legislation Committee scrutiny but still allow the regulations to be debated in Plenary in July. I am proceeding in this way to accommodate the Committee's scrutiny of these regulations while ensuring that the regulations are made in July as originally planned.

## **Action**

9. The Committee is invited:

i. to discuss this paper and its appendices, particularly the draft regulations at Appendix 1.

ii. to note my intention to seek my Cabinet colleagues agreement to dis-apply Business Committee and Legislation Committee scrutiny but still allow the regulations to be debated in Plenary in July.

**Jane Hutt**  
**Minister for Health and Social Services**  
**June 2004**

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**Welsh Assembly Government**

**Direct Payments Guidance**

Community Care, Services for Carers and Children's Services  
(Direct Payments) Guidance – Wales

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## ***Foreword***

The purpose of direct payments is to give recipients control over their own life by providing an alternative to social care services provided by a local authority. A financial payment gives the person flexibility to look beyond local authority service solutions for certain housing, employment, education and leisure activities as well as for personal assistance to meet their assessed needs. This will help increase opportunities for independence, social inclusion and enhanced self-esteem. Local direct payment schemes can facilitate this by building links with health, housing, education and other agencies.

## **Introduction**

### **Aim of this guidance**

1. The aim of this guidance is to assist local authorities in making direct payments. Together with the Annexes, it also provides guidance on how local authorities might manage and administer direct payments.

This guidance replaces the following Welsh Assembly Government Guidance:

- the *Community Care (Direct Payments) Act 1996 Policy and Practice Guidance* that was issued in 2000

- the direct payments section of the *Guidance on the Carers and Disabled Children Act 2000* that was issued in 2001,

2. Direct payments are a different way of delivering certain existing social services responsibilities. Generic policy and practice guidance on those social services that are the subject of direct payments also applies.

3. This guidance, which is issued under section 7(1) of the Local Authority Social Services Act 1970, has been written to reflect the changes introduced chiefly by s 57 of the Health and Social Care Act 2001 ('the 2001 Act'), section 17A of the Children Act 1989 ('the 1989 Act') and by the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004 ('the Regulations'). From November 2004, the broad effect of this legislation ('the direct payments legislation') is that instead of a local council providing certain social care services, they are required, in certain circumstances, to make direct payments to enable a person to obtain for themselves the services that they are assessed as needing.

Persons eligible to receive direct payments as from November 2004

4. From November 2004, local authorities will have a duty to offer Direct Payments to all who are potentially eligible (under the regulations and the 2001 and 1989 Acts) to receive them. The eligible groups from November 2004 are:

- Adult disabled persons receiving community care services (that is, persons to whom section 29 of the National Assistance Act applies)
- Persons receiving carers services under section 2(1) of the Carers and Disabled Children Act 2000
- The following persons receiving services under section 17 of the Children Act 1989:
  - a person with parental responsibility for a disabled child
  - a disabled person with parental responsibility for a child
  - a disabled child aged 16 or 17

This means that local authorities can no longer choose to make direct payments available only to certain groups of disabled people nor can they make them available only for certain services..

Persons eligible as from March 2005



5. From March 2005, the duty to offer Direct Payments will be extended to encompass all people aged 65 or over in receipt of community care services.

6. Not all social care services are included in the direct payments legislation, although a great many of the services for which local authorities are responsible are. The Regulations and the 2001 and 1989 Acts provide that the duty to make direct payments applies to:

- a community care service within the meaning of section 46 of the National Health Service and Community Care Act 1990; or
- a service under section 2 of the Carers and Disabled Children Act 2000; or
- certain services which local councils may provide under section 17 of the 1989 Act (provision of services for children in need, their families and others).

Wherever a person is assessed as needing social care services, an authority should check whether there is a duty to offer a direct payment in respect of that service.

7. In implementing the legislative changes, the Welsh Assembly Government is anticipating an increase the number of people who receive direct payments and wants to ensure that people from all client groups have access to the choice that direct payments bring. This is equally important whether the person assessed as needing services is an older person, a disabled adult of working age, a carer, or a disabled child. In respect of the services to which direct payments apply, direct payments should, therefore, always be considered when deciding which service to provide to meet a person's care needs. If the conditions under the Regulations and the 2001 and 1989 Acts are met, an authority has a duty to make a direct payment. Payments may only be made if the person agrees, and they have a choice of whether to receive services provided by the council. Recipients of services should not be unfairly influenced in their choices one way or the other. The Welsh Assembly Government will be monitoring local progress in implementing these new arrangements.

8. This guidance has been written primarily for the use of local authorities, but also the NHS and others who want information on the setting-up and operation of local authority direct payments schemes might find it useful to refer to it. Individual direct payments users will often find it more convenient to consult locally developed user guides for information which they need in order to manage their own direct payments package.

9. Direct payments are monetary payments by local councils direct to individuals, who have been assessed as needing certain services, including those that find themselves caring for others. Direct payments help people who want to manage their own support to improve their quality of life. They promote independence, choice and inclusion by enabling people to purchase the assistance or services that the council would otherwise provide in order to live in their own homes, be fully involved in family and community life, and to engage in work, education and leisure.

10. Day-to-day control of the money and care package passes to the person who has the strongest incentive to ensure that it is spent properly on the necessary services, and who is best placed to judge how to match available resources to needs.

11. When setting up a direct payments scheme, local authorities are encouraged to actively consider how to include people with different kinds of impairment, people from different ethnic backgrounds and people of different ages. When considering whether a person's needs for a service can be met by means of a direct payment, local authorities should consider the provision of direct payments for both intensive packages and lower level services, long and short-term provision, and they are also encouraged to think about how direct payments can be assimilated into preventative and rehabilitative strategies. The legislation does not authorise any other body (it only applies to social services authorities), such as a local health board or housing authority, to make direct payments. However, joint working has a key role in promoting the independence of people with assessed needs and where a local health board is contributing funding towards the provision of services, then with the agreement of the local health board, social services may use these funds to make direct payments.

12. The Welsh Assembly Government wants to see more extensive use of direct payments, in particular, by those groups that have not made wide use of them up to now. For that reason, local authorities now have not just a power, but a duty to make direct payments in certain circumstances. This has important implications for the way that social service departments undertake assessment and care planning discussions with individuals, and for a local authority's own commissioning procedures and planning arrangements. For some staff/professionals, direct payments may require a significant change from current ways of working with people needing services. However, those staff who have made the 'cultural leap' have discovered that they experience the great satisfaction that comes from expanding individuals' lifestyle choices.

13. People may ask carers or other people to *help* them manage direct payments, for example, by helping them to secure the services to which the payments relate. Someone assisting in this way may be the person who also receives and handles the money (if the service user has nominated the person to do so). Except for children under 16, the person using the service should remain in control, and is accountable for the way in which the direct payments are used. Unless the person using the service is a child aged under 16, payments made to other people wholly *on behalf* of the user are not direct payments within the meaning of the Regulations.

## **Context**

14. The Welsh Assembly Government's aim, in promoting direct payments, is to increase individuals' independence and choice by giving them control over the way the services they are assessed as needing are delivered. The local authority makes the payment or payments *instead* of providing or arranging for the provision of the services. The person then uses the payment to secure for him or herself the relevant services. In the case of disabled children, a person with parental responsibility for a disabled child, which is frequently the parent, secures services to meet the needs of their child or the child's family.

15. As a general principle, local authorities should aim to leave choice in the hands of the individual by allowing people to address their own needs as they consider best, whilst satisfying themselves that the agreed outcomes are being achieved. Where a child is assessed as needing services under section 17 of the 1989 Act, the local council also has to be satisfied that the direct payment will 'safeguard and promote' the welfare of the child for whom the service is needed.

## **Scope of the direct payments legislation**

16. Where a local authority makes a direct payment, it retains its functions with respect to overall provision of the service under the applicable social services legislation. However, so long as the authority is satisfied that the person's needs for a particular service will be met through the arrangements he or she makes using the direct payment, the authority is not obliged to provide or arrange those services for that person.

17. Direct payments shall be made to all individuals who are eligible to receive them and who want them. This might include those people in the groups listed in paragraph 21 below who have been assessed as needing relevant services.

18. There are some persons to whom the duty to make direct payments does not apply. Examples of the relatively few exceptions to this are people listed in Annex B. Broadly, these are certain people whose liberty to arrange their care is restricted by certain mental health or criminal justice legislation. People in these groups are required to receive specific services. A local authority retains its existing functions as respects the provision of services even though it is not under a duty to make a direct payment to a person in this group.

19. Each eligible individual should be offered the choice of having their needs for a relevant service met through direct payments rather than through services provided or arranged by the council as part of the care planning process.

20. If individuals wish, local authorities can arrange mixed packages for individuals with some directly provided services and direct payments for other needs. This can, for example, give somebody the opportunity to familiarise him/herself with the business of using a direct payment before taking on responsibility for arranging services to meet all their needs.

21. The following groups of people may be eligible to receive direct payments:

- **Disabled people aged 16 and over**

This includes in particular older people who, despite being the largest single group of people using community care services, have been the least likely to be offered and to get a direct payment. This may also include disabled adults and disabled young people aged 16 or 17.

- **A person with parental responsibility for a disabled child or a disabled person with parental responsibility for a child**

This may include a parent or others, such as a grandparent, with parental responsibility.

- **Carers aged 16 and over**

People whom the authority decides need services because they provide or intend to provide a substantial amount of care on a regular basis for someone aged 18 or over. Carers (but not employees, persons working under contract or for a voluntary organisation) may obtain direct payments in respect of their

own needs for services but not for services in respect of the needs of the person they care for.

## **Developing direct payment services locally**

### **Consultation**

22. If local authorities are to enhance local involvement in community care services, it is important that they consider ways of making direct payment services more responsive to the needs and wishes of individuals using services, including arrangements to consult local people about how direct payments schemes are set up. The most effective direct payments schemes have been developed by authorities, other organisations and people needing support working together to draw up a scheme that meets local needs. Authorities should avoid focusing on one group of potential recipients to the exclusion of other groups. They should not make the assumption that organised groups necessarily represent all individuals and their carers in the locality who might benefit from the flexibility offered by direct payments.

23. Care should be taken to include people with different kinds of impairment, people from different ethnic backgrounds and people of different ages in this process. In particular, local authorities should consider how best to consult those people who have previously found it difficult to access schemes. Authorities may wish to seek views on the types of scheme people would like, and also the views of people with impairments that have not yet been fully encompassed within many schemes. Examples include people with learning disabilities, sensory impairments or mental health problems. It is also important that the lines of communication remain open, so that the authority is responsive to users' views over time.

### **Commissioning**

24. Authorities should take care to ensure financial planning systems and commissioning arrangements take account of changing patterns of demand, including increases in demand for direct payments.

25. Problems with internal budget management procedures may not be used by authorities as a reason to refuse or delay the offering or start of a direct payment to a person to whom there is a duty to make a direct payment.

### **Support services**

26. When discussing direct payments with people, local authorities will wish, wherever possible, to offer the option for them to be put in touch with a support group or local centre for independent living, or a peer support group of people who already manage direct payments.

27. Experience has shown that developing support services is a key component of successful implementation of direct payment schemes. Authorities are encouraged to consider ways in which they can offer support in connection with direct payments. Authorities might decide that they can provide a support service directly, in partnership with a local voluntary organisation, or by some other means. Support

provided through voluntary/recipient-run organisations has been shown to be particularly effective and valued by recipients.

28. The experience of existing recipients of direct payments suggests that they find it easier to seek advice from someone who is independent of the authority. People receiving direct payments who have been involved with setting up their local scheme can often act as advocates for and mentors of those who follow. They can be a valuable source of emotional support, understanding and advice, and offer positive role models to others. Parents of disabled children often have informal networks with other parents with disabled children. Strengthening such local schemes and networks could be an effective way of providing advice and support to parents. It could also aid the rapid local expansion of the scheme and ensure that an authority's investment in start-up costs provides good value for money.

29. A support service helps to produce better outcomes for both individuals and local authorities. When establishing and reviewing support services, local authorities should seek to ensure that the range of support provided reflects the needs of local people requiring services and their carers. A good support service can make direct payments an accessible, more manageable and attractive option for a wide range of people. Authorities should seek to ensure that people who express an interest in direct payments do not have to wait unduly for advice about direct payments.

30. Support services might include training and practical assistance in addition to providing information, advice and peer support. Examples of the range of areas in which support might be welcomed are:

- a list of local provider agencies
- support and advice in setting up and maintaining a direct payments scheme including financial management
- help for people to draft advertisements, job descriptions and contracts
- help in explaining the safeguards needed in the employment of people to work with children or adults
- rooms for interviews and assistance 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
- 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, etc.
- some emergency cover support
- signposting to other services such as welfare benefits advocacy
- advice about user-controlled trusts.

31. People who receive direct payments may need particular support when they first take on responsibility for managing their own or their child's care, or become employers for the first time.

32. Authorities should also have regard to the reasonable needs and expectations of support scheme users, and to the need to comply with their legal obligations, for example, under the Disability Discrimination Act 1995.

33. Authorities will wish to ensure that local support services are sufficiently accessible to everyone eligible to receive direct payments. Skills and knowledge are

required to work with people with particular support needs, especially where there are issues of consent and the ability to manage. This might include people with learning disabilities, communication difficulties, mental health problems or older people with dementia.

34. It can often be important for the person with parental responsibility for the disabled 16- or 17-year-old also to have access to support services. This may be particularly important if the 16- or 17-year-old is receiving help from their parent to manage the direct payment, or if they are receiving a package of care where some elements are managed by the parent and some managed by the young person. People with parental responsibility for a disabled 16- or 17-year-old may also find it useful to meet disabled adults who receive direct payments. The local community and voluntary sector is often able to promote links between families with disabled children, both for parents and for children and young people.

35. Support services may need to contract-in people with specialist skills as appropriate. As the number and variety of direct payments recipients expands, local authorities should review the support services they provide, or arrange to ensure that people from different backgrounds have sufficient access to peer support and other services to match their particular needs and that the aims of the service continue to be met.

36. In considering the development of local information on direct payments, authorities should also allow for differing communication requirements, for example, for non-English speakers, British sign language, communication methods for deaf/blind people, large print, audio, Braille, and email.

37. People in receipt of Independent Living Fund (ILF) awards often require the same advice as people using direct payments. Authorities are encouraged to consider the needs of ILF recipients when setting up and reviewing local support services. In addition, other people such as carers of people who are receiving direct payments may also need advice about how direct payments work. This is particularly important if they are assisting their friend or relative with managing the payments. People who are self-funding their services may also welcome the advice of a support service.

#### Advocacy

38. Many people who receive direct payments 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 recipients as a group when a local authority is considering changes to the scheme. However, it may well be preferable to separate any support role from an advocacy role on behalf of individuals to avoid any conflict of interest. Extra time may be needed to set up the direct payment to ensure the advocate fully understands the individual's wishes.

#### Support for young disabled people

39. Young people who receive direct payments may also find it helpful to have access to advocacy support. This should be separate from any support/advocacy provided to their parents.

40. Where there is a difference of views between parents and disabled young people aged 16 or 17, the duty to make direct payments might mean that local authorities should give precedence to the views of the young person. It follows that there may be situations where it would be right for a young person to

receive a direct payment whether the parents agree or not, although. it is important that local authorities consider the welfare of the young person in such circumstances.

41. There will be situations where disabled young people aged 16 or 17 will express their wish to manage a direct payment but their parents and the local authority believe that they are not at the moment capable of managing a direct payment by themselves or with help. When the young person does not agree with the authority's judgement, they should have access to advocacy and the opportunity for discussions with the authority to ensure that their arguments are properly considered. The social service's complaints procedure should also be open to the young person.

### **Complaints procedure**

42. 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. The making of direct payments is a social services function within the meaning of section 1A of the Local Authority Social Services Act 1970. People who receive, or consider that they should receive, direct payments are entitled to have access to this procedure in the same way as someone who receives services provided or arranged by the local authority.

43. There is also a complaints procedure under section 26 of the 1989 Act which may be used to complain about direct payments made under section 17A of that Act.

### **Using Direct Payments**

#### **Consent**

44. Local authorities may make direct payments only with the consent of the person concerned, or, for disabled children aged under 16, with the consent of a person with parental responsibility, usually a parent. Whilst a direct payment can be made to a nominee and someone else can help the person to manage the direct payment, the person eligible to receive direct payments must be able to consent to the making of the payment.

45. As well as giving users greater control and independence, a direct payment carries with it responsibilities. The individual is accountable to the local authority for the way in which the money is spent. Users also take on responsibility for obtaining the services they need through their own arrangements, which may involve legal responsibilities.

46. Authorities should establish that there is an understanding of what is involved in managing the direct payment. This is an area where people may particularly welcome support. Obtaining consent might be a process involving continuing discussion, rather than a single event.

47. The authority should also make clear that a person does not have to agree to a direct payment and that it would arrange services in the normal way if someone decides not to accept direct payments. They should also discuss with people who are to receive direct payments what they should do if they no longer wish to receive direct payments.

48. 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. In such cases, the individual should have access to the same procedures outlined above for those who have been refused a direct payment.

### **Ability to manage**

49. If the person consents, local authorities are under a duty to make direct payments to anyone who appears to the authority to be able to manage them (either alone or with help). This is, of course, provided they are not prevented from doing so for other reasons specified in the Regulations, or, for example, because the local authority is not satisfied that the person's needs for the service can be met using a direct payment.

50. Local authorities should not make blanket assumptions that whole groups of people will or will not be capable of managing direct payments. A local authority is not under a duty to make a direct payment if it does not appear to it that the person is capable of managing the payment, or to do so with assistance. However, very many people will be able to do so, in particular, if they have access to help and support. Where an authority makes a judgement that someone is unable to manage, this should be made on an individual basis, taking into account the views of the individual and the help that may be available to him or her. Where an individual does not agree with the authority's judgement, they should have access to advocacy and, if available, an arbitration procedure, to ensure that their arguments are properly considered, or access to the complaints procedure.

51. Authorities should give the person information and support as early in the process as possible about what receiving direct payment will involve. In order to make an informed decision, people need to understand what is involved in managing direct payments. Managing direct payments is not simply about handling money. A direct payment also involves people making their own arrangements, with assistance if necessary, to obtain the services which the authority would otherwise have arranged or provided.

### **Advice on making decisions about the ability to manage**

If an authority is concerned that a person who wishes to receive a direct payment may not be able to manage the payment, the authority should ensure that it takes into account all relevant factors before making a decision not to make a direct payment. These decisions may need to involve professional staff who are trained to assess capacity and to help people make decisions, and who should consider:

- the person's understanding of direct payments, including the actions required on their part;
- whether the person understands the implications of taking or not taking on direct payments;
- what help is available to the person;



- the nature of the services the person is assessed as needing;
- what arrangements the person would make to obtain services.

52. If the person who is deciding whether to accept direct payments does not already have a service in place, for example, if they have been newly assessed, the authority may need to provide a service in the interim.

Where the individual is expressing doubt about their ability to manage, this might mean that they are experiencing some difficulties, but this may not mean that they are incapable of managing the payment altogether. It may be appropriate to offer a mixed package of direct payments and authority-arranged services to give him/her experience of operating direct payments. This may be particularly useful for those people used to receiving direct services, such as older people, and who may need to increase their confidence.

53. Some people may need help with managing the money. The payment may be made to a third party (nominee) for the recipient and day-to-day management of finances may be delegated in this way. However, the person to whom the direct payment is made must have control over how services are delivered. Direct payments may also, in principle, be provided through someone with power of attorney for the individual or a user-controlled trust. Before direct payments begin, authorities should satisfy themselves that the relationship between the individual and the agent will enable and sustain the individual's independence. .

54. Where someone needs assistance to manage direct payments, the authority might wish to explore ways of delivering this so that adequate help is available over a sustained period, not just for the set-up period. Recipients may choose to ask family or friends, or advocacy or support groups to help them in this way. They might also choose to buy in assistance, for example, with keeping records, management of day-to-day relationships with staff or using a payroll service.

55. In certain circumstances a trust may take on the employment of staff and the financial management of the payment (see above). In such cases, local authorities should seek to establish that there is an understanding by those appointed to manage the administration of the payment of what is involved before making direct payments.

56. If the local authority concludes that someone is not, even with assistance, able to manage direct payments, it is important to discuss with him or her and, in appropriate circumstances, with any family or friends the reasons for the decision. Where an individual does not agree, they should have access to advocacy and, if available, to arbitration to ensure that their arguments are properly considered. 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.

### **Long-term considerations**

57. Many people with an episodic condition can manage direct payments very adequately. Nevertheless, some people may be better 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. Advance statements should

be used as part of the process of managing a fluctuating condition.

58. Provided it appears to an authority that a person is currently capable of managing a direct payment, or managing the payment with help, there may still be duty to make a direct payment even if it is known that the person is likely to lose the ability to manage in the future. 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.

59. Where individuals are worried about dementia or other cognitive impairment local authorities may wish to direct them to the appropriate voluntary sector organisations (see Appendix F). It is important that the needs of people with dementia and their carers are properly considered, and direct payments should not be discontinued if the person needing services is able to manage with appropriate support.

### **Enduring power of attorney**

60. A person with legal capacity can make an enduring power of attorney (EPA). He or she makes the EPA in the expectation that if they lose capacity the person appointed as attorney will lawfully be able to continue to deal with his or her property and affairs once the power is registered. An appointment as attorney does not carry with it authority to make personal care and welfare decisions on behalf of the person who granted the attorneyship (see part VII of the law Commission's review of the law relating to decision-making : LC 130), and so an attorney cannot give consent on the person's behalf to direct payments.

61. If a person, to the knowledge of the authority, becomes permanently incapable of managing a direct payment, whether alone or with help, the authority is required by the Regulations to terminate the making of direct payments, and provide or arrange for the provision of services instead. Where an enduring power of attorney has been registered, local authorities should consider, in the light of the registration, whether a person continues to be capable of managing his/her direct payment. If it becomes appropriate for the person to receive different services, an attorney cannot consent to direct payments for such services. This guidance will be reviewed in light of any changes to the law made as a result of the Mental Capacity Bill. The draft Bill currently includes provision for a "lasting power of attorney" so that important decisions can be made about a person's welfare in addition to decisions about their property and affairs.

### **Support for people with communication difficulties**

62. Some people with learning disabilities may have little real knowledge about their current services, how they operate, who pays for the services or who controls the spending. Information about direct payments may be meaningless if people do not understand the system they are replacing. In addition, some people with learning disabilities may have little control over their current services and may not even be aware that they have choices. Local authorities should foster the development of good support services and schemes so that more people with learning disabilities and their families can benefit from direct payments.

63. Authorities will need to think carefully about how to best present information about services including direct payments to people with learning disabilities and other cognitive impairments so as to maximise the potential for people to make informed

decisions. Supporting people in making choices about how they want their needs to be met should be an integral part of the assessment and review process.

64. If it is not obvious initially how an individual communicates choices, care should be taken to involve in the process people who know the service user well and understand how they express their preferences. This will help build up a picture of the type of service response that would best meet the individual's needs, desires and aspirations.

### **Setting up direct payments**

65. In order to ensure that the person's assessed needs for the relevant service can be met by means of a direct payment, each local authority should consider the person's needs and also discuss with anyone to whom it proposes to offer direct payments how he or she intends to secure the services. Authorities will want to be satisfied that the person's assessed needs can and will be met, and that the money is being spent appropriately in securing services to meet those needs. In the case of services for children in need, a local authority is required to satisfy itself that child's welfare will be safeguarded and promoted using the direct payment. Authorities may set reasonable conditions on the direct payment, but need to bear in mind when doing so that the aim of a direct payment is to give people more choice and control over the services they are assessed as needing. For example, individual choice and control would not be delivered were a condition set that someone who receives direct payments may only use certain providers. Conditions should be proportionate and no more extensive, in terms or number, than is reasonably necessary. Authorities should avoid setting up disproportionately intensive monitoring procedures. Financial payments should not begin until the recipient has agreed to any conditions that the local authority considers are necessary in connection with the direct payment.

66. Some people may already have ideas about how they would use direct payments, and may have discussed these with the care manager or social worker at the assessment stage. Other people may need advice or advocacy to help them think through the implications or alternatives. A local support group can be invaluable in assisting with this. If there is a local register of approved providers of services to direct payment recipients who are willing for their details to be passed on, the authority could bring the register to the attention of the individual. Authorities should not *require* the individual only to contract with providers from the register, and will also need to think carefully about setting up and maintaining a register, including the potential legal implications.

67. In considering whether the person's needs for the relevant service will be met by the person's own arrangements, local authorities should not be constrained by existing patterns of service provision. By exploring innovative and creative options, people should be encouraged to identify alternatives that meet their 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.

68. Many people will prefer to use direct payments to take on their own personal assistants as employees. This option gives them the most direct control over the assistance they receive, but it also carries the most responsibility (e.g. to pay tax, National Insurance contributions and statutory sick and maternity pay). Others may choose to contract with independent agencies and not to employ personal assistants themselves or to contract with self-employed individuals.

69. The Welsh Assembly Government has introduced a scheme of regulation under the Care Standards Act 2000 for domiciliary care. Direct payments users need not restrict themselves to registered domiciliary care providers, but should be made aware of the scheme of regulation. If a direct payments recipient intends to contract with an agency that is required to be registered, it should be checked that the organisation is, in fact, registered with the Care Standards Inspectorate for Wales.

### **Assessment and care plans**

70. Detailed policy and practice guidance on assessment (including risk assessment) is contained in the Welsh Assembly Government's Creating a Unified and Fair System for Assessing and Managing Care Guidance, and this should be followed whether or not the person being assessed is likely to receive services provided by the local authority or direct payments. There is no difference in the assessment of a person's needs or the determination of eligibility for care and support, although under the Regulations a local authority must also be satisfied that the person's assessed needs can be met by means of a direct payment.

71. If encouraged, many individuals will already have clear views about the activities with which they need assistance. Existing direct payment schemes have enabled people to secure assistance with personal and domestic tasks inside and outside the home. This might include daily activities like getting in and out of bed, dressing, having a bath, preparing a meal, doing housework and laundry, going shopping, going to college, and more complex needs such as enabling a deaf/blind person to secure the services of a guidecommunicator. Direct payments in respect of children with enduring disabilities will usually be a long term commitment, but frequent review will be needed as the needs of the child change with age.

72. Authorities should also consider how direct payments might promote local preventive and rehabilitative strategies. Good assessment can result in timely provision of a direct payment and forestall the need for a more extensive provision of services in the future.

73. Authorities are reminded that there should always be a care plan, a written copy of which should be given to the individual. This advice applies equally where direct payments are provided in place of services provided or arranged by the local council.

### **Short-term needs**

74. For people whose needs are short term, direct payments can support their return to independence. In such instances it will be important to discuss at the outset how the ending of the direct payment will be managed. Consideration should also be given to looking at how people could use a direct payment to regain or retain their independence, and live in their own home, for as long as possible. When setting up direct payments schemes, local authorities should particularly consider how to make the administration of direct payments sufficiently fast and flexible to use for hospital discharge or intermediate care.

75. Many parents with parental responsibility for a child will wish to use a direct payment to arrange services in the home or improve access for their child to services in the community. In addition, they may want to use a direct payment to arrange short-term breaks for their child. Such breaks usually serve two purposes, both allowing the parents more time for other activities, for example with their non-disabled children, and affording the disabled child an opportunity to make new friends and participate in new activities. Parents may look to an established voluntary organisation to provide such breaks either in foster families or residential homes or they may wish to make their own arrangements.

### **Short term care in a care home**

76. Direct payments may not pay for adults to live for the long term in a care home. They may be made to enable people to purchase for themselves short stays in care homes, but this cannot be for more than a four-week period in any twelve-months. In calculating the period of 4 weeks in any twelve month period an initial period in residential accommodation of less than 4 weeks (period A) shall only be added to a succeeding period (period B) where period B begins within 4 weeks of the end of period A; and any period in residential accommodation subsequent to period B shall be included in the calculation. For example, Ms J spends three weeks in a care home in January 2005 funded through direct payments. In March 2005 she wants to spend another three weeks in a care home. She is entitled to direct payments to fund this second spell because it begins more than four weeks after the first. For the rest of the year she can only insist on direct payments funding for one more week in a care home. It is unlikely that direct payments will be appropriate for emergency (unplanned) residential care.

77. People can receive additional weeks in a care home once they have reached the four-week maximum. They cannot purchase the stay using their direct payments, but if the authority considers that a longer stay is needed, it can still arrange and fund stays for the person itself in the normal way. There is no restriction on the length of time for which the authority may arrange such accommodation for someone.

78. A direct payment also cannot be made in relation to the provision of residential accommodation for a disabled child or disabled young person for any single period in excess of four weeks, and for more than 120 days in any period of twelve months. The time limit is imposed to avoid inappropriate use of residential accommodation.

### **People in residential care**

79. Direct payments may also be used to enable people who are living in care homes to have temporary access to direct payments to try out independent living arrangements before making a commitment to moving out of their care home. Direct payments can also be used by people living in care homes to buy a day service place or engage in an alternative day time activity, and this can be particularly enabling for young people at transition stage.

### **Equipment**

80. Authorities may make direct payments to enable people to purchase for themselves equipment that would otherwise have been provided by the social services department. Direct payments may also be made to enable people to pay for

adaptations that would otherwise have been provided or arranged by the social services department.

81. Direct Payments cannot be used to purchase services or equipment for which the authority is not responsible, for example, services that the NHS provides. Direct Payments are not a substitute for disabled facilities grant for major property adaptations.

82. If making a direct payment for the purchase of items of equipment, local authorities will need to satisfy themselves that the person's needs for the service will be met by the user's own arrangements. In particular, local authorities will wish to ensure that the direct payment recipient is adequately supported by specialist expertise. This is particularly true in the case of major items, when advice may be needed to ensure that equipment purchased is safe and appropriate.

83. Where an authority makes a direct payment for equipment, it needs to clarify with the individual at the outset (just as it should where it arranges for the provision of equipment itself) where ownership lies as well as who has responsibility for ongoing care and maintenance. As direct payments mean that the individual will secure for themselves the equipment they are assessed as needing, an authority will need to consider what conditions, if any, should be attached to the payment. For example, concerning what will happen to the equipment if the individual no longer requires the services for which the equipment was purchased. Equipment can be purchased as part of making a package cost effective, for example, supplying pagers or mobile phones to personal assistants.

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

84. It is up to the authority to decide on the amount of a direct payment. However, the direct payments legislation provides that it must be equivalent to the authority's estimate of the reasonable cost of securing the provision of the service concerned, subject to any sum paid by the recipient. This means that the direct payment should be sufficient to enable the recipient lawfully to secure a service of a standard that the local authority considers is reasonable to fulfil the needs for the service to which the payment relates. There is no 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.

85. In estimating the reasonable cost of securing the provision of the service concerned, local authorities should include associated costs that are necessarily incurred in securing provision, without which the service could not be provided, or could not lawfully be provided. The particular costs involved will vary depending upon the way in which the service is secured, but such costs might include recruitment costs, National Insurance, statutory holiday pay, sick pay, maternity pay, employers' liability insurance, public liability insurance and VAT.

86. The authority is not obliged to fund the particular costs associated with the individual's preferred method of securing the service if, taking into account the user's assessed contribution, the costs exceed the authority's estimate of the reasonable cost of securing it and the service can in fact be secured more cost effectively (but still to the required standard) in another way. The local authority is also not obliged to fund particular costs that are incurred by the individual on a discretionary basis, for

example, non-statutory liabilities such as an ex -gratia bonus payment The authority might decide that they are able 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 still represents best value. Direct payments recipients can use their own resources to purchase additional, or better quality, services if they wish to do so.

87. 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 or the amount they are asked to pay by way of reimbursement should be less than the council proposes. Where these cases cannot be resolved through discussion, local authorities should advise the individual that he or she can pursue the matter through the authority's complaints procedure.

88. A local authority should give individuals as much notice as possible of the value of a direct payment, and the contribution or repayment they will be expected to make to the cost of their care package. This should be done before the payment begins, or its level is changed, to provide the opportunity for any dispute over the level to be resolved before the payment begins or the change takes effect. If that is not possible, whilst any complaint is being considered, individuals may choose either to manage on the amount of direct payments being offered or refuse to accept the direct payments. If a person does not agree to a direct payment, the authority remains responsible for providing or arranging the provision of the services they are assessed as needing.

89. A preventive strategy may necessitate a higher investment to achieve long-term benefits and savings. Provision of direct payments that allow a person to remain in their own home may represent long-term savings if that person does not then require hospital or residential care. Similarly the provision of direct payments to a person in need of rehabilitative care may result in a more sensitive and individualised service which may in turn ease a person's recovery.

## **Charging**

90. In considering whether to ask recipients of direct payments to make a financial contribution to the cost of their care package, the Regulations provide that the local authority shall determine, having regard to the recipient's means, what amount or amounts (if any) it is reasonably practicable to pay towards the cost. For people assessed as needing community care services or carer services, the relevant Welsh Assembly Government guidance is *Fairer Charging Policies for Home Care and Other Non-residential Social Services*.

91. There are two ways in which an individual may make a financial contribution to the cost of his or her care. An authority may make a direct payment that is equivalent to their estimate of the reasonable cost of the service and subsequently seek reimbursement (gross payment). Alternatively, the local authority may deduct from their estimate the assessed charge before the payment is made and make direct payments net of the amount that the individual is expected to make (net payment). Authorities should take into account the views of users when producing their policy on charging, allowing sufficient flexibility to respond to individual circumstances.

92. Authorities are reminded that they do not have power to charge for services provided under section 117 of the Mental Health Act 1983 (after-care). Accordingly,

where local authorities make direct payments instead of providing services under section 117 of the Act, they may not seek payment, whether by way of reimbursement or a contribution. Where the need for services arises under section 17 of the 1989 Act and payments are made to person with parental responsibility for a child aged 16 or 17, or to a person in receipt of certain benefits, the same restrictions on charging apply.

## **Making payments**

93. It is up to local authorities to decide how frequently payments should be made. In considering what procedures to put in place, local authorities should bear in mind the possible effect of different alternatives on the circumstances of people who are likely to receive direct payments. People need to be in a position to pay for services when payment is due. The arrangements for making direct payments should be reliable, as late or incorrect payments may put at risk people's ability to secure the services they need. An authority may also need to set up procedures for making additional payments in emergencies, for example, if needs change or regular payments go astray. Authorities should tell recipients, before direct payments begin, how and when the payments will be made, and the procedures for additional payments in an emergency.

94. The flexibility inherent in direct payments means that individuals can, subject to any conditions placed upon the direct payments, adjust the amount they use week to week and 'bank' any spare money to use as and when extra needs arise. So long as overall the payments are being used to secure the services they are for and the care plan objectives are met, the actual pattern of 'service' does not need to be predetermined.

## **Transfer to direct payments from direct provision**

95. People who are already receiving services may wish to switch to direct payments. They may also wish to combine a package of services to meet their assessed needs involving both services provided by the local authority and other services purchased using direct payments but direct payments cannot be used to purchase a service from a local authority. They may not raise these possibilities themselves, so an authority should raise it at, or between, a person's review. This guidance applies equally to people with whom the authority is undertaking an assessment for the first time, and existing service users with whom the authority is discussing a switch to direct payments.

## **Specific Delivery issues**

### **Close relatives**

96. Except where an authority is satisfied that it is necessary to meet satisfactorily a person's needs, a local authority may not allow people to use direct payments to secure services from a spouse (husband or wife), from a partner (the other member of an unmarried couple with whom they live), or from a close relative (or their spouse or partner) who live in the same household as the direct payment recipient.

97. 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 usually excluded by the Regulations. The restriction is intended to apply where the relationship between the two people is primarily personal rather than



contractual, for example, if the people concerned would be living together in any event.

### **Health and safety**

98. Authorities will wish to consider the health and safety implications of direct payments, both for themselves and for recipients. As a general principle, local authorities should avoid laying down health and safety policies for individual direct payment recipients. Individuals should accept that they have a responsibility for their own health and safety, including the assessment and management of risk. They should be encouraged to develop strategies on lifting and handling and other tasks both in the home and outside it where lifting equipment, for example, may not be available.

99. As part of the process of informed choice, local authorities will wish to take appropriate steps to satisfy themselves that recipients and potential recipients are aware of health and safety issues that affect them as individuals, anyone they employ, and anyone else affected by the manner in which their support is delivered.

100. As part of this process, local authorities should give the recipients and potential recipients the results of any risk assessments which were carried out as part of the care assessment. Such risk assessments are necessary so that health and safety issues can be taken into account. This allows the individual to share the assessment with the care agency or the employee who provides the service. They can therefore take reasonable steps to minimise the risks to the health and safety of any staff they employ. (The recipient or potential recipient has a common law duty of care towards the person he or she employs.)

### **Direct payment recipients as employers**

101. For people who receive direct payments it may be their first experience of being an employer, and they may welcome support through the recruitment process whether they intend to employ a personal assistant, or hire a self-employed assistant or an agency to provide services. It is important that the information and help provided is clear and concise and not offered in such a way as to dissuade them from accepting a direct payment.

102. Individuals should be made aware of their legal responsibilities in terms of providing a statement of employment particulars, meeting the national minimum wage, taxes and statutory benefits such as sick pay and annual leave. If support services are provided, local authorities may wish to include a payroll service which will take responsibility for administering wages, tax and National Insurance for the direct payment recipient. A written contract will help ensure that all those involved have the same understanding about the terms of employment.

103. Concern over becoming an employer should not be allowed to discourage people who would otherwise be willing and able to manage direct payments. The aim should be to inform the potential recipient accurately, responsibly, constructively and supportively. It should not be done in such a way as to put off the recipient, for example, by over-stressing the extent and complexity of these responsibilities, but neither should the authority fail to make recipients aware of what is involved. Recipients should be able to make informed choices. In all cases the local authority remains responsible for continuing assessment and review to ensure the person's assessed needs for services can be met by means of a direct payment.

104. The only contracts which are binding on minors are contracts for 'necessaries', that is, contracts for necessary goods and services. Even then such a beneficial contract will not be enforceable against a minor if it is found to contain unreasonable and onerous terms. This will need to be borne in mind in deciding whether to make a direct payment to a disabled 16- or 17-year-old, and it is suggested that in each case local legal advice be obtained.

### **Employing a suitable person: children and young people**

105. The Protection of Children Act 1999 enables a person who is considering employing an individual to care for their child, or a disabled 16- or 17-year-old who is considering employing a care worker themselves to ask the local council to carry out checks under the Protection of Children Act 1999 via the Criminal Records Bureau (CRB). When the person with parental responsibility or the disabled young person requests such a check the local council has a duty to comply.

106. Authorities should work in partnership with parents to help them make arrangements that are designed to safeguard and promote the welfare of the child. The majority of parents will be both willing and able to do this, but local authorities should only arrange a direct payment for a parent of a disabled child when they are satisfied this is the case.

107. Local authorities may want to clarify with those who request a CRB check the authority's responsibility for child protection, and the implications should a parent insist on employing an individual who has been found to be unsuitable following such a check. The authority's actions must be determined in the light of its duty to safeguard and promote the welfare of children in need. Note that it is an offence under the Criminal Justice and Court Services Act 2000 if an individual knowingly offers work with children to, or procures work with children for, an individual who is disqualified from working with children, or allows such an individual to continue in such work.

108. When the parent or young disabled person has chosen to ask for a CRB check to be carried out, they should be advised that they may wish to continue to receive services from their local authority, current provider, or contract with a registered agency for the services they need until the prospective candidate for employment is approved.

109. Local authorities may also refer to the Protection of Children Act list a relevant individual the authority considers guilty of a misconduct that harmed a child or placed a child at risk of harm. Local authorities should make people with parental responsibility aware that the fact that a CRB check reveals no criminal convictions does not necessarily mean that someone is a suitable person to work with children. They should still offer the advice about employing someone using direct payments as outlined above. A relevant individual is one who is or has been employed to provide care to a child and that employment is funded by a direct payment under section 17A of the Children Act.

110. An individual wishing to work with the child will make the application for a CRB check to be carried out. The application will be counter-signed by the local authority. A fee is required for each CRB check. The individual making the application for employment will normally be asked to pay the fee. The local

authority may wish to consider the cost of the check in its estimate of the reasonable cost of securing the provision of the service so that the direct payment user may reimburse successful candidates.

111. Currently there is no requirement to carry out criminal records checks for people working with adults. Under the Care Standards Act 2000, the Protection of Vulnerable Adults (POVA) arrangements will be put in place to protect vulnerable adults from harm from those employed to care for them. The Department of Health will introduce the POVA arrangements on a joint England/Wales basis.

### **Where additional support is required**

#### **Parents and children**

112. Existing guidance emphasises the importance of:

- the family as the natural and most appropriate place for children;
- local authorities working in partnership with parents;
- recognising that children are individuals with their own wishes and feelings; and
- holistic family assessment, taking account of the needs and views of children and parents.

113. Local authorities are required to provide information about services available in their area. It will be essential that families have information about the full range of services, including the option of direct payments.

#### **Direct payments to disabled parents with parental responsibility for a child**

114. Authorities should ensure that needs assessments for disabled adults include parenting responsibilities.

115. Disabled people who are parents could be assessed as needing services under both community care legislation and/or the 1989 Act to assist them in their parenting role. This means that direct payments can be used to meet the social care needs of them, their children or their family that arise from their disability. It is important that the needs of the disabled person and their family are looked at holistically, bearing in mind that specific duties may arise under particular legislation. In the interest of the family and to avoid duplication, local authorities should ensure the assessment process is streamlined and co-ordinated between adult and children's services and other relevant departments such as education.

116. Where there is a disabled parent, the local council may be under a duty to assist the family if they are assessed as needing help in bringing up their child.

#### **Direct payments to a parent with parental responsibility for a disabled child**

117. In this section, 'parent' and 'parents' refers to those with parental responsibility for a disabled child.

118. Where a parent opts for direct payments, local authorities retain their responsibilities under the 1989 Act to assess and review the needs of disabled children and their families in the normal way.

119. In considering direct payments some parents will require advice about their child's need for additional support or protection. Other parents need support and sometimes permission to let their disabled child take risks in their everyday lives. This may include allowing their 16- or 17-year-old to manage their own support through a direct payment.

120. Local authorities should make clear the steps that people with parental responsibility for a disabled child ought to take to satisfy themselves that the person offering help with the care of their child is a suitable person. It is important that people with parental responsibility for disabled children are fully alerted to any risks of abuse and provided with advice to minimise those risks.

121. The responsibilities of people with parental responsibility for disabled children are often made more arduous by the difficulty of accessing mainstream services such as childcare, after school clubs and leisure activities. Families with disabled children may not think existing services provided or commissioned by their local authority are suitable for their child and may well be able to make more appropriate arrangements for themselves. Direct payments can enable parents with parental responsibility for a disabled child to make such arrangements.

122. Parents should be encouraged and supported to use direct payments with a view to enabling their disabled children to access the same kinds of opportunities and activities as their non-disabled peers. Direct payments to people with parental responsibility for a disabled child are provided within the framework of Part III of the 1989 Act which requires local authorities to provide a range of services to safeguard and promote the welfare of children in need.

### **Intimate care for a disabled child using direct payments**

123. Parents may use direct payments to purchase services of an intimate nature to meet the assessed needs of their disabled children. However, as children mature, parents should be encouraged to give greater weight to the child's views about how their intimate care needs are to be met. Particular care should be taken to ascertain the child's wishes when they have a cognitive and/or communication impairment.

### **Childminding**

124. Local authorities may make available the list of registered child minders and other registered providers of childcare in the area. The local authority may consider that a direct payments support service is also well placed to provide such information and support.

125. Section 79D of the 1989 Act states that anyone caring for a child under eight for over two hours a day and for payment in their own home has to be registered as a childminder. Parents of disabled children should be aware of this requirement, designed to safeguard the welfare of young children, when

purchasing support via a direct payment.

126. A checklist such as that available on [www.childcarelink.gov.uk](http://www.childcarelink.gov.uk) that enables parents to select safe childcare may be helpful.

## **Transition**

### **Young person into adulthood**

127. Parents often face challenges or problems in supporting and preparing their children for an independent adult life. The transition to financial independence and independent living is not usually a single event, nor does it happen quickly. Families with disabled children often face additional challenges that may delay or limit the children's move towards independence. For any young person (with or without a disability) the process of growing up involves the gradual taking on of more and more responsibility for himself or herself.

128. In some cases the young disabled person at age 16 or 17 may wish, as part of the transition to adulthood, to take control of parts or all of the direct payment that has to date been managed by the person with parental responsibility. This can allow them to gain experience of managing direct payments in a gradual way prior to reaching adulthood.

129. Whatever decisions are made when the disabled child reaches age 16 or 17, people with parental responsibility for a disabled child may not continue to receive direct payments to purchase services that meet the needs of that child once the child reaches his or her majority. However, if they are going to continue in their caring role, such carers may be entitled to receive direct payments as an alternative to local council directly provided carers' services under section 2 of the Carers and Disabled Children Act (2000). Carers' services would be to support the parent carer in their caring role and to help them maintain their own health and wellbeing.

130. It will be important for local authorities to recognise and respect the views of parents who have been managing the delivery of support for their child in setting in place any new arrangements once the young person reaches his or her majority. The parents would, for example, normally be involved in setting up and running a user-controlled trust.

131. Disabled 16- and 17-year-olds are entitled to take advantage of the flexibility of direct payments where this will safeguard and promote their welfare. Direct payments enable them to make more decisions for themselves and to provide opportunities for them to have more control over their lives.

132. Some disabled 16- and 17-year-olds may have previous experience of direct payments because their parents are receiving them to meet the family's needs. However, many disabled 16- and 17-year-olds' parents will have been receiving services direct from their local authority.

133. A way to develop a young person's ability to manage the direct payment can be to put in place transitional arrangements, initially set up with the young person managing only a proportion of their support with a direct payment. This proportion

could increase as the young person matures, with the objective of full management of the support package at age 18.

134. Young disabled people may receive assistance with managing the direct payment, just as any other direct payment recipient may do. Where that assistance takes the form of a user-controlled trust or similar arrangement, it should be set up in the knowledge of the views of those people with parental responsibility. Their ability to exercise their views should not be undermined by the arrangement.

### **Direct payments for carers**

135. Direct payments allow carers to purchase the services they are assessed as needing *as carers* to support them in their caring role and to maintain their own health and wellbeing. Carers (other than those with parental responsibility caring for children) may not receive a direct payment to purchase services to meet the assessed needs of the person they care for.

### **Young carers**

136. This facility is available to allow for flexibility in the *small* number of circumstances where a 16- or 17- year-old is choosing to undertake a substantial caring role for a disabled adult for a period and where the local council supports that decision. It could in some circumstances be more helpful to the young carer to receive a direct payment, for example, to allow them to arrange for carer services to be delivered in such a way as to minimise any disruption to their education that would result from their decision to care.

137. An example where it might be appropriate for a 16- or 17-year-old to provide assistance is where they are involved in looking after a terminally ill relative. In such a temporary situation, direct payments may provide flexibility, which enables them to have a break from caring.

138. When assessing whether the young carer is willing and able to manage the direct payment a local authority should consider the impact of the additional responsibility direct payments will bring. The local authority might also consider the variety of ways in which the young person could be supported to manage any direct payment. For instance, the young carer might need to be informed that they might be able to have the payroll aspects of managing a direct payment dealt with by a local payroll service.

### **Monitoring and reviews**

139. When a person chooses to receive direct payments, he or she takes on the responsibility for securing the provision of services to which the direct payment relates. Monitoring arrangements should be consistent both with the requirement for the authority to be satisfied that the person's needs for the service can and will be met and with the aim of promoting and increasing choice and independence.

140. Authorities should focus on achieving agreed outcomes, rather than on the service being delivered in a certain way. An authority should discuss with individuals what steps it intends to take to fulfil its responsibilities, 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.

141. Authorities should aim to ensure that the information that the direct payment recipient is asked to provide is as straightforward and the least onerous possible, consistent with monitoring requirements.

142. Each authority will need to establish how it will know if someone is experiencing difficulty with managing their direct payments. It may not be appropriate to rely on someone who has been managing his or her own care for some time to ask for extra help if he or she needs it. It is important, however, that local authorities should not assume this is an adequate safeguard, particularly when someone has a fluctuating or deteriorating condition such as HIV/AIDS or Alzheimer's, or when the person begins to receive direct payments for the first time.

143. Where an authority wishes to ask the individual whether he or she is satisfied with the services he or she is securing, it should ensure that it communicates directly with the individual on a regular basis. For example, a different interpreter may be required if the person wishes to comment on the services of his or her usual interpreter. Authorities should not make assumptions that someone who is not receiving services to their satisfaction cannot manage direct payments. They should seek to ensure that individuals feel able to express reservations about the services they are purchasing, or any other problems they are having in managing their direct payments, without concern that their direct payments will be stopped automatically or arbitrarily.

144. Authorities should follow existing guidance on carrying out reviews. The fact that an authority is making direct payments rather than arranging services itself does not affect its responsibility to review an individual's care package at regular intervals. As with all services, the projected timing of the first review should be set at the outset. The purpose of the review remains to establish whether the objectives set in the original care plan are being met. It should therefore cover whether the person's needs have changed, whether the use of direct payments is meeting assessed needs, and how he or she is managing direct payments.

145. The frequency of monitoring will be dictated by the length of time the person has managed a direct payment (either alone or with help) and their particular circumstances. Once an authority is satisfied a person is managing the direct payments satisfactorily, reviews should be at the same intervals as for other people receiving services. For example, people with fluctuating conditions might need monitoring every few months, rather than once or twice a year. For children identified as needing services under section 17 of the 1989 Act, reviews may be necessary more often so that the council remain satisfied that the direct payment promotes and safeguards the welfare of the child.

### **Financial monitoring**

146. Each authority should set up financial monitoring arrangements for audit purposes. This will fulfil its responsibility to ensure that public funds are spent to produce the intended outcomes. CIPFA issues up-to-date guidance for local authorities on this point and local authorities should ensure this advice is being used. 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.

147. Authorities should pay particular attention to ensuring that audit arrangements are as simple and easy to understand as possible. Complicated paperwork can be a significant disincentive for people considering direct payments. It is worth taking time to discuss with individuals what is required so as to avoid being needlessly intrusive.

148. In order to audit direct payments, it is important for people 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 ILF. A single bank account for direct payment and ILF money (and other money related to personal assistance) can meet this requirement, and is consistent with the CIPFA guidance. It is not appropriate to ask the individual to have second bank account for non-recurrent expenditure such as a short-term need.

149. Monitoring arrangements to ensure that a person's needs can continue to be met and that finances are properly managed need to be co-ordinated. If they are not to be carried out by the same person, local authorities should ensure that information is exchanged. All those involved should understand the purpose of direct payments and the role that the authority's monitoring plays in the successful operation of the policy.

### **Monitoring local implementation**

150. As well as monitoring how well direct payments are meeting the needs of individuals, it is anticipated that local authorities will wish to monitor how direct payments are working overall. In doing so, local authorities should actively seek the comments and suggestions of people who receive direct payments or who have considered receiving them. Authorities should pay attention to the views of those who have been discouraged from using them.

151. As part of the process, authorities should also monitor take-up of direct payments across different groups, to ensure that local policy and practice is encouraging equal access to, for example, black and minority ethnic groups, older people, people with mental health problems, people with learning difficulties, parents with disabled children and young disabled people.

### **Troubleshooting**

#### **When difficulties arise**

152. If an authority becomes aware that someone is or will be unable to secure the services to meet his or her needs through their own arrangements, either temporarily or in the longer term, then the authority will need to take steps to meet its responsibility to provide or arrange for the provision of services for that person.

153. Local authorities should make people aware that they should plan for the unexpected and 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 (e.g. through sickness of one of the person's personal assistants). An authority will need to be prepared to respond in these circumstances just as it would with any other person using a service. It may decide to step in and arrange the services where this is necessary to meet its responsibilities.



Local authorities could also explore other ways of providing assistance to enable the person to continue to manage his or her own care by using direct payments, particularly if the difficulty is temporary or unforeseen.

154. Difficulties can be minimised by good assessments, clarity (e.g. about what the money can be used for), and monitoring and effective support arrangements. Discussing potential areas of difficulty and how they will be handled with the individual before direct payments begin is important. Reviews should be carried out regularly, not just when difficulties arise.

155. 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, the direct payment recipient should know that they can contact a named individual in the authority or support service who they can ask for help.

156. If an authority's monitoring or review process reveals that the person's needs are not being met, or they contact 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 council 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.

### Questions to ask

157. If difficulties arise, a local authority might find it useful to ask 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 reasonable to enable the person to secure the services concerned?*** It may be that experience shows that there are other costs which were not taken into account in the initial calculations. Alternatively, anticipated costs may have arisen. It may be necessary to review the level of direct payment.
- ***Is the person still able to manage direct payments, or can they do so with assistance?*** Difficulties will not necessarily mean the person cannot manage. There is inevitably a learning process when people begin to receive direct payments. 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 there is a duty on the council to make direct payments, it should seek to explore ways of helping people to overcome difficulties and prevent them becoming unduly discouraged when they experience problems. However, if someone has decided that

he or she no longer wishes to receive direct payments, then the authority will need to provide or arrange to provide the services they are assessed as needing.

• ***Has all the money been spent towards achieving the outcomes identified in the care plan?***

If the money has been diverted to other purposes there may be a case for considering seeking repayment. The authority should explain before someone begins to receive direct payments the circumstances in which it would seek repayment.

• ***Have services for which the individual has paid been received?*** If not, then it is the responsibility of the individual to seek a refund from the service provider. They may need support to do this. The authority may decide that it would be appropriate to require repayment of the direct payment from the recipient if they have provided services to meet the same needs as the direct payment or if the services were not received because they were no longer required.

• ***Has the money been spent wisely?*** If the money has not been spent in a cost-effective way to meet assessed needs as set out in the care plan, the person may need more support to enable him or her to manage.

158. Some local authorities have concerns that they might be liable for the actions of the user (e.g. the way in which the user treats their employees). Authorities should arrange their direct payments schemes in the light of any legal advice about their liabilities. This should not be used as a reason to refuse people direct payments.

### **When to seek repayment**

159. Authorities are able to require some or all of the money they have paid out to be repaid if they are satisfied that it has not 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 that the council has properly imposed. Authorities that decide to require repayment by someone who they know is also receiving payments from the ILF should inform the ILF as soon as possible and should seek to agree if possible a common approach if the ILF is also seeking recovery. Authorities will need to comply with their responsibilities under the Data Protection Act 1998 and should advise users of the circumstances in which the ILF will be contacted.

160. It is up to a local authority to decide when it is appropriate to seek recovery. Authorities should bear in mind that repayment should be aimed at recovering money which has been diverted from the purpose for which it was intended, or where services have been obtained from someone who is ineligible to provide them, or which has simply not been spent at all. It should not be used to penalise honest mistakes, nor should repayment be sought where the individual has been the victim of fraud.

161. Authorities should be satisfied before they start to make payments that people who will receive the direct payment understand all of the conditions they will be required to meet. Authorities should also discuss with potential recipients of direct payments the circumstances in which the authority might wish to consider seeking repayment. Authorities may wish to take into account hardship considerations in deciding whether to seek repayments. Authorities should also bear in mind that there might be legitimate reasons for unspent funds. There may be outstanding legal liabilities necessitating a direct payment recipient to build up an apparent surplus

(e.g. to pay their employees' quarterly PAYE, or to pay outstanding bills from a care agency).

### **Discontinuing direct payments**

162. A person for whom direct payments are made may decide at any time that they no longer wish to continue with direct payments. The Regulations provide that an authority shall cease making direct payments if the person no longer appears to the authority to be capable of managing the direct payment or of managing it with help. An authority may, however, continue to make direct payments if it is reasonably satisfied that the person's incapability will be temporary, and that there is someone else who is prepared to accept and manage the payments on their behalf. It is also necessary for the authority to confirm that the person providing assistance or services agrees to accept payment from the person who steps in to help.

163. The Regulations also state that an authority shall stop making direct payments if it is not satisfied that the person's needs for the service can be met by using a direct payment or if the direct payment is not safeguarding or promoting the child's welfare where the payment relates to services under section 17 of the 1989 Act.

164. An authority might also discontinue payments if the person fails to comply with a condition to which the direct payments are subject, for example that the payments must be used to obtain services that the user has been assessed as needing and the authority has reasonable reason to fear that further payments may be misspent.

165. An authority should discuss with individuals as soon as possible if it is considering discontinuing direct payments to them. They should be given an opportunity to demonstrate that they can continue to manage direct payments, albeit with greater support if appropriate. A minimum period of notice should be established that would normally be given before direct payments are discontinued. This should be included in the information to be provided to people who are considering direct payments. It will be extremely unlikely that an authority will discontinue direct payments without giving notice. Authorities should explain to people, before they begin to receive direct payments, the *exceptional* circumstances in which this might occur and discuss with them the implications this has for the arrangements that individuals might make. An authority should not automatically assume when problems arise that the only solution is to discontinue or end direct payments.

166. Direct payments should be discontinued when a person no longer needs the services for which the direct payments are made. This might particularly happen in situations where the direct payment is for short-term packages when leaving residential care or hospital. Direct payments might be varied if the person's needs call for the provision of different services.

167. Other than in exceptional cases, the decision to discontinue should follow discussion with the individual and any carer. An authority may also need to keep in touch with the ILF and share information where appropriate (and normally with the service user's permission) in cases where the individual is also receiving ILF funding. If an 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 needed.

168. There may be circumstances in which an authority discontinues direct payments temporarily. An example might be when an individual does not require assistance for a short period because his or her condition improves and they do not require the services that the direct payment is intended to secure. An authority will need to discuss with the individual how best to manage this. The person should be allowed to resume responsibility for his or her own care after the interruption, if that remains his or her wish unless there has been a change of circumstances which means that there is no duty on the authority to make a direct payment.

169. If 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). Authorities should take reasonable steps to make people aware of the potential consequences if direct payments end.

170. Authorities should also consider how to recover unspent direct payments if the recipient dies. For example, if someone wishes to pay an agency in advance for its services, an authority should 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 (e.g. he or she received services for which payment had not been made at the time of death).

### **Annex A: Care plan for direct payments – an example**

- What are the person's needs, as identified in the assessment?
- To which of these needs do the direct payments relate?
- Can the person's needs for those services be met by means of a direct payment?
- How will the person secure the appropriate services?
- What variations to the way in which the direct payments are used does the authority 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 authority consider is reasonable to secure the appropriate services?
- How much of this total will the authority 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 authority propose for monitoring? What information should the person provide? What access will be required to the person's home?
- (Where relevant, how will the authority be satisfied that the direct payment is purchasing services which safeguard and promote the welfare of the disabled child/young person?)
- What information does the authority 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 authority consider discontinuing direct payments (permanently or temporarily)?
- How will the authority and user handle any temporary gap in direct payments being made?
- How much notice will normally be given if the authority 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 authority seek repayment?

## **Annex B: Eligibility restrictions – examples**

Direct payments may not be made to certain people whose liberty to arrange their care is restricted by certain mental health or criminal justice legislation as follows:

- (i) patients detained under mental health legislation who are on leave of absence from hospital;
- (ii) conditionally discharged detained patients subject to Home Office restrictions;
- (iii) patients subject to guardianship under mental health legislation and those covered by the new power of supervised discharge introduced by the Mental Health (Patients in the Community) Act 1995;
- (iv) people who are receiving any form of after-care or community care which constitutes part of a care programme initiated under a compulsory court order;
- (v) offenders serving a probation or combination 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 restrictions in Scottish mental health or criminal justice legislation.

Reference should be made to the Regulations for full details of the circumstances in which the duty to make a direct payment does not apply.

## **Annex C: Further information**

Both Disability Wales, who have published a Resource Manual for the development of Direct Payment Schemes and Independent Living support services, and the Cardiff and Vale Coalition of Disabled People, who have set up their own Independent Living Scheme, are sources of information and expertise. These organisations can be contacted at:

Disability Wales  
Wernddu Court  
Caerphilly Business Park  
Van Road  
Caerphilly CF83 3ED

Tel: 02920 887325  
Fax: 02920 888702  
Email: [info@dwac.demon.co.uk](mailto:info@dwac.demon.co.uk)

Cardiff and Vale Coalition of Disabled People  
Cowbridge Court  
60 Cowbridge Road West  
Ely  
Cardiff CF5 5BS

Tel: 02020 255611  
Fax: 02920 255621

## **Publications**

### **National Centre for Independent Living**

The NCIL is a source of information and expertise.  
250 Kennington Lane, London SE11 5RD  
Tel: 020 7587 1663 Fax: 020 7582 2469 Text: 020 7587 1177  
Website: [www.ncil.org.uk](http://www.ncil.org.uk) Email: [ncil@ncil.org.uk](mailto:ncil@ncil.org.uk)

*Everything You Need to Know about Getting and Using Direct Payments*, 2003

*Direct Routes to Independence: A guide to local authority implementation and management of direct payments*, F Hasler, G Zarb and J Campbell, 1999

*The Rough Guide to Managing Personal Assistants*, Sian Vasey

*Direct Payments: A beginner's guide*. A 30-minute video which covers the essential aspects of managing a personal assistant set-up, including recruitment, supervision and contracts

*Direct Payments for Mental Health Users/Survivors: A guide to some key issues*

*Users' Ability to Manage Direct Payments*, NCIL and Changing Perspectives. £3.00, cheques payable to BCODP. A training pack for care managers and others involved in assessment

*Creating Independence and Inclusion – Youth Personal Assistance Support Scheme*, Rowen Jade, National Youth Agency and WECIL

### **Values into Action**

Oxford House, Derbyshire Street, London E2 6HG

Tel: 020 7729 5435 Fax: 020 7729 7797 Email: [general@viauk.org](mailto:general@viauk.org)

Website: [www.via.org.uk](http://www.via.org.uk)

*Pointers to Control*, Catherine Bewley et al., 2002. Information on direct payments issues such as consent, control, money management, employment and eligibility

*Funding Freedom 2000: People with learning difficulties using direct payment*, Andrew Holman and Catherine Bewley, 1999

*Making Decisions: Best practice and new ideas for supporting people with high support needs to make decisions*, Stephanie Beamer with Mark Brookes, 2001  
*Trusting Independence: A practical guide to independent living trusts*, Catherine Bewley and Andrew Holman, 2001

*Direct Payments and People with Learning Difficulties*. 8-page leaflet and 14-minute tape making direct payments easier to understand

*Framework for the Assessment of Children in Need and Their Families*, The Stationery Office, 2000

*Direct Payment*, 1996. Cash for services video (BSL version)

### **Scope**

6 Market Road, London N7 9PW

Tel: 020 7619 734441 Email: [information@scope.org.uk](mailto:information@scope.org.uk)

*Good Practice Guide for Support Workers and Personal Assistants Working with Disabled People with Communication Impairments*

*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**

The Homestead, 40 Water End, York, North Yorkshire, YO30 6WP

Tel: +44 (0)1904 629241 Email: [info@jrf.org.uk](mailto:info@jrf.org.uk) Website: [www.jrf.org.uk](http://www.jrf.org.uk)

*Directing Support: Report from a workshop on direct payments and black and minority ethnic disabled people*, JRF/YPS, 2000

*Independent Successes: Implementing direct payments*, Carol Dawson, JRF/YPS, 2000

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

### **Other resources**



*Cashing in on Independence*, Gerry Zarb and Pamela Nadash, BCODP, 1994

*Devising and Resourcing Personal Care Packages*, Flora Gathorne-Hardy,  
Disablement Income Group

*Personal Assistant Employer's Handbook*, ILSA, West of England Centre for  
Inclusive Living 1998

*Recruiting and Employing a Care Worker*, Disablement Income Group, 1999  
*User Consultation: Consulting and involving older people with the provision and  
development of personal social services*, M. Davis, RNIB, 1996

*Handling Home Care: Achieving safe, efficient and positive outcomes for care  
workers and clients*, HSG225, ISBN 0 7176 2228 2, price £9.50. Available online:  
<http://www.hsebooks.co.uk/> from HSE Books, PO Box 1999, Sudbury, Suffolk CO10  
2WA. Tel: 01787 881165 Fax: 01787 313995

## Annex D: Contacts

### Welsh Voluntary Organisations

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<p>Mr Norman Moore Director Wales Council for the Deaf Glenview House Courthouse Street Pontypridd CF37 1JW Tel;01443 485687 Fax 01443 408555 E-mail:<a href="mailto:wcdeaf@freenet.co.uk">wcdeaf@freenet.co.uk</a> Finance</p>	<p>Mr Richard Jones Community Advocacy Officer British Deaf Association Shand House 2 Fitzalan Place Cardiff CF2 1BD Tel;20462929 Fax 20 499873 E-mail:<a href="mailto:richardj@bda.org.uk">richardj@bda.org.uk</a> Finance Contact: Richard Jones</p>
<p>Mr Jim Edwards Service Development Officer RNID Cymru Fourth Floor, Tudor House 16 Cathedral Road Cardiff,CF11 9LJ Tel:029 20 333034 Fax 029 20 333035 E-mail:<a href="mailto:jimedwards@rnid.org.uk">jimedwards@rnid.org.uk</a> Finance</p>	<p>Mr J Micklewright General Manager SENSE Cymru 5 Raleigh Walk Brigantine Place, Atlantic Wharf Cardiff CF10 4LN Tel:029 20 465561(home 01495 750457) E-mail: <a href="mailto:johnmick@sensecymru.freemove.co.uk">johnmick@sensecymru.freemove.co.uk</a> Finance</p>
<p>Ms Vanessa Webb Director Wales Council for the Blind Shand House 20 Newport Road Cardiff CF1 2YB Tel:029 20 473954 Fax 029 20 455710 E-mail:<a href="mailto:wcb-ccd@btconnect.com">wcb-ccd@btconnect.com</a> Finance</p>	
<p>Francis Daw Chief Officer Epilepsy Wales 15 Gelliwastad Road Pontypridd CF37 2BW Tel:02920 191744 Mobile 07740 813841 E-mail:<a href="mailto:epilepsy-wales@lineon.net">epilepsy-wales@lineon.net</a></p>	

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<p>John Gillibrand  Development Officer  National Autistic Society  Glamorgan House  Monastery Road  Neath Abbey  Neath SA10 7DH  01792 325297  <a href="mailto:wales@nas.org.uk">wales@nas.org.uk</a></p>	<p>Mr Julian Hallett  Development Officer  Down's Syndrome Society  206 Whitchurch Road  Cardiff  CF14 3JL  02920 522511  <a href="mailto:dsa.wales@lineone.net">dsa.wales@lineone.net</a></p>

<p>Mr Phil Davies Alzheimer's Society Wales Office 4<sup>th</sup> Floor, Baltic House Mount Stuart Square Cardiff CF10 5FH 02920 431990 <a href="mailto:PDavies@alzheimers.org.uk">PDavies@alzheimers.org.uk</a></p>	<p>Ms Barbara Parnell Manager MDF Wales 1 Palmyra Place Newport NP20 4EJ 01633 244244 <a href="mailto:info@mdfwales.org.uk">info@mdfwales.org.uk</a></p>
<p>Mr Richard Paterson Cruse Bereavement Care Ty Energlyn Heol Las Caerphilly CF38 2WP 02920 889409 <a href="mailto:cruse.cymru@care4free.net">cruse.cymru@care4free.net</a></p>	<p>Mr Jeff Williams US Network Offices 2&amp;4 Crynant Business Centre Crynant Business Park Crynant Neath SA10 8PA 01639 751022 <a href="mailto:jeff@walesnetwork.freereserve.co.uk">jeff@walesnetwork.freereserve.co.uk</a></p>
<p>Mr Tim Watkins Depression Alliance 11 Plas Melin Westbourne Road Whitchurch Cardiff CF14 2BT 02920 692891 <a href="mailto:information@depressionalliance.org">information@depressionalliance.org</a></p>	<p>Mr Bill Waldon-Jones Director HAFAL Suite 2 William Knox House Brittanic Way Llandarcy Neath SA10 6EL 01792 816600 <a href="mailto:hafal@hafal.org">hafal@hafal.org</a></p>
<p>Ms Lindsay Foyster MIND Cymru 3<sup>rd</sup> Floor Quebec House Castlebridge, Cowbridge Road East Cardiff CF11 9AB 02920 395123 <a href="mailto:Lfoyster@mind.org.uk">Lfoyster@mind.org.uk</a></p>	

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1 Cathedral Road  
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Ms Roz Williamson  
Director  
Carers Wales  
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Ynysbridge Court  
Gwaelod y Garth CF15 9SS

Mrs. Shirley Bowen  
Director

Crossroads Wales  
49 Landore Court (3<sup>rd</sup> Floor)  
Charles Street  
Cardiff CF1 2EG

Mr Keith Bowen  
Manager  
Contact a Family Wales  
The Exchange Building  
Mount Stuart Square  
Cardiff CF10 5EB

Princess Royal Trust for Carers  
142 Minories  
London EC3 1LB  
Website: [www.carers.org](http://www.carers.org)  
E-Mail: [info@carers.org](mailto:info@carers.org)

Shaw Trust  
D'arcy Business Park  
Llandarcy  
Neath SA10 6EJ  
Web Site: [www.shaw-trust.org.uk](http://www.shaw-trust.org.uk)

### **All Wales Local Authority Forum on Direct Payments**

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E-mail [Carol.Smith@rhondda-cynon-taff.gov.uk](mailto:Carol.Smith@rhondda-cynon-taff.gov.uk)

## Annex E: Glossary

**Ability to manage** – capacity (with or without support) to arrange a direct payment service to meet an assessed need. The ability to ‘direct’ is more important than the ability to ‘manage’.

**Advance statement** – a statement made by a person (with, for example, a fluctuating condition) of how they wish their services to be delivered or their payments managed in the event that they are temporarily unable to do this for themselves. Advance statements have no legal status at present.

**Advocate** – a person who acts on behalf of and in the interests of a service user/direct payments recipient who feels unable to represent him/herself when dealing with professionals. An **independent advocate** has no vested interest in the service or legal system and solely represents the individual, not relatives, friends or professionals, thus avoiding conflicts of interest. **Self advocates** are trained and supported to represent their own views.

**Arbitration** – settlement of a dispute by an independent person/body appointed by both parties in the dispute.

**Assessment** – collection and interpretation of data to determine an individual’s need for health, personal and social care and support services, undertaken in partnership with the individual, his/her representative/advocate and relevant professionals.

**Best value** – a systematic approach to improving local council performance which places a duty on local councils to deliver services to clear standards covering both the quality and efficiency of these services.

**Capacity** – ability to make a decision, with support if needed. Common Law incorporates a presumption of capacity – that is, everyone is presumed to be able to make decisions for themselves until proved otherwise. **Incapacity** is defined in *Making Decisions* (Lord Chancellor’s Department, 1997) as ‘unable by reason of mental disability to make a decision on the matter in question; or unable to communicate a decision on that matter because he or she is unconscious or for any other reason’.

**Close relative** – someone related to the direct payment recipient in one of the following ways: parent, parent-in law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, stepson or daughter, brother or sister.

**Consent** – the legal agreement to a choice or action (i.e. to take on a direct payment) freely made by an individual without coercion, as well as acceptance of the responsibilities associated with that choice or action. In a legal context, the individual must be ‘mentally capable’ of giving consent before it is valid.

**Control** – having autonomy and power over your own life and what happens to you, regardless of how much support you need to put your choices into action. Having self-determination.

**Decision-making** – the process of making choices which lead to decisions and action. The word ‘decision’ is also used in legal contexts. Some people require support (e.g. communication support or advocacy) to consider and make decisions. (Last sentence from *DRC*.)

**Indirect payment** – payment to someone other than the person with an assessed need (a third party).

**Mixed package** – a direct payment plus a directly provided social care service.

**Parental responsibility** – in the Children Act 'parental responsibility' means all the rights, duties, powers, responsibilities and authority of parents in relation to the child and his or her property. People other than parents, for example, grandparents or guardians, can have parental responsibility for a child.

**Power of attorney** – authority given by one person to another to act on his or her behalf . An **enduring power of attorney** (EPA) is entered into by a person with legal capacity and authorises the appointee to continue to act for him or her in business or legal matters if he or she loses capacity.

**User-controlled trust** – a legal arrangement by which a third party/agent helps the direct payment recipient to manage the direct payment, for example, by receiving and handling the money, but the user's choices and preferences direct the decision-making, and the user retains control of and is accountable for the arrangements.

## Regulatory Appraisal

### THE COMMUNITY CARE, SERVICES FOR CARERS AND CHILDREN'S SERVICES (DIRECT PAYMENTS) (WALES) REGULATIONS 2004

#### 1. Purpose and intended effect of the measure

1.1 Direct Payments offer individuals more flexibility in how to meet assessed care needs, by offering a cash payment to service users to purchase their own care. Currently all local authorities in Wales have the discretion to offer a Direct Payment to eligible individuals who have had a care needs assessment. Direct Payments can presently be offered to a number of client groups encompassing disabled 16/17 year olds; young carers (including 16/17 year old carers); people with parental responsibility for a 16/17 year old disabled child; disabled people aged 18 to 64 and disabled people aged 65 or over. All 22 local authorities presently offer a Direct Payment scheme but most do not cover the entirety of the existing eligible client groups. At 1 August 2003 there were 359 people receiving Direct Payments in Wales.

1.2 The Regulations are made under sections 57 and 64 of the Health and Social Care Act 2001 and section 17 of the Children Act 1989 and their intention is:

- From November 2004, to extend the eligible groups of people to include disabled persons with parental responsibility for a child;
- From November 2004, to place a duty on local authorities to offer direct payments to all people who are now potentially eligible to receive them; and
- From March 2005, to extend the groups of people eligible to receive direct payments and place a duty on local authorities to offer direct payments to people potentially eligible to receive them to include all people aged 65 or over.

#### Intended effect

1.3 Currently the Direct Payments Scheme is enacted through The Community Care (Direct Payments) Regulations 1997; The Community Care (Direct Payments) Amendment (Wales) Regulations 2000; The Carers (Services) and Direct Payments (Amendments) (Wales) Regulations 2001; The Disabled Children (Direct Payments) (Wales) Regulations 2001 and the Carers and Disabled Children Act 2000 (Commencement No. 1) (Wales) Order 2001. Direct Payments Policy and Practice Guidance was issued by the Welsh Assembly Government in July 2000 and supplementary guidance was issued in 2001. Local authorities presently have the discretion to operate a local direct payment scheme and to determine which potentially eligible groups of people may be encompassed by their scheme. The effects of the regulations are summarised in its covering Explanatory Notes. The main features of the proposed regulations are to:



- require local authorities in Wales to make direct payments to certain persons for them to secure the provision of certain social care services;
- prescribes the categories of persons who may receive direct payments in respect of certain services;
- confers powers, duties and conditions on local authorities in relation to direct payments;
- provides for the circumstances in which a local authority shall, or may, terminate direct payments
- sets out the categories of persons to who direct payments may not be made.

## **2. Risk Assessment**

2.1 The implementation of the current discretionary arrangements means that there is no consistency in the coverage of local direct payments schemes across Wales therefore people in the existing eligible client groups are not provided with an opportunity to access direct payments on an equitable basis across the whole of Wales. This is a constraint to enabling those people to have greater independence and to be able to exercise more choice on how their care services are provided in the best way to suit their individual needs and circumstances. Since direct payments were first introduced in 1997, the take up in Wales has been very gradual and been dependent on when local authorities made local direct payments schemes available and the coverage of those schemes in terms of eligible persons.

## **3. Options**

3.1 The options are:

- i) Do nothing. The local availability of Direct Payments will then be determined by local authorities on a discretionary basis. But this would not ameliorate the unsatisfactory situation outlined in paragraph 2.1 above
- ii) Extend the groups of people eligible to receive direct payments to include the disabled persons with parental responsibility for a child but otherwise retain the existing local authority discretionary arrangements. Again this would not ameliorate the unsatisfactory situation outlined in paragraph 2.1 above
- iii) Introduce the new Regulations. This will ensure that local direct payments schemes in terms of availability and coverage would be more consistent across Wales and allow all potentially eligible people to be offered access to direct payments. The choice about whether to participate in direct payments would be in the hands of the individual.

## **4. Costs**

### **Business sectors affected**

4.1 Local authorities are the only sector that can operate Direct Payments.

- 4.2 Option (i) would have no additional impact on local authorities.
- 4.3 Option (ii) would have some impact dependent on whether local authorities decided to encompass this new category of eligible persons within their existing local direct payment scheme arrangements. If all Welsh local authorities decided to do so the implementation costs have been estimated as £60,000.
- 4.4 Option (iii) would have an impact on local authorities. The additional administrative and support scheme costs for implementing the new regulations by the local authorities has been estimated as £0.7 million per annum. This sum has been made available to local authorities from 2004-05 through the Revenue Support Grant. It is possible that some authorities may encounter some transitional costs in implementing the new direct payments arrangements as they continue to offer a direct service, while at the same time dis-investing in services to release resources to fund direct payments. Which authorities will be affected and what costs may be incurred cannot presently be quantified as this will depend on (for each authority) the take up of direct payments, the services affected and the impact of any forward planning initiated as part of an authority's commissioning strategy. Any transitional local authority costs that may be identified, if significant, will need to be addressed through the normal RSG/ESG process, which would then be used to inform future Budget Planning Rounds.

## **5. Benefits**

- 5.1 Option (I) – there would be no benefits when compared to the existing situation.
- 5.2 Option(ii) – would provide limited benefits in that the categories of eligible persons will have been expanded but there would be no overall benefit when compared to the existing situation
- 5.3 Option (ii) – the proposed Regulations will have significant benefits as they will ensure that local direct payments schemes in terms of availability and coverage would be consistent across Wales and allow all potentially eligible people to be offered access to direct payments. The choice about whether to participate in direct payments would be in the hands of the individual.

## **6. Consultation**

- 6.1 An 11-week public consultation exercise on the draft regulations and policy and practice guidance commenced on 16 January 2004 involving local authorities, national and local voluntary organisations.

## **7. Review**

- 7.1 The Welsh Assembly Government will monitor the operation of the new arrangements following legislation and implementation.

## **8. Summary**

- 8.1 Option (I) Taking no action would sustain the existing unsatisfactory position.
- 8.2 Option (ii) would provide some potential benefits but again would sustain the existing unsatisfactory position.

8.3 Option (iii) Would enable and empower people to exercise more independence and choice on how their care services are provided in the best way to suit their individual needs and circumstances and ensure that local direct payments schemes in terms of availability and coverage would be more consistent across Wales.

## **9. Contact Point**

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## DIRECT PAYMENTS CONSULTATION EXERCISE RESPONSES

RESPONDENT	COMMENTS	WAG Response
1. Advocacy Matters (AM)	<p style="text-align: center;">GUIDANCE</p> <ul style="list-style-type: none"> <li>• AM wishes to state that whereas WAG may be compliant with the form of legislation, substance would be lacking and such parity (with England) would remain elusive in Wales so long as no financial provisions are made for concurrent and inter-related activities such as the development and allocation of funding to voluntary organisations and to foster partnership working between statutory, community and voluntary organisations to increase the number and types of people who are offered and able to take up Direct Payments</li> <li>• <b>AM</b> believes that the WAG can take advantage of the devolved powers under Section 64 of the ACT to promote joint funding bidding between local authorities and voluntary organisations in Wales to enable support to be made to individuals who may need advocacy services, amongst others to make informed decisions and choices in respect of Direct Payments.</li> <li>• <b>AM</b> believes that the low take up of Direct Payments in Wales is wholly attributable to the lack of support provisions in Wales.</li> <li>• <b>AM</b> believes that prescriptive principles or indicators of</li> </ul>	<p>The Assembly has made available £0.7M from 2004-05 to further support the development of Direct Payments. How that money is applied locally is a matter for Local Authorities to determine.</p> <p>The Assembly is developing a number of initiatives about Advocacy, including the introduction of a new Learning Disability Advocacy Grant Scheme.</p> <p>Our last survey, in 2003, indicated that 21 Local Authorities had Direct Payment Support Services in place.</p> <p>Existing draft Guidance</p>

<p><b>Advocacy Matters (AM) (cont'd)</b></p>	<p>good practice needs to be spelled out in within the Guidance to prevent misadministration of the scheme at local level.</p> <ul style="list-style-type: none"> <li>• <b>AM</b> fears that the final Policy Guidance may not contain any at all or worse contain practices which arguably may not be good practice. In summary unless examples of good practice are included in the Policy Guidance as a matter of course or in at least prescriptive indicators of good practice, it shall remain within the province of local providers to exercise their discretions and deal with support services as they see fit. This may inevitably result in same lack of take-up of Direct Payments contrary to established principles of service user autonomy leading to the object and effect of the enabling statutory provisions remaining unfilled.</li> </ul> <p><b>REGULATIONS</b></p> <ul style="list-style-type: none"> <li>• <b>Regulation 7(5) (a) and (b)</b> uses the word “<b>must</b>” rather than “<b>shall</b>”. Since they are not technically interchangeable, the implicit use of the word “<b>must</b>” imports an element of compulsion and obligation as well as upholding an assumption of power imbalance between service users and providers. AM believes this to be inappropriate in the context of Direct Payments principles which places duties and obligations on the providers rather than on the service users and empowers service users to enforce their rights. In reflecting this principle of</li> </ul>	<p>satisfactory.</p> <p>We have supported the development of the All-Wales Direct Payment Forum, whose remit includes the dissemination of good practice.</p> <p>Legal Advice is that “must” and “shall” are alternative ways of expressing a command. When used to express commands their effect is identical.</p>
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<p><b>Advocacy Matters (AM) Cont'd</b></p>	<p>equal power by central government under the enabling Acts the word “<b>shall</b> ” was used in the <b>2003 Regulations</b> applicable in England.</p> <ul style="list-style-type: none"> <li>• <b>Regulation 8</b>, in respect of calculation of the 4weeks period in securing a Direct Payment for residential accommodation <u>is a complete departure</u> from the 2003 provisions of Regulation 7 of the 2003 S.I. This envisages situations where a person may be required to move placements frequently, for whatever reason, over a period of 12 months and neither fall foul of the 4 week rule nor be denied the services of a Carer. The 2004 Regulations are drafted in such a way that it may only allow ONE move (Regulation 8(2)(a) “an initial period”) whereupon subsequent moves and periods after Period B, for the purposes of Direct Payments, would be counted globally towards the 4 week period (Regulation 8 (2) (b). In reconciling the provisions of 8(2) (a) with the added burden under 8(2) (b) such vital differences in drafting may mean a service user vis a vis their Carer in Wales, who generally are not in a position to pick and choose a preferred residential accommodation may without personal fault fall foul of Regulation 8 resulting in their disqualification from receiving their Direct Payment after the deemed 4 week period.</li> <li>• <b>Regulation 9(2)</b> uses the word “<b>met</b>” rather than “<b>secured</b>”</li> </ul>	<p>Direct payments cannot be used for funding residential care except for short term respite. Guidance has been amended to make clear how the period is to be calculated.</p> <p>Legal Advice is that there is no difference between the two terms. Legal Advice is that the current</p>
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<p><b>Advocacy Matters (AM) (cont'd)</b></p>	<ul style="list-style-type: none"> <li>• <b>Regulation 11(2) has</b> “ if any condition imposed “by or” under....” Reading Regulation 7(4) in conjunction with “by or” as per Regulation 11(2) can result in an interpretation that the addition of “by or” to the word “under” may have the effect of empowering local authorities to impose further conditions over and above that are already available under Regulation 7 generally and specifically under 7(5). This would go further than the 2003 S.I. which only contains the word “under”. Therefore, the overall impression of Regulation 11(2) in addition to the word “must” in Regulation 7 (5) (a) and (b) as stated tend to support an argument that the principle of Direct payment in assisting service users to exercise choice and control in Wales is not as determinant as in England.</li> </ul>	<p>drafting is accurate because it refers expressly to duties that are automatically imposed by operation of Regulation 7, and these additional conditions that a Local Authority has the power to impose because of the powers given to it by Regulation 7.</p>
<p><b>Respondent</b></p>	<p><b>Comments</b></p>	<p>WAG Response</p>
<p><b>2. All Wales Direct Payment Forum</b></p>	<p><b>Guidance Notes</b></p> <ul style="list-style-type: none"> <li>• The Group welcomes the extension of eligibility across all client groups in Wales. However, the expansion timescale will challenge all Local Authorities in terms of the budget setting agenda. We would therefore suggest that some reflection on the implementation period take place for it to become more realistic. Aligning implementation planning for April 2005-March 2007 would still present challenges but would give more opportunities for Local Authorities to action required changes in their operational delivery.</li> </ul>	<p>Noted</p>

Respondent	Comments	WAG Response
<p><b>All Wales Direct Payment Forum (cont'd)</b></p>	<ul style="list-style-type: none"> <li>• <b>Point 7:</b> We feel there is a missed opportunity to give clearer guidance on joint working and the use of Direct Payments. When considering “the spirit of independent living” and the “holistic” assessment approach being undertaken, there was an opportunity to identify the responsibility of the Health Authorities role within a Direct Payment package (as previously alluded to within the 2000 Guidance)</li> <li>• <b>Point 10:</b> Some clarification would be helpful within this point to say what “the person who has the strongest incentive” means.</li> <li>• <b>Point 11:</b> Again, as in Point 7 we feel that the Health Authority could be brought into joint working for the benefit of the Direct Payment user.</li> <li>• <b>Point 17:</b> While accepting that the changes will make Direct Payment a “duty” rather than a discretionary power the Local Authority has a responsibility to all its clients for ensuring that there is equity across all service Areas. Direct Payment must be seen in this light and not as a means of receiving services any quicker than normal, therefore we suggest saying that “Direct Payments <i>will</i> be made to all individuals who are eligible to receive them and want them”. And not “Direct Payments <i>must</i> be made....”</li> <li>• <b>Point 25:</b> This must also be seen in the light of equity, as</li> </ul>	<p>Changes made to guidance for clarification</p> <p>Changes made to Guidance for clarification.</p> <p>Changes made to Guidance for clarification.</p> <p>Changes made to Guidance for clarification.</p> <p>Changes made to Guidance for clarification.</p> <p>Draft guidance satisfactory.</p>



	in Point 17, and while work is ongoing to decommission services to release funds the responsibility for all clients across the service area must be considered.	
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>All Wales Direct Payment Forum (cont'd)</b>	<ul style="list-style-type: none"> <li>• <b>Point 38:</b> All Local Authorities recognise the importance advocacy services play for individuals. We currently are not confident that there are the diverse services in all areas to support Direct Payments users and would welcome support from WAG as how this can be advanced.</li> <li>• <b>Point 53:</b> How does the WAG envisage that the Local Authorities will ensure that a Direct Payment will “honour the spirit of Independent Living”? Clearer Guidance on the elements that make up Independent Living would be useful to ensure a consistent approach across Wales.</li> <li>• <b>Point 61:</b> Clarification would be helpful around Long-Term considerations and the section regarding Enduring Power of Attorney. There are contradictions about continuing a Direct Payment if the person loses capacity and then a section, which highlights that a person who loses capacity should have their Direct Payment removed. It would also be helpful to have greater guidance on the general problems of how to assess capacity and facilitate meaningful involvement for the individual, which is not currently available.</li> <li>• <b>Point 70:</b> Can it be made clear under this point that Local Authorities assess for need and not for a service provision, which is implied under this section.</li> </ul>	<p>Provision of local Advocacy Services is a matter for the Local Authority. WAG has taken a number of steps to improve Advocacy e.g. Learning Disability Advocacy Grant Scheme.</p> <p>Changes made to Guidance for clarification.</p> <p>To be determined on an individual basis, not possible to issue more specific guidance.</p> <p>Changes made to Guidance for clarification.</p>

Respondent	Comments	WAG Response
<p><b>All Wales Direct Payment Forum (cont'd)</b></p>	<ul style="list-style-type: none"> <li data-bbox="620 288 1496 687">● <b>Point 94:</b> Saying that individuals can “Bank” any spare monies to use as and when extra needs arise is creating an expectation that is unrealistic. A Direct Payment is costed and given to meet the needs identified within a “Care Plan” and while there may be a “Banking” of hours where tasks that are familiar become quicker implemented It would be poor management for monies to be “Banked” f for use outside the “Care Planning arena”. It is possible that money “Banked” could be used in situations where infrequent but foreseeable variations in care needs were identified in the Care Plan however.</li> <li data-bbox="620 695 1496 1023">● <b>Point 96:</b> This point requires clarification as the wording used can allow for some ambiguity. There is concern that employing a relative could become a “first choice” therefore we would wish for clarity that this would happen in “exceptional circumstances” thereby narrowing down the occasions of use. Our suggestion is that the Regulations remain the same as the 2000 Guidance where it prevents people using Direct Payments to secure services from a partner or close relative.</li> </ul> <p data-bbox="701 1066 1249 1098" style="text-align: center;">Additional Comments on the Guidance</p> <ul style="list-style-type: none"> <li data-bbox="620 1106 1496 1246">● The Group is concerned about the omission identified within the previous Guidance that “Direct Payments cannot be used to purchase a Local Authority service”. We see no benefit to the individual in that stance and feel that:</li> </ul> <ol style="list-style-type: none"> <li data-bbox="620 1254 1496 1321">1) It would result in conflict of Line Management responsibility.</li> </ol>	<p data-bbox="1523 288 1973 352">Changes made to Guidance for clarification.</p> <p data-bbox="1523 695 1973 759">Changes made to Guidance for clarification.</p> <p data-bbox="1523 1106 1973 1169">Changes made to Guidance for clarification.</p>

Respondent	Comments	WAG Response
<p><b>All Wales Direct Payment Forum (cont'd)</b></p>	<p><b>2)</b> The cost in recirculation of funds back to the Local Authority could be wasted resources.</p> <p><b>3)</b> It could have a detrimental effect on private support agencies as if funds remained within the Local Authority then the “Care Sector Agencies” could be affected.</p> <p>We would welcome the decision to re-introduce the sentence within the new Guidance.</p> <p>Could there be standardised identification within both the Statutory Instrument (Explanatory Notes) and the Guidance on identifying various groups of eligible clients, e.g. a person with parental responsibility for a disabled child, 16/17 year olds, a disabled person with parental responsibility for a child.</p> <p>The true cost of implementing an extended Direct Payments Scheme have not been able to be calculated because of fluctuating/unknown demand. All officers that are involved with the All Wales Forum are committed to support their Authority in developing as flexible a system as possible around use of Direct Payment.</p> <p>There is however a difficulty in being able to offer a service provision while disinvesting to release funds for Direct Payments i.e. double funding within the short-term. There is a requirement for a “bridging loan” to support us to take forward this agenda into the extension which is being proposed. For WAG and the individual Local Authority to be confident of achieving a positive outcome for the people of Wales more funds are required to take us into the implementation period.</p>	<p>Impact will vary from Authority to Authority, depending on take up and these matters should be pursued as part of Social Services input to the ESG/RSG process.</p>

Respondent	Comments	WAG Response
<p><b>All Wales Direct Payments Forum (cont'd)</b></p>	<p style="text-align: center;"><b>Regulatory Appraisal</b></p> <p>With regard to the above the Group feel that Option(iii) is the most equitable for all those who may benefit from the flexibility, which Direct Payment can give and we welcome having a “duty” to ensure increased opportunities.</p> <p>As previously stated we are however concerned with the cost of providing for a “double” service provision within the implementation period. We recognise that £0.7M will be made available across Wales although this will be under the funding levels currently paid to our support organisations and does not allow for direct impact on the decommissioning strategies that we are involved with.</p> <p>Allocation from the £0.7M for 2004-05 did not get transferred into the majority of Social Services/Community Care budgets as the notification identifying the scope of this money arrived after the settlement agreement. We believe that Authorities will expand their schemes out of current budgets however the “up-front” costs of additional staff and increased support scheme funding will potentially cause overspend this year. The savings between Direct Payments and Domiciliary Care will not be realised until 2005-06 financial year, as it will take at least 9 months for the scheme to expand.</p>	<p>Noted.</p> <p>It is for Local Authorities to determine how these additional £0.7m resources are utilised.</p>

Respondent	Comments	WAG Response
<p><b>3. Association of Voluntary Organisations in Wrexham (AVOW)</b></p>	<ul style="list-style-type: none"> <li>• A National Campaign to make people aware of Direct Payments should be considered to create a far higher profile</li> <li>• <b>Paragraph 4:</b> Duty to Offer –this will need to be emphasised as there is no such understanding at present. At present the Criteria in Care Assessments is in 4 categories and each local authority decides what they will include, this needs to be consistent if there is to be uniformity.</li> <li>• <b>Paragraph 8:</b> Understanding of Direct Payments by NHS and also financial contribution.</li> <li>• <b>Paragraph 26: Support-Promote</b> setting up a Centre for</li> </ul>	<p>Noted.</p> <p>Guidance as drafted is satisfactory.</p> <p>Noted.</p> <p>Guidance as drafted is satisfactory.</p>
	<ul style="list-style-type: none"> <li>• Living, enhance peer support groups-some doubt as to whether they want to do this.</li> <li>• <b>Paragraph 27: Support Service-</b>Continue to develop support systems in Wales through joint working. Ensure that there is adequate support to develop the system and to support individuals. That there is a lead officer in each authority who can work with the support service.</li> <li>• <b>Paragraph 37:</b> Develop links with ILF to provide parity of funding.</li> <li>• <b>Paragraph 37: Advocacy-</b> This needs to be a separate role for third party support, should not have to give</li> </ul>	<p>Guidance as drafted is satisfactory.</p> <p>This is a matter for local determination.</p> <p>Guidance as drafted is satisfactory.</p> <p>Guidance as drafted is satisfactory.</p>

<p><b>AVOW (cont'd)</b></p>	<p>information and advice-there are 2 roles.</p> <ul style="list-style-type: none"> <li>• <b>Paragraph 39: Support for 16/17 year olds</b>-This should start with any transitional reviews in schools from at least +14. Working together between adult and children's services is vital to ensure continuity.</li> <li>• <b>Paragraph 50:</b> This will only happen through Publicity and Promotion.</li> <li>• <b>Paragraph 70:</b> Although there needs to be statistics regarding the uptake of Direct Payments consideration should also be given to those who have received information and have not taken it up. In England, I understand that support services receive funding on the basis of numbers on the scheme-whilest this has some merit there should still be choice-some people will receive information and come back a year later.</li> </ul> <p>Paragraph 74: Short-Term Needs- This may be desirable but it is more difficult to achieve; CRB checks etc. take time to complete</p> <ul style="list-style-type: none"> <li>• <b>Paragraph 75:</b> -Personal arrangements could mean that the child needs to be with a family member; childminding registration.</li> <li>• <b>Paragraph 79:</b> Desirable, but doubtful this will be taken on board.</li> <li>• <b>Paragraph 80:</b> Needs clarification as to what comes into these categories-reluctance by OT to consider DP for equipment. Adaptations-under what conditions? Queue Jumping?</li> </ul>	<p>Guidance as drafted is satisfactory.</p> <p>Guidance as drafted is satisfactory.</p> <p>Guidance as drafted is satisfactory</p> <p>Guidance as drafted is satisfactory</p> <p>Guidance as drafted is satisfactory</p> <p>Guidance as drafted is satisfactory.</p> <p>Noted.</p> <p>Guidance as drafted is satisfactory.</p>
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Respondent	Comments	WAG Response
<b>AVOW (cont'd)</b>	<ul style="list-style-type: none"> <li>• <b>Paragraph 89:</b> Should Health contribute?</li> <li>• <b>Paragraph 109:</b> How can third party support workers get access to these lists when assisting in recruitment?</li> <li>• <b>Paragraph 111:</b> See above</li> <li>• <b>Paragraph 112:</b> Parents and Children need to be made aware of Direct Payments as soon as possible and certainly through any transitional arrangements.</li> <li>• <b>Paragraph 115:</b> AN ABSOLUTE MUST but will it happen?! Overall there needs to be support to show Carers and Young People how they can benefit from Direct Payments. There seems to be so many organisations and initiatives for providing services that are not being co-ordinated lack of knowledge and reluctance to change.</li> <li>• <b>Paragraph 114:</b> Concern that cases are closed and Reviews are not taking place.</li> </ul>	<p>NHS position clarified with changes in paragraph 11. Guidance as drafted is satisfactory.</p> <p>Guidance as drafted is satisfactory.</p> <p>Guidance as drafted is satisfactory.</p> <p>Guidance as drafted is satisfactory</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>4. Blaenau Gwent (Local Health Board)</b>	<ul style="list-style-type: none"> <li>• Disappointing to note that there was no reference to National and Local policies on the protection of Vulnerable Adults made.</li> <li>• A major concern was the lack of emphasis that individuals can only procure care services from an individual that are subject to regulation by Care Standards Inspectorate for Wales. Suggest that the Final Guidance has a section that specifies this more clearly</li> <li>• A WAG service user leaflet would be advantageous to</li> </ul>	<p>Guidance as drafted is satisfactory, the “In Safe Hands” Guidance on Adult Protection will apply.</p> <p>There is little support to constrain Direct Payment recipients to organisations registered under the Care Standards Act.</p> <p>Provision of information to</p>

<p><b>Blaenau Gwent LHB (cont'd)</b></p>	<p>describe what the scheme entails, what can and cannot be procured and monitoring arrangements.</p> <ul style="list-style-type: none"> <li>• It is not clear what methods, if any, WAG will put in place to monitor local authority responses and safeguards for implementation and take up by individuals of Direct Payments. Some reference to this in the Final document would be welcomed.</li> <li>• Strongly suggest that WAG ensures that each local authority have systems and processes in place that support individuals in the event concerns about care delivery arise.</li> </ul>	<p>Service Users is a matter for local determination.</p> <p>Local Authority “duty of care” responsibilities remain.</p>
<p><b>Respondent</b></p>	<p><b>Comments</b></p>	<p><b>WAG Response</b></p>
<p><b>5. Bridgend County Borough Council and Bridgend Local Health Board</b></p>	<ul style="list-style-type: none"> <li>• <b>Points 7 &amp; 11:</b> This is an opportunity to give clearer Guidance on joint working with Health and the Local Health Boards as it states that local authorities are encouraged to think about how Direct Payments can be assimilated into preventative and rehabilitative strategies. <b>Clarification is needed on whether this applies to</b></li> </ul>	<p>No changes proposed to Point 7. Point 11 changes made to Guidance for clarification.</p>
	<p>Community Re-ablement and the appropriate links with Intermediate care.</p> <ul style="list-style-type: none"> <li>• <b>Point 10:</b> Clarification needed on phrase “the person who has the strongest incentive”.</li> <li>• <b>Point 25:</b> Real concern around decommissioning services to provide funds for Direct Payments and equity for all clients across the service areas has still to be considered.</li> <li>• <b>Point 38:</b> Advocacy is important, it is however,</li> </ul>	<p>Changes made to Guidance for clarification. Guidance as drafted is satisfactory.</p> <p><b>Provision of local Advocacy</b></p>



<p><b>Bridgend CBC and LHB (cont'd)</b></p>	<p>recognised that within Bridgend there are insufficient diverse advocacy services to support Direct Payment users. Guidance from WAG on how this can be taken forward would be welcomed.</p> <ul style="list-style-type: none"> <li>• <b>Point 44:</b> Clarification is needed on how Consent is defined</li> <li>• <b>Point 61:</b> This section requires greater guidance around issues relating to assessing capacity and facilitating meaningful involvement for the individual. This is currently not available within the proposed guidelines. Clarification is also required as there are contradictions about continuing a Direct Payment if the person loses capacity, followed by a statement that a person who loses capacity should have the Direct Payment removed.</li> <li>• <b>Points 65 &amp; 66:</b> States that individual choice and control would not be delivered where a condition of the Direct Payment states that someone who receives a Direct Payment may only use certain providers. Additionally if there is a local register of approved providers of services the authority could bring the register to the attention of the individual but Authorities should not require the individual only to contract with providers from the register. There is concern that if Authorities do not stipulate certain providers, there is potential for abuse of vulnerable adults and poor quality of service</li> </ul>	<p>Services is a matter for the Local Authority. WAG has taken a number of steps to improve Advocacy e.g. Learning Disability Advocacy Grant Scheme.</p> <p>To be determined on an individual basis, not possible to issue more specific guidance.</p> <p>These are issues to be considered by Local Authorities for each Direct Payment application.</p>
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Respondent	Comments	WAG Response
<p><b>Bridgend CBC and LHB (cont'd)</b></p>	<ul style="list-style-type: none"> <li>• <b>.Point 69:</b> The Welsh Assembly Government is developing a scheme of regulation under Care Standards Act 2000 for domiciliary care. Direct Payment users need not restrict themselves to registered domiciliary care providers. There is concern as to the quality of care provided by those not registered and the contradictory nature of the Direct Payment Guidance to the Care Standards Act 2000 for domiciliary care requirements.</li> <li>• <b>Point 70:</b> It should be made clearer that the Local Authority assesses for need and not service provision.</li> <li>•</li> <li>• <b>Point 94:</b> There is real concern at the wording “Individuals can “Bank” any spare monies to use as and when extra needs arise “. The Direct Payment is costed and given to meet the needs identified within a care plan. It is acknowledged that at times there may be occasions when a person is unable to participate in planned activities funded by the Direct Payment. The periods for “Banking” those hours should be limited and not open-ended.</li> <li>• <b>Point 96:</b> It is suggested that the regulations should indicate that a relative could be employed in “exceptional circumstances” and it follows that there would need to be. criteria to define “exceptional</li> <li>• <b>Point 111:</b> There is concern that there <u>should</u> be a requirement for criminal record checks to be undertaken for people who work with adults and recommend that there needs to be a good practice standard for ensuring</li> </ul>	<p>Choice is for the individual, and should not be fettered.</p> <p>Changes made to Guidance for clarification.</p> <p>Changes made to Guidance for clarification.</p> <p>Changes made to Guidance for clarification</p> <p>The POVA arrangements will be applied on a joint England and Wales basis.</p>

Respondent	Comments	WAG Response
<b>Bridgend CBC &amp; LHB (cont'd)</b>	<p>that this is included in the Local Authority's Vulnerable</p> <ul style="list-style-type: none"> <li>• ”. Adult Policy.</li> </ul> <p>Additional Comments:</p> <ul style="list-style-type: none"> <li>• Further thought be given on the impact of this Guidance on jointly funded packages of care.</li> <li>• There needs to be a standardisation of definition for 16/17 year olds etc. throughout the Statutory Instrument and Guidance.</li> <li>• Regulatory Appraisal: Option 3 is the most equitable for those people who may benefit from the flexibility which Direct Payments can give.</li> <li>• Good Practice: Direct Payments should be identified as part of the Unified Assessment Documentation and also as part of the Carers Assessment process and could be included in the Direct Payments Guidance.</li> <li>• There is a need to highlight concerns regarding the increased resources that will be needed to fully implement the changes to the Direct Payment regulations. There will be difficulties around providing a service provision while disinvesting to release funds for Direct Payments.</li> </ul>	<p><b>WAG Response</b></p> <p>No changes proposed.</p> <p>Noted.</p> <p>Changes made to Guidance for clarification.</p> <p>Impact will vary from Authority to Authority, depending on take up, and these are matters to be pursued as part of the Social Services input to the ESG/RSG process.</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>6. Caerphilly CBC</b>	<ul style="list-style-type: none"> <li>• <b>Page 5, (point 7).</b> Missed opportunity to give clearer guidance on joint working and the use of Direct Payment,</li> </ul>	<p>No changes proposed.</p>

<p><b>Caerphilly CBC (cont'd)</b></p>	<p>missed opportunity to identify the responsibility of the Health Authorities role within a Direct Payment package.</p> <ul style="list-style-type: none"> <li>• <b>Page 6 (point 10)</b> Clarification needed within this point to say what “the person who has the strongest incentive” means.</li> <li>• <b>Page 7 (point 11)</b> Again, as in point 7 feel that the Health Authority could have been brought in to joint working for the benefit of the Direct Payment user.</li> <li>• <b>Page 8 (point 17)</b> the Local Authority has a responsibility to all its clients for ensuring there is an equity across all service areas. Direct Payments must be seen in this light and not as a means of receiving services any quicker than normal. Suggest saying that “Direct Payments <i>will</i> be made to all eligible individuals and not Direct Payments <i>must</i> be made.</li> <li>• <b>Page 9 (point 25)</b> This must be seen in the light of equity as in point 17 above and while work is ongoing to decommission services to release funds the responsibility to all clients across the service areas must be considered.</li> <li>• <b>Page 12 (point 38)</b> All Local Authorities recognise the importance advocacy services play for individuals. We currently are not confident that there are the diverse services in all areas to support Direct Payments users and would welcome support from WAG as to how this can be advanced.</li> <li>• <b>Page 15 (point 57)</b> Clearer guidance on the elements that make up Independent Living would be useful to ensure a consistent approach across Wales.</li> <li>• <b>Page 16 (point 61)</b> Clarification would be useful around</li> </ul>	<p>Changes made to Guidance for clarification.</p> <p>Changes made to Guidance for clarification.</p> <p>Changes made to Guidance for clarification.</p> <p>Draft guidance is satisfactory.</p> <p>Provision of local Advocacy Services is a matter for the Local Authority. WAG has taken a number of steps to improve Advocacy e.g. Learning Disability Advocacy Grant Scheme</p> <p>Changes made to Guidance for clarification.</p> <p>To be determined on an</p>
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<p><b>Caerphilly CBC (cont'd)</b></p>	<p>Long Term Considerations and the section regarding enduring Power of Attorney. There are contradictions about continuing a direct payment if the person loses the capacity and then a section which highlights that a person who loses capacity should have their direct payment removed.</p> <ul style="list-style-type: none"> <li>• It would also be helpful to have greater guidance on the general problems of how to assess capacity and facilitate meaningful involvement of the individual, which is currently not available.</li> <li>• <b>Page18 (point 94)</b> Can it be made clear under this point that Local authorities assess for need and not for service provision, which is implied under this section.</li> <li>• <b>Page 23 (point 94)</b> Saying that “individuals can bank” any spare monies to use, as and when, extra needs arise is creating an expectation that is unrealistic. A Direct Payment is costed and given to meet the needs identified within a “care plan” and while there may be a “banking” of hours where tasks that are familiar become quicker implemented. It would be poor management of monies to be “banked” for use outside of the “care planning area”</li> <li>• <b>Page 23 (point 96)</b> This point requires clarification as the wording used can allow for some ambiguity. There is concern that employing a relative could become a “first choice” therefore we would wish for clarity that this would happen in “exceptional circumstances” thereby narrowing down the occasions for use. Our suggestion is that the Regulations remain as in the 2000 Guidance where it prevents people using Direct Payments to secure services</li> </ul>	<p>individual basis, not possible to issue more specific guidance.</p> <p>Changes made to Guidance for clarification.</p> <p>Changes made to Guidance for clarification.</p> <p>Changes made to Guidance for clarification.</p>
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Respondent	Comments	WAG Response
8. Caerphilly People First	<ul style="list-style-type: none"> <li>• Definitely feel this is the way forward for the future, it will help people with Learning Disabilities to take control of their own lives.</li> <li>• Caerphilly People First listed a number of Questions they wished answered :</li> <li>• Will each authority have a complaints Procedure to</li> </ul>	<p>Noted – these are all issues that need to be addressed by the Local Authority.</p>

from a ,partner or close relative.

- Concern expressed regarding the omission that “Direct Payment cannot be used to purchase a Local Authority service”. We feel that this would result in a conflict of Line Management responsibility. The cost in recirculation of funds back to the Local Authority could be wasted resources. It could have a detrimental effect on Private Support Agencies as if funds remain within the Local Authority then the “care sector” agencies could be affected. We would welcome the decision to re-introduce this sentence within the new guidance.
- Differing language used throughout the Guidance, to identify 16-17 year olds/ people with parental responsibility for a child etc. Could standardised definition as stated in Statutory Instruments be used?
- Wish to highlight anxieties about the resources required to fully implement the changes proposed to the existing Direct Payment scheme. More funds are required to achieve a positive outcome for the people of Wales to see through the implementations.

Changes made to Guidance for clarification.

Changes made to guidance for clarification

Impact will vary from Authority to Authority, depending on take up, and these are matters to be pursued as part of the Social Services input to the ESG/RSG process.

8. Caerphilly People First

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Noted – these are all issues that need to be addressed by the Local Authority.

	<p>process issues of treatment received after receiving a Direct Payment?</p> <ul style="list-style-type: none"> <li>• If there is no Advocacy Service in a Local Authority who do people contact?</li> <li>• What if the person receiving Direct Payments disagrees with the Care Plan or assessment?</li> <li>• If people try Direct Payments and find it's not for them, can they return to services provided by the Local Authority?</li> <li>• How long does it take to complete a Complaints Procedure if there is disagreement between service user and Local Authority over decisions of their Care Manager?</li> <li>• How do people with Learning Disabilities stop their Local Authority from having their own Agenda on the scheme?</li> <li>• Some Care Managers are not in favour of Direct Payments and may delay the process. How can this be addressed?</li> <li>• What if a person with a Learning Disability has no assessment or Care Plan?</li> <li>• What is the role of the Care Manager once Direct Payments have been agreed for the person?</li> </ul> <p><b>Comments</b></p>	
<p><b>Respondent</b> <b>Caerphilly People First (cont'd)</b></p>	<ul style="list-style-type: none"> <li>• How long will people have to wait for Direct Payments?</li> <li>• Who has the final word on who receives Direct Payments?</li> <li>• Are there sufficient support agencies in place to help people administer Direct Payments?</li> </ul>	<p><b>WAG Response</b> Noted- these are all issues that need to be addressed by the Local Authority.</p>
<p><b>Respondent</b></p>	<p><b>Comments</b></p>	<p><b>WAG Response</b></p>
<p><b>9. City and County of</b></p>	<ul style="list-style-type: none"> <li>• The Authority considers the draft guidance offers a useful</li> </ul>	<p>Noted.</p>

<p><b>Cardiff</b></p>	<p>and detailed model for operation of Direct Payments schemes, and recognises its basis in best practice and experience to date in the operation of Direct Payment Schemes in Cardiff and throughout Wales. This Authority recognises the need to review its current arrangements in order to expand the scheme to all appropriate user groups. The draft regulations and guidance provides a useful model of delivery, and largely reflects current practice in Cardiff.</p> <ul style="list-style-type: none"> <li>• On a specific point, this Authority assumes that reference to individual's rights to invoke the Authority's Complaints Procedure when in dispute over levels of funding, or personal finance contribution can be dealt with by the Authority's process of appeals rather than defined as a complaint unless the manner in which any decision of the Authority is established is being questioned. Perhaps the Assembly would provide further guidance on this issue.</li> <li>• Whilst the Authority welcomes the guidance and necessity to introduce new Regulation, and appreciates the increase in revenue, it remains concerned about financial implications of expanding support systems, while at the same time ensuring that Direct Payments remain an attractive proposition</li> </ul>	<p>Current Guidance is satisfactory.</p> <p>Impact will vary from Authority to Authority depending on take up, and these are matters to be pursued as part of Social Services input to the ESG/RSG</p>
<p><b>Respondent</b></p> <p><b>City and County of Cardiff (cont'd)</b></p>	<p><b>Comments</b></p> <ul style="list-style-type: none"> <li>• for service users and potential personal assistants.</li> </ul>	<p><b>WAG Response</b></p> <p>process.</p>
<p><b>Respondent</b></p>	<p><b>Comments</b></p>	<p><b>WAG Response</b></p>
<p><b>10. Cartrefi Cymru</b></p>	<ul style="list-style-type: none"> <li>• Welcome the changes in particular the extension to eligible client groups and the intention to further extend</li> </ul>	<p>Noted</p>



	<p>coverage of the present scheme.</p> <ul style="list-style-type: none"> <li>• The requirement for a mandatory offer of a Direct Payment will serve to facilitate choice and offer further additional opportunity for an individual to extend control and responsibility over significant areas of their lives.</li> <li>• Further consideration should be given to strengthening local support groups with adequate resources and funding particular for dealing with people with Learning Disabilities.</li> </ul>	<p>Noted</p> <p>Current Guidance is satisfactory.</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<p><b>11. Ceredigion and Mid-Wales NHS Trust</b></p> <p><b>Ceredigion and Mid Wales NHS Trust (cont'd)</b></p>	<ul style="list-style-type: none"> <li>• Potential delays in discharges whilst care packages established</li> <li>• Direct payments cannot be used to purchase services or equipment for which an authority is not responsible. Is there to be a level of consistency in the areas for which Direct Payments can be used?</li> <li>• Is there going to be uniformity in the definitions of Nursing Care that can be provided through continuing care, but not via a Direct Payment to the client?</li> <li>• There appears to be no obligation to undertake a CRB check for staff working with Adults, we believe this should be reconsidered. Additionally there will be a need to ensure that all individuals have the required</li> <li>• Skills involved and that they will not be working outside new regulations such as Working TIME directorate, having already worked a full schedule for an employing agency.</li> <li>• Trust and LHB'S should be fully consulted when local arrangements are being developed.</li> <li>• Using Direct Payments for accessing intermediate care is</li> </ul>	<p>Current draft Guidelines are satisfactory</p> <p>Current draft Guidelines are satisfactory</p> <p>Current draft Guidelines are satisfactory</p> <p>The POVA arrangements for England and Wales are on a joint basis.</p> <p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p>

Respondent	Comments	WAG Response
12. Ceredigion County Council (Social Services Department)	<ul style="list-style-type: none"> <li>• The timetable for implementation appears arbitrary and bear no relation to existing timescales for the setting of budgets. A delay in implementation until April 2005 would be of assistance.</li> <li>• The funding of the additional services is incorrect, particularly in regard to the issue of “double funding” which occurs during the period when Authorities have to run both a Direct Payment scheme and traditional services prior to the commencement of de-commissioning.</li> <li>• The revised Guidance as it currently stands is a lost</li> </ul>	<p>Noted.</p> <p><b>Noted</b></p> <p>Impact will vary from Authority to Authority depending on take up, these are matters to be pursued as part of Social Services input to the ESG/RSG process.</p> <p>Noted</p>

<p><b>Ceredigion County Council (Social Services Department) cont'd</b></p>	<p>opportunity to clarify the interface between Local Authority Social Services and Local Health Boards.</p> <ul style="list-style-type: none"> <li>• The revised Guidance offers no significant clarification of when and how a combined package of Health and Social Care can be made. More detailed Guidance would allow authorities, in conjunction with Health colleagues, to develop holistic packages of care, without the necessity to regularly obtain independent legal advice regarding the legality of their proposed actions. Guidance would also assist in addressing the issue of “consistency of coverage” suggested in the Regulatory Appraisal as one of the apparent prime reasons behind the introduction of this measure.</li> <li>• Paragraph 10: Clarification is required into the meaning of the phrase “the person who has the strongest incentive”. This phrase is open to interpretation. As it currently stands, it could be argued in some cases it does not necessarily equate to the service user.</li> <li>• <b>Paragraph 16:</b> Clarification of the first sentence would be advantageous. The general interpretation was that the awarding of a Direct Payment was simply a method of service delivery and hence subordinate to the requirements of the legislation governing the provision of that service. The clarification achieved through inclusion in some way of Direct Payments being “subordinate” to the overarching legislation was thought to be useful.</li> <li>• <b>Paragraph 21:</b> Should not the second bullet point read: A person with parental responsibility for a <u>disabled</u> child?</li> <li>• <b>Paragraph 21:</b> Would a cross-reference to the primary</li> </ul>	<p>Changes made to paragraph 11 to reflect NHS position.</p> <p>Changes made to Guidance for clarification.</p> <p>No changes proposed.</p> <p>No changes proposed.</p> <p>No changes proposed.</p>
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<p><b>Ceredigion CBC Social Services (cont'd)</b></p>	<p>legislation help clarify the meaning of “substantial amount of care”.</p> <ul style="list-style-type: none"> <li>• <b>Paragraph 53:</b> Clarification is required as to exactly what is meant by the phrase “honour the spirit of independent living”.</li> <li>• <b>Paragraphs 60 and 61:</b> Clarification sought. It appears that the third sentence of paragraph 61 <u>directly contradicts</u> the contents of paragraph 60 with regard to whether a direct Payment package can or cannot be confirmed after a person has lost capacity</li> <li>• <b>Paragraph 96 Close Relatives:</b> Whilst the Authority is content for the permissive power contained in this paragraph to remain, the current wording will lead to many disputes over the interpretation of the single word “necessary”. The deletion of “necessary” and replacement by “essential” would be of great assistance. For example, a situation may arise whereby a Direct payment package is established and there is an ample supply of assistants/assistance in the area. Therefore, it would not be “essential” for a close relative to provide care and a cogent argument could be advanced to underpin this decision. However, the Guidance retains the word “necessary”, a Direct Payment recipient may advance the argument that it will be “necessary” for the Authority to allow a close relative to care, simply because the recipient is wholly unwilling to accept any other person. It is anticipated that, without change, interpretation of the word “necessary” could become a lucrative source of employment for various Legal Teams.</li> </ul>	<p>Changes made to Guidance for clarification.</p> <p>Changes made to Guidance for clarification</p> <p>Changes made to Guidance for clarification.</p>
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<p><b>Ceredigion County Council (Social Services Department) cont'd</b></p>	<ul style="list-style-type: none"> <li>• <b>Paragraph 140:</b> The first sentence could benefit from redrafting, as it might be interpreted as implying that an Authority should not be heavily involved in the manner in which an outcome is achieved. It might be considered that omitting the first sentence and inserting reference to “outcomes” in the final sentence may achieve the desired outcome, whilst also reducing the possibility of disputes.</li> <li>• <b>Purchase of Local Authority Services with a Direct Payment:</b> The Authority cannot identify significant benefits, if any accruing from the use of Direct Payments in this summer. The Authority would strongly argue that such a use would add significantly to the cost burden through the ensuing requirement to establish systems for the administration and monitoring of such “re-cycled” finance. It could also directly affect attempts to develop the private and voluntary sector, in terms of increased provision. The omission of the previous prohibition of this point seems a retrograde step, serving only to “muddy the waters”, without any identifiable and counter-weighting benefit.</li> </ul>	<p>No change proposed</p> <p>Changes made to Guidance for clarification.</p>
<p><b>Respondent</b></p>	<p><b>Comments</b></p>	<p><b>WAG Response</b></p>
<p><b>13. Cerebra – For Brain Injured Children and Young People</b></p>	<ul style="list-style-type: none"> <li>• Propose giving clear Guidelines to local authorities regarding child protection issues with regard to people with parental responsibility for a disabled child.</li> </ul>	<p>Noted</p>
<p><b>Respondent</b></p>	<p><b>Comments</b></p>	<p><b>WAG Response</b></p>
<p><b>14. Contact a Family</b></p>	<ul style="list-style-type: none"> <li>• Very much welcomes the proposed strengthening of the Scheme to place a duty on Local Authorities to offer Direct Payments to all people who are potentially eligible to receive them.</li> </ul>	<p>Noted</p>

	<ul style="list-style-type: none"> <li>• Experience has shown that families have faced a number of barriers including difficulties accessing assessments, a poor knowledge of Direct Payments amongst field workers, poor systems for arranging payments within Finance Departments and a lack of planning for using Direct Payments with disabled children and their families at strategic levels.</li> <li>• For disabled children and families it is vital that they have access to the relevant independent support services at the earliest possible stage, not only once a Direct Payment has been agreed.</li> </ul>	<p>Noted.</p> <p>Noted.</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>15. David Burslem Independent Living Trust</b>	<ul style="list-style-type: none"> <li>• Page 8, Para 17, Line 3 should read “paragraph 21 below” not para19.</li> <li>• Page 10, Para 29 Is there any guidance for Local Authorities for reviewing their DP scheme?</li> <li>• Page 10, Para 30 There is a need to ensure consistency</li> </ul>	<p>Amendment made.</p> <p>This is a matter for local determination Current draft Guidance satisfactory</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>David Burslem Independent Living Trust (cont'd)</b>	<ul style="list-style-type: none"> <li>• of service in delivering DP services throughout Wales</li> <li>• Page11, Para 33 These people are not catered for in my experience. There needs to be a way to ensure that DPSS's provide support for these people.</li> <li>• Page11, Para 35 Are LA's accountable to anyone re: DPSS's? If they do not review their schemes, or fail to meet the needs of a particular group of people what should be done about this?</li> <li>• Page11, Para 36 Again, what happens if they do not provide accessible information?</li> </ul>	<p>Current draft Guidance is satisfactory.</p> <p>Individuals can access their Local Authority Complaints Procedure and Local Government Ombudsman. Individuals can access the above processes.</p>

Respondent	Comments	WAG Response
David Burslem Independent Living Trust (cont'd)	<ul style="list-style-type: none"> <li>• Page12, Para 37 My experience is that advice and support is only offered to DP recipients. This should not be so especially as people receiving ILF do not get any support whatsoever!</li> <li>• Page 12, Para 38 Advocates supporting people who may wish to access DPs, or people who are having difficulty with DPs, should receive training in DPs.</li> <li>• Page 12, Para 42 DP support schemes should be inspected and monitored. I do not think satisfaction with the service should just be gauged by the number of complaints received. Also, because DP schemes are such a new service people do not really know what to expect, so they do not know if the service is up to scratch.</li> <li>• Page12, Paras 44-48 I think the issue of consent needs to be reviewed. This is interpreted in different ways. In some areas people with severe Learning Disabilities get DPs, and in others they do not! I think that as long as there are enough checks and balances ( for example by having an</li> </ul>	<p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p> <p>This is to be determined on an individual basis, it is not possible to issue more specific guidance.</p> <p>Current draft Guidance is satisfactory.</p> <p>This is a matter for local determination.</p>

	<p><b>should come to that decision.</b></p> <ul style="list-style-type: none"> <li>• Page 15, Para 54 “may choose to buy in assistance”. This is very important when it comes to setting up an arrangement which is sustainable. One way of doing this is to buy in a Service from an Agency or Specialist Provider.</li> <li>• Page 15, Para 53, Line 6 It would be helpful if a reference were made here to Values Into Action publication – Trusting Independence – which explains how to set up an Independent Living Trust. However, despite being recommended in both English and Welsh Guidance local authorities are saying that ILT is not a robust enough legal body and are suggesting it would be better to establish a company limited by guarantee. If they are correct in this both the English and Welsh Guidance should be altered to reflect this.</li> <li>• Page 17, Para 60 Would be good to include reference to the fact that “Fulfilling the Promises” seeks to promote the use of DPs by people with Learning Disabilities.</li> </ul>	<p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<p><b>David Burslem Independent Living Trust (cont'd)</b></p>	<ul style="list-style-type: none"> <li>• Page 17, Para 62, Line 5 It would be helpful here to include the following: “ For further information on how to make Direct Payments work for people with learning disabilities, Local Authorities should consult with Values Into Action, who produce a range of guidance on the subject. Details of some of their publications can be found in Annex C.</li> <li>• Page 17, Para 65, Line 10 Unreasonable for Local</li> </ul>	<p>Current draft Guidance is satisfactory.</p> <p>This is a matter for local</p>





Respondent	Comments	WAG Response
<p><b>David Burslem Independent Living Trust (cont'd)</b></p>	<ul style="list-style-type: none"> <li>• Page 21, Para 85, Line 4 Should include the cost of all staff needed for provision of service.</li> <li>• The Terms and Conditions for staff should be at least equal to those of SSD or Health staff who would have provided the service had the person not elected to have a DP. This is very important. If the Terms and Conditions are not good enough the DP recipient will not be able to recruit and retain the right standard of staff.</li> </ul> <p>The cost of a holiday for the recipient should also be included in the initial calculation –i.e. the cost of the extra support needed whilst away and the cost of retainers for any staff who do not go away on holiday with the recipient.</p> <p>Page 21, Para 85, Line 8 To this list needs to be added Administration, Payroll, Training (inc. travelling expenses to/from training and subsistence), CRB enhanced disclosures, cost of staff meals.</p> <p>Page 24, Paras 101-104 Would be helpful to refer reader to Annex C for more info on being an Employer and</p>	<p>Current draft Guidance is satisfactory.</p> <p>This is a matter for local determination</p> <p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p>

	<p>have some advice on safe recruitment practices in addition to asking for a CRB enhanced disclosure – see Boxed Text in English Guidance- although I think this could be improved upon.</p> <ul style="list-style-type: none"> <li>• Page 26, Para 111 I thought there already is a requirement to have an enhanced CRB disclosure on people working with Vulnerable Adults. The need for a list is extra protection, as an enhanced CRB may not show up everything.</li> <li>• Page 27, Para 120, Line 3 Need to insert quotation: “!The available UK evidence on the extent of abuse among disabled children suggests that disabled children are at increased risk of abuse” Working Together to Safeguard Children, DoH et al 1999.para 6.27</li> <li>• Page 28, para 123, Line 5 “particular”. Should be capital P.</li> <li>• Page 28, After Para126. There should be a Section here on Education. Although we seem (sadly) to have no equivalent of the English “Connexions” in Wales we do have Transitional Reviews in Education.</li> </ul> <p><b>Comments</b></p>	<p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p> <p>Amendment made.</p> <p>Current draft Guidance is satisfactory.</p> <p><b>WAG Response</b></p>
<p><b>Respondent</b> <b>David Burslem</b> <b>Independent Living Trust</b> <b>(cont’d)</b></p>	<ul style="list-style-type: none"> <li>• At these reviews, which are usually attended by the Special Needs Careers Advisor and a representative from SSD Adults Services, Direct Payments should be mentioned.</li> <li>• Page 31, Para 145, Line 10 Why has the reference which is in the England 2003 Guidance been missed out?</li> <li>• Page 31, Para 147 I think the Audit requirements should</li> </ul>	<p>Noted</p> <p>Current draft Guidance is satisfactory. This is subject to Local determination.</p>

	<p>be standardised across Wales.</p> <ul style="list-style-type: none"> <li>• Page 31, Para148, Line 5 Clarification needed on the need for separate accounts for DP and ILF monies. Local Authorities suggest separate accounts, Guidance states one account will suffice.</li> <li>• Page 32, Para 150 My Local Authority have only sought our views on their DP scheme once, when Pilot Scheme was evaluated some time ago.</li> <li>• Page 32, Para 151 My Local Authority, as far as I am aware, have not monitored take-up of DPs since the initial evaluation of the Pilot Scheme.</li> <li>• Pages 32 and 33, Paras 153 and 156. The current Guidance, as well as the new version, says that the Local Authority should step in and arrange services if necessary, this has not been my experience.</li> <li>• Page 35, Para 165, Line 12 The last line should be emphasised, using italics or bold.</li> <li>• Page 36, Para 169 this needs clarification. If DPs are discontinued and there are resulting costs, will the recipient be able to pay these out of their DP before it is stopped?</li> </ul>	<p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>David Burslem Independent Living Trust (cont'd)</b>	<ul style="list-style-type: none"> <li>• Page 36. The English Guidance has an Annex: "Setting up a DP Scheme. Examples of how 3 local councils have developed schemes" This is missing from the WAG draft Guidance.</li> </ul>	Current draft Guidance is satisfactory
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>16. Disability Rights Commission (DRC)</b>	<ul style="list-style-type: none"> <li>• The DRC would like to see Direct Payments available to all who would benefit from them and for any unnecessary</li> </ul>	All points Noted –no

	<p>barriers to be removed</p> <ul style="list-style-type: none"> <li>• The DRC welcomes WAG's Policy Guidance to Local Authorities and in particular the need to ensure there is</li> </ul>	<p>amendments to draft Guidance proposed.</p>
<p><b>Disabilty Rights Commission (DRC) cont'd</b></p>	<ul style="list-style-type: none"> <li>• Adequate support in place for disabled people, and indeed all those claiming Direct Payments, to do so successfully and with the maximum ease.</li> <li>• WAG must actively encourage Local Authorities to pro-actively offer Direct Payments so that take-up is as extensive as possible. Without this, individual disabled people may not be aware of their entitlement, or may lack the confidence to pursue their right to receive Direct Payments.</li> <li>• Local Authorities must make available adequate support, clear information, in accessible formats and different languages, on how people can make their applications. In addition, there must be clearly identified people within the authority with whom applicants can discuss their application.</li> <li>• Recognition must be given to the fact that if Direct Payment schemes are to work successfully and equitably, there must be local authority sponsored and funded schemes in place to support disabled people in managing their Direct Payments. The DRC welcomes WAG's Policy Guidance on this issue. It should be a pre-requisite of any such scheme that potential users of the scheme as well as current recipients are fully consulted on what they would want from support services. As a minimum such support services should provide information and practical ongoing</li> </ul>	

	assistance.	
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>17. East Sussex County Council</b>	<ul style="list-style-type: none"> <li>• <b>Paragraph 111, Page 26</b> may need to be amended in light of the impending POVA List as many vulnerable people receive Direct Payments and need protection with regard to employing their carers</li> </ul>	Draft guidance amended
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>18. Flintshire County Council</b>  <b>Flintshire County Council (cont'd)</b>	<ul style="list-style-type: none"> <li>• <b>Assessment and Care Plans:</b> This section needs clarification as Social Services undertake assessment for need rather than for service provision.</li> <li>• <b>Specific Delivery Issues:</b> Guidance on employing close relatives requires further clarification. Our concern is that without firmer guidelines families may insist on employing relatives in the first instance, and therefore not consider other options.</li> <li>• <b>Purchasing Services:</b> The original Guidance issued in 2000 was clear that Local Authority services could not be purchased using a Direct Payment. There is no mention of this in the revised Guidance. This does not appear to benefit families and, from a Local authority point of view, time and resources may be wasted in recycling monies back into service budgets.</li> <li>• <b>Regulatory Appraisal:</b> We believe introducing the new Regulations across all eligible client groups will have the most significant benefit, allowing the choice to participate in Direct Payments to be in the hands of the individual.</li> <li>• <b>Flintshire Children's Services</b> does not yet have a</li> </ul>	<p>Draft Guidance amended for clarification.</p> <p>Draft Guidance amended for clarification.</p> <p>Changes made to Guidance for clarification.</p> <p>Noted.</p> <p>Impact will vary from Authority to</p>

	<p>Direct Payment scheme for disabled children and families, and we are unclear at this stage of the cost of implementing a scheme because the demand is unknown. However, there is some concern with regard to being able to offer and deliver effective services whilst at the same time meeting the demand for Direct Payments.</p> <ul style="list-style-type: none"> <li>• Notwithstanding this, we are committed to introducing a flexible scheme that meets the needs of disabled children and families, enabling and empowering them to exercise more independence and choice as to how their care services are provided.</li> </ul>	<p>Authority depending on take up and these are matters to be pursued as part of the Social Services input to the ESG/RSG process.</p> <p>Noted.</p>
<p><b>Respondent</b> <b>19. Monmouthshire County Council</b></p>	<p><b>Comments</b></p> <ul style="list-style-type: none"> <li>• Only one main point to raise which is felt has been completely missed from the document, as far as children are concerned: Some of our Parents are keen to pursue Direct Payments as an alternative to the current provision of Respite Care. Like most authorities Monmouth do not have enough resources to dual equip regarding adaptations and equipment such as Hoists etc. The document does not mention anything to do with Risk Assessments regarding the Health and Safety of the Child if the Parent is to purchase Overnight Respite outside of the child's home (this is how some Parents want to use the Direct Payments scheme). I could not find any mention in the draft guidance of the need for OT assessments of the suitability of the proposed abode or the proposed Carers</li> </ul>	<p><b>WAG Response</b></p> <p>Current draft Guidance is satisfactory for all the issues raised.</p>

<p><b>Respondent</b></p>	<p>ability to carry out the necessary handling and moving tasks.</p> <ul style="list-style-type: none"> <li>• The document states that Direct Payments should be promoting and safeguarding the health and welfare of the child, but the philosophy of Direct Payments has been one of minimum “interference” from Social Services and one of enabling the Carer to choose their own resource to meet service user needs. This means we have a dichotomy; to ensure that payments are promoting the health and welfare of the child when there are significant levels of disability would mean Police checks and moving and handling assessments should take place with the person with whom it is proposed will receive the Direct Payment. Again this would have to be provided via Social</li> </ul> <p><b>Comments</b></p>	<p><b>WAG Response</b></p>
<p><b>Monmouthshire County Council (cont’d)</b></p>	<p>Services, as parents do not have access to these</p> <ul style="list-style-type: none"> <li>• resources.</li> <li>• The current principle of Direct Payments seems to be based on an Adult Model, whereby the Carer uses the Direct Payment to pay someone to come into the already adapted home, if respite is the purpose of the Direct Payment. It is dangerous to assume that this is the Model that will prevail- I assume that in Adult Care there may be the request for care to be provided outside of the home and be funded by Direct Payments –the same issues would then apply.</li> </ul>	<p>Current guidance satisfactory</p>
<p><b>Respondent</b></p>	<p><b>Comments</b></p>	<p><b>WAG Response</b></p>
<p><b>20. The National Autistic</b></p>	<p><b>General Comments</b></p>	



<p><b>Society (NAS)</b></p>	<ul style="list-style-type: none"> <li>• The NAS welcomes the principal of increasing choice and flexibility for Adults with an Autistic Spectrum Disorder (ASD), parents and carers through the use of Direct Payments (DPs). The assumption is that enough provision naturally exists for people to choose from is problematic, the NAS is concerned that Local Authorities could withdraw services on offering a DP, leaving individuals with no opportunities to spend their money. The NAS would like to see monitoring of the reasons why people apply for a DP and for this to be fed into the planning and commissioning of services.</li> <li>• If DPs are to be successful, local authorities will need funds specifically allocated which can be released on demand. Administration, Advocacy and Training Costs will</li> </ul>	<p>Noted.</p> <p>This is a matter for local determination.</p>
<p><b>Respondent</b></p>	<p><b>Comments</b></p>	<p><b>WAG Response</b></p>
<p><b>NAS (cont'd)</b></p>	<p>be incurred if the initiative is to be effective. As the replacement cost of a service is not necessarily the same as the cost of provision local authorities may incur significant additional costs and face strategic choices in terms of service provision. If local authorities need to rely on recycling" money from existing services, the resulting erosion of services will make a mockery of the choice element .</p> <ul style="list-style-type: none"> <li>• DP acknowledge that parents are often the most knowledgeable about their child's needs and best placed to contract appropriate services. NAS feel that local authorities may need training to take adapt to this approach. Local Authorities cannot make parents use registered or cleared carers and are compelled to pay</li> </ul>	<p>Noted.</p>

<p>Respondent</p>	<p>whoever the parent chooses to employ. Social Services would therefore benefit from training in “letting go” and encouraging young people to take controlled risks. Local Authorities must be encouraged to continue to develop services for autistic people, in partnership with both the voluntary and private sectors.</p> <p>Draft Guidance Comments</p> <ul style="list-style-type: none"> <li>• Para111- As well as the delay in phased implementation individuals will not be able to access the POVA checklist. The NAS would welcome the opportunity for persons employing carers and/or services through DP to permit Local Authorities to check the POVA list as a third party.</li> <li>• Close Relatives. The NAS are aware of cases in which exceptions to the regulations against not employing close</li> </ul>	<p>The POVA arrangements apply to England and Wales on a joint basis.</p> <p><b>WAG Response</b></p>
<p><b>NAS (cont'd)</b></p>	<p><b>Comments</b></p> <ul style="list-style-type: none"> <li>• Relatives have been made for South Asian families since recruiting staff from culturally appropriate communities was so difficult. People with ASD would require workers to have extensive training and may have difficulty interacting with strangers. Therefore it would be appropriate this group to have discretion to use relatives too, NAS would like this to be made clearer in the Guidance.</li> <li>• Paras 117-122 The NAS welcomes the recognition that the mainstream services provided by authorities are often inappropriate for disabled children. Extra resources will need to be allocated if disabled children are enabled to access services designed to maximise benefit and help</li> </ul>	<p>Guidance amended for clarification.</p> <p>Subject to local determination. Draft Guidelines are satisfactory.</p>

	<p>lead lives that are as normal as possible.</p> <ul style="list-style-type: none"> <li>• Short-Term Breaks – The NAS is aware that many people with ASD do not receive funding for short-term breaks and many services are not equipped to cope with them. Services must recognise that children with ASD, including Asperger syndrome, have both a need and a right to short breaks.</li> <li>• Support Services- The NAS is concerned that authorities continue to exclude people with high functioning autism and Asperger syndrome from their Learning Disability services. Access to Advocacy Support is extremely important for people with ASD, the NAS is pleased to see that extra-time may be needed so that the Advocate fully understands the person's wishes.</li> <li>• Calculating the amount of a Direct Payment</li> </ul>	<p>This is a matter for local determination.</p> <p>Noted.</p> <p>Draft Guideline is satisfactory.</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>21. Newport City Council</b>	<ul style="list-style-type: none"> <li>• Newport City Council supports Option (iii) of the Draft Regulatory Impact Assessment</li> <li>• Unified Assessments and a Holistic Assessment of need appears to be lacking in the Guidance, especially when working jointly with Health. Would have expected some guidance on a unified approach.</li> <li>• It is recognised that although currently we are providing both a Direct Payment service and direct Social Care services a point will be reached where we will need to disinvest in some direct service provision. There will be implications for current staff and there will be a need to identify extra resources to enable these changes to happen, especially in the interim period. It is impossible at</li> </ul>	<p>Noted.</p> <p>Noted</p> <p>Impact will vary from Authority to Authority depending on take up, these are matters to be pursued as part of Social Services input to the ESG process.</p>

	<p>this stage to know what the real costs of providing an extended Direct payments scheme may be and difficult therefore to identify appropriate funds especially as budgets for this year have been set.</p> <ul style="list-style-type: none"> <li>• Future commissioning strategies will need to consider these issues. It will also be necessary to ensure all clients during this change over period when direct service provision may be reduced.</li> <li>• There is no mention in the draft guidance about it not being open to people to purchase our own direct services, and this needs to be made clear.</li> </ul>	<p>Noted.</p> <p>Guidance amended for clarification.</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<p><b>22. Powys County Council</b></p>	<ul style="list-style-type: none"> <li>• Page 5, Points 7&amp;8 It would be helpful if the Guidance identified the role and responsibility that the NHS holds in the provision of Direct Payments (DPs)</li> <li>• Page 12, Point 38 Reference is made to the use of Advocacy Services to support DPs. Although in some service areas advocacy support is available the provision within areas may not be diverse enough or sufficient to deal with the demand. This may be an issue which WAG would wish to consider.</li> <li>• Page12, Point 70 The statement infers that Authorities assess for services rather than to identify individual needs.</li> <li>• Page23, Point 94 The Guidance states that individuals can “Bank” money not used on a week-to-week basis and “use as and when extra needs arise. Individuals are assessed for the level of DPs, any change in need would</li> </ul>	<p>No changes proposed.</p> <p>Provision of local Advocacy Services is a matter for the Local Authority. WAG has taken a number of steps to improve Advocacy e.g. The Learning Disability Advocacy Grant Scheme.</p> <p>Changes made to Guidance for clarification.</p> <p>Changes made to Guidance for clarification.</p>

<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>23. Pembrokeshire County Council</b>	<p>require a re-assessment. However, it would be appropriate for a Local Authority to allow spare money to be used for any variations in care needs identified within their Care Plan. The level of any “spare money” which can be held at any time should for part of the agreement between the Local Authority and the recipient.</p> <ul style="list-style-type: none"> <li>• Although some finance has been made available to support further implementation of DPs no resources have been given to support the transition from direct service provision to DPs.</li> </ul> <ul style="list-style-type: none"> <li>• If demand is significant the disinvestment within existing services will need to be planned and finances made available to “bridge” an initial duplication of costs.</li> <li>• Timing of Implementation of Changes: A delay in implementation until April 2005 would be of assistance.</li> <li>• The amount of the additional money provided by WAG to assist in implementing the proposed changes are insufficient. The funding does not recognise the costs inherent in establishing and maintaining such a system, nor does it consider the costs relating to internal expenditure in areas such as finance and monitoring. Most notable is the issue of “double funding”, which occurs during the period when Authorities have to run both a Direct Payment scheme and traditional services, prior to the commencement of de-commissioning.</li> </ul>	<p>Impact will vary from Authority to Authority depending on take up, these are matters to be pursued as part of Social Services input To the ESG/RSG process.</p> <p>Noted.</p> <p>Impact will vary from Authority to Authority depending on take up, these are matters to be pursued as part of Social Services input To the ESG/RSG process</p>

<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>Pembrokeshire County Council (cont'd)</b>	<ul style="list-style-type: none"> <li>• Involvement of LHB's, Health Trusts etc.: The revised Guidance as it stands is a lost opportunity to clarify the interface between the Local Authority Social Services Departments and colleagues in Health. The revised Guidance offers no significant clarification of how and when this can be achieved. More detailed Guidance would allow Authorities, in conjunction with Health colleagues, to develop holistic packages of care, without the necessity to regularly obtain legal advice regarding the legality of their proposed actions.</li> <li>• Guidance would also assist in addressing the issue of "consistency of coverage" suggested in the Regulatory Appraisal as one of the prime reasons behind this measure.</li> <li>• Paragraph 10 – see 7 above</li> <li>• Paragraph 16 –see 7 above</li> <li>• Paragraph 21 –see 7 above</li> <li>• Paragraph 53- see 7 above</li> <li>• Paragraphs 60 and 61 –see 7 above</li> <li>• Paragraph 96 (Close Relatives) –see 7 above</li> <li>• Paragraph 140 – see 7 above</li> <li>• Purchase of Local Authority Services with a Direct</li> </ul>	<p>Guidance amended for clarification</p> <p>Noted</p> <p>Changes made to Guidance for clarification.</p> <p>No change proposed</p> <p>No change proposed</p> <p>Changes made to Guidance for clarification.</p> <p>To be determined on an individual basis, not possible to issue general guidance.</p> <p>Changes made to Guidance for clarification.</p> <p>No change proposed</p>

	Payment –see 7 above.	Guidance amended for clarification.
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>24. Pontypridd &amp; Rhondda NHS Trust</b>	<ul style="list-style-type: none"> <li>Agree that the proposed changes will give individuals more choice. There is however a need to be mindful that it may be more difficult for the quality of service to be monitored. There also needs to be further clarification of the Contact Points for raising concerns in respect of the Scheme.</li> </ul>	Noted.
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>25. RNIB Cymru</b>	<ul style="list-style-type: none"> <li>Point 27: Management and Monitoring- It is essential that people receive proper support in managing Direct Payments, particularly in employing staff. It is vital that the support structure in each Authority is monitored to ensure that there is not a variation in the quality of support across Wales.</li> <li>In cases where a third party receives the Direct Payment and manages money for another person the Authority should monitor that they are administering the payment in a way that is satisfactory to the individual.</li> <li>RNIB particularly welcomes Point 23 that recommends the inclusion of people with different types of impairment and the difficulties some people have in accessing</li> </ul>	<p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p> <p>Noted.</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>RNIB Cymru (cont'd)</b>	<p>schemes.</p> <ul style="list-style-type: none"> <li>RNIB would encourage the extension of Direct Payments</li> </ul>	Noted.

	<p>to allow them to be used to employ close relatives. These are often the people best placed to provide services and may be the person that the recipient of Direct Payments feels most comfortable in employing</p> <p><b>Conclusion:</b> RNIB Cymru welcomes the changes in Direct payments and hopes they will give people greater choice in the services that they receive and promote independent living.</p>	Noted.
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>26. Standing Conference of Voluntary Organisations (SCOVO)</b>	<ul style="list-style-type: none"> <li><b>Additions to Annex C: Further Information – SCOVO</b> have asked that reference be included in Annex C to their range of accessible fact sheets on Direct Payments aimed at people with a Learning Disability. In addition a Video that seeks to promote understanding of Direct Payments amongst people with Learning Disabilities. Two examples of Good Practice were also provided and requested to be included in Annex C.</li> </ul>	Noted.
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>27. Torfaen County Borough Council</b>	<p><b>General Observations</b></p> <ul style="list-style-type: none"> <li>Torfaen welcomes the new guidance. However, the August 2004 deadline looks unrealistic to increase the capacity of the existing scheme, covering both the independent Support Service and the internal financial monitoring systems. Budgets for 2004 were set in October 2003, the Guidance was issued in January 2004</li> </ul>	Noted.



Respondent	Comments	WAG Response
<p data-bbox="188 284 517 320"><b>Torfaen CBC (cont'd)</b></p> <p data-bbox="188 691 517 727"><b>Torfaen CBC (cont'd)</b></p>	<ul data-bbox="620 288 1496 802" style="list-style-type: none"> <li>• extension to this deadline would enable Local Authorities to implement strategic, staffing and commissioning changes in a planned and systematic way, building for capacity increases rather than short term measures to meet immediate needs.</li> <li>• Both in Torfaen, and in benchmarking exercises across Wales, there have been very few Care Packages involving DPs jointly funded with Health. Although the current legislation allows this, the practicalities remain an unknown quantity, so some emphasis on the process for our Health colleagues would serve as a valuable reminder. Some of the most vulnerable people with the highest care needs are excluded at present for this reason.</li> </ul> <p data-bbox="620 842 920 879"><b>Specific Comments</b></p> <ul data-bbox="667 884 1496 1321" style="list-style-type: none"> <li>• Point 9, Local Authorities may interpret this as only providing DPs to pay for a service which is equivalent to in-house services, thus restricting innovative, person centred solutions for needs (e.g.respite) although this is covered in Section 63.</li> <li>• Point 10 More clarity is needed here to explain who would be suitable as a “person who has the strongest incentive”</li> <li>• Point 13 This section requires clarification. The first sentence is fine and fits with Section 49 where it states that people can receive a DP if they can manage alone or with help. The second sentence does not tie-</li> </ul>	<p data-bbox="1523 472 1845 509">No changes proposed.</p> <p data-bbox="1523 876 1989 912">Draft Guidelines are satisfactory.</p> <p data-bbox="1523 1062 1973 1129">Changes made to Guidance for clarification.</p> <p data-bbox="1523 1173 1883 1240">Current draft Guidance is satisfactory.</p>

	in with The last sentence, as they appear to contradict	
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>Torfaen CBC</b>	<p>, and do not fit with section 53, where it states that “the payment may be made to a third party (nominee) for the recipient and day-to-day management of finances may be delegated in this way. A sign post to Section 53 or a repeat of examples in 53 would be useful.</p> <ul style="list-style-type: none"> <li>• Point 14 Last sentence , does this mean that Local Authority foster carers can receive DPs if they are caring for a disabled child?</li> <li>• Point 70 Second sentence-delete the words “for services”. It needs to be made clear that we assess for needs, not for services.</li> <li>• Point 96 More clarity and some examples would be helpful here to give guidance on instances where an Authority “would be satisfied that it is necessary” to employ relatives. The words “exceptional circumstances” were used in previous guidelines and while this has some ambiguity, it had the effect of making Care Managers think carefully in each case. It would also be helpful to state here that it is permitted to employ close relatives who live in a different household.</li> <li>• Point 99 This needs more definitive guidance i.e. whether it is necessary for the Local Authority to carry out a risk assessment.</li> <li>• Point 116 This section would fit better under Section 114.</li> </ul>	<p>If they have parental responsibility.</p> <p>Changes made to Guidance for clarification.</p> <p>Draft Guidance adjusted for clarification.</p> <p>Draft Guidance is satisfactory, issue for local determination.</p> <p>Draft Guidance is satisfactory.</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>Torfaen CBC (cont'd)</b>	<ul style="list-style-type: none"> <li>• “A single Bank Account for DPs and ILF money...is</li> </ul>	Current draft Guidance is

	<p><i>consistent with CIPFA guidance. We have permitted this in Torfaen, and there are issues of real and potential problems. For example, payments in and out of the account that we can only assume relate to ILF because we have no information about them. This causes confusion and takes up staff time to sort out. It creates problems with end of year accounts. Any funds left unused in the account that need to be reclaimed may need to be split between the Authority and the ILF, which may lead to disputes.</i></p> <ul style="list-style-type: none"> <li>• Point 169 It might be useful to add in a reminder that Authorities also need to fund any associated costs of notice periods or redundancy.</li> <li>• Point 170 There are difficulties in accessing Bank Accounts when a DP recipient dies. Local Authorities need some guidance on this, as we have had an instance where the bank does not recognise that the money belongs to the LA, and not the person's estate. Family and/or Executors may be unwilling to pay the money back, especially if they are not aware of the DP arrangements.</li> </ul> <p style="text-align: center;"><b>Annex A</b></p> <p>Most of these points (except from the first seven) are included in the Torfaen Direct Payment agreement ( a document signed by the user and the Care Manager</p>	<p>satisfactory.</p> <p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p> <p>Current draft Guidance is satisfactory.</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>Torfaen CBC (cont'd)</b>	<ul style="list-style-type: none"> <li>• It may be useful if WAG could consider this separately and</li> </ul>	

<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
	<p>give a checklist of what should be covered, as Local Authorities have had to develop their agreements individually and are consequently inconsistent.</p> <p><b>Other General Points</b></p> <p>The previous guidance stated that DPs cannot be used to purchase a Local Authority service; this reminder does not appear in the new draft guidance. As Local Authorities are not allowed to sell their services, this should not cause a problem, but the reminder was useful for clarification, so should remain.</p> <p>There is no solution in this guidance regarding the capacity of an individual person to consent to receive a DP e.g. people with a Learning Disability; many Authorities struggle with this and as a result, many people who may be eligible are discouraged. This could impact on other client groups and the potential loss of a DP could impact on lifestyle choices and independence.</p> <p>Although we are committed to offering the flexibility of DPs, there are funding implications in many aspects of the process to be considered:</p> <ul style="list-style-type: none"> <li>• Funding for the Support Service will have to increase to employ more staff, office costs of the organisation may increase due to an expansion.</li> </ul>	<p>Current draft Guidance is satisfactory.</p> <p>Guidance amended for clarification.</p> <p>This is for local determination, on an individual basis, not possible to issue general guidance.</p> <p>Impact will vary from Authority to Authority depending on take up, these are matters to be pursued as part of the Social Services input to the ESG/RSG process.</p>

<b>Torfaen CBC (cont'd)</b>	<ul style="list-style-type: none"> <li>• Internal staff costs within the Authority will increase e.g. financial monitoring, publicity, Care Manager training, increased demand on Care Manager's time as more people request assessments for a DP.</li> <li>• Double funding of services, direct service provision will have to be maintained whilst dealing with increase in DPs</li> <li>• Additional funding from WAG will be necessary if we are to implement an efficient scheme, able to support users in this important step to independence.</li> </ul>	<p>These are issues to be determined locally.</p> <p>These are issues to be determined locally.</p> <p>Current draft Guidelines are satisfactory.</p>
<b>Respondent</b>	<b>Comments</b>	<b>WAG Response</b>
<b>28. Wrexham County Borough Council</b>	<ul style="list-style-type: none"> <li>• <b>Paragraph 10:</b> It is felt that third party support services should be made a mandatory requirement of a Direct Payments scheme, as the responsibility within such a scheme may deter some service users from accessing Direct payments without adequate support. This view is also supported by the desire to create a more consistent approach to Direct Payments across Wales.</li> </ul>	<p>Current draft Guidelines are satisfactory.</p>
<b>Wrexham CBC (cont'd)</b>	<ul style="list-style-type: none"> <li>• <b>Paragraph 38:</b> There is a possibility of conflict of interest if the third party support service were to act as an advocate for recipients (where the LA proposes changes to the scheme) as the support service, in many cases, is commissioned by the Local Authority.</li> <li>• <b>Paragraph 40:</b> Whilst we can support the principle of favouring the Young Person's view, this matter will need to be handled very sensitively if the Parents are in disagreement.</li> <li>• <b>Paragraph 65:</b> It is envisaged that some Care Managers may initially find it difficult to balance "reasonable" given the duty to safeguard the welfare of the Children/Young</li> </ul>	<p>Current draft Guidelines are satisfactory.</p> <p>Noted.</p> <p>Current draft Guidelines are satisfactory.</p>

<p><b>Respondent</b></p>	<p>People. This provision needs to be linked to the “Reasons to withdraw Direct Payments”</p> <ul style="list-style-type: none"> <li>• <b>Paragraph 67:</b> This will be particularly appropriate in the case of some Children/Young People who have complex and fluctuating health needs e.g. Epilepsy</li> <li>• <b>Paragraph 71:</b> The need for frequent reviews of Direct Payments for Children with enduring disabilities as the needs of the Child change with age, could lead to increased demands on Social Worker time.</li> <li>• Paragraph 72: It is certainly important to consider how Direct Payments might promote local preventative and rehabilitative strategies, given the demands on services and resources.</li> <li>• Paragraph 75: Given there is no restriction on purchasing from a Local Authority, would it be satisfactory (under this</li> </ul>	<p>Noted.</p> <p>Noted.</p> <p>Noted. Noted</p> <p>Guidance amended for clarification.</p> <p><b>WAG Response</b></p>
<p><b>Wrexham CBC (cont'd)</b></p>	<p>provision) to purchase services from a Local authority Respite Foster Carer?</p> <ul style="list-style-type: none"> <li>• Paragraph 76: It should be made clear that this provision does not effect a person’s benefits if he/she goes into short-term care in a care home, regardless of the method of payment.</li> <li>• Paragraph 84: Is there any potential for needs led hourly rates, i.e. varying hourly rates according to assessed needs.</li> <li>• Paragraph 91: It is felt that all Direct Payments should be</li> </ul>	<p>Current draft Guidelines are satisfactory.</p> <p>This is subject to local determination.</p> <p>Current draft Guidelines are</p>

	<p>made on a net basis so as to make the process more streamlined both for the Authority and for Direct Payments recipients, as recipients will not be required to pay the Local Authority twice. It would also prevent the Local Authority having potentially unrecoverable debts.</p> <ul style="list-style-type: none"> <li>• Paragraph 94: Local Authorities must ensure that this flexibility is audited correctly. Direct Payments must be supported in this process, taking into account the issue of non-intrusive monitoring procedures.</li> <li>• Paragraph 129: There is concern about what will happen to disabled Young People, when they turn 18, who may not have the capacity to manage Direct Payments and whose Parents have been receiving Direct Payments for them, will they have to receiving direct services from the Local Authority?</li> </ul>	<p>satisfactory.</p> <p>Noted.</p> <p>Current draft Guidelines are satisfactory.</p>
<p><b>Respondent</b> <b>Wrexham CBC (cont'd)</b></p>	<p><b>Comments</b></p> <ul style="list-style-type: none"> <li>• General Comments: There is some reservation about the lack of Guidance with regards to the purchase of services from the Local Authority, using Direct payments. Whilst it is felt that this could be beneficial to some clients, it is felt that it somewhat goes against the spirit of the scheme. There are also some concerns about how this could be managed internally, both financially and within auditing requirements.</li> <li>• On the whole the Guidance is very clear and provides Local Authorities with a Key Tool for establishing and</li> </ul>	<p><b>WAG Response</b></p> <p>Guidance amended for clarification.</p> <p>Noted.</p>

	<p>maintaining a Direct payments scheme.</p> <ul style="list-style-type: none"> <li>• The Guidance expands well on the provisions of the Regulations.</li> <li>• The Regulations are clear</li> <li>• <b>Regulatory Appraisal</b> : With regards to the Options available, Wrexham CBC are in favour of, and will be following Option3 (Introducing the Regulations) as it is felt that there is a need for local Direct Payment schemes to be more consistent across Wales and to be available to all potentially eligible client groups.</li> <li>• <b>Costs:</b> It is not felt that the predicted additional costs for implementing the new Regulations, and subsequent funding from WAG truly reflect the additional costs of: support schemes, information provision, training, staff time</li> </ul>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Impact will vary from Authority to Authority depending on take up, these are matters to be pursued as part of Social Services input</p>
<p><b>Respondent</b></p> <p><b>Wrexham CBC (cont'd)</b></p>	<p><b>Comments</b></p> <ul style="list-style-type: none"> <li>• (particularly Finance and Audit staff).</li> <li>• The issue of cost is particularly prevalent to Children's Services given the limited purchasing capacity (small Section 17 budget) in comparison to that of Adult Services.</li> </ul>	<p><b>WAG Response</b></p> <p>to the ESG/RSG process.</p> <p>Draft Guidance satisfactory, subject to local determination.</p>