



SCOTTISH EXECUTIVE

Health Department
Directorate of Service Policy and Planning
Circular No: CCD 4/2003

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23 June 2003

Dear Colleague

SOCIAL WORK (SCOTLAND) ACT 1968 , SECTIONS 12B AND 12C DIRECT PAYMENTS: POLICY AND PRACTICE GUIDANCE

Introduction

1. This policy and practice guidance is issued under Section 5(1) of the Social Work (Scotland) Act 1968 ("the 1968 Act"). It offers advice to local authorities on how to make direct payments under sections 12B and 12C of the 1968 Act which now place a **duty** on local authorities to **offer** direct payments to eligible people who wish to receive them for adult community care and children's services. This includes housing support services and equipment and temporary adaptations.
2. Section 7 of the Community Care and Health (Scotland) Act 2002 ("the 2002 Act") introduces a number of measures which amend section 12B to help make direct payments more widely available. The Community Care (Direct Payments) (Scotland) Regulations 2003¹ ("the 2003 Regulations") specify persons who cannot receive services by direct payments, and other conditions attached to their use. The legislation requires local authorities to offer direct payments to certain disabled people who have been assessed as needing community care or children's services. The person receiving the direct payments must give their consent and be able to manage them (but can have as much assistance as necessary). The person using the services bought with direct payments must not come within the list of persons excluded by regulations.
3. This guidance replaces the policy and practice guidance issued under cover of circular **CCD 8/2002** on 10 July 2002.

Background

4. The Executive's aim in introducing these measures is to increase the independence of people who use community care or children's services. We believe that direct payments promote a more person-centred approach to service provision giving people more control and choice over the way the

¹<http://www.scotland-legislation.hms.gov.uk/legislation/scotland/ssi2003/20030243.htm>



services they need are delivered. These provisions were included in the 2001 "Better Care for all our futures" consultation document and were widely welcomed.

New provisions commenced on 1 June 2003

5. The 2002 Act places a duty on local authorities to offer direct payments to all who are potentially eligible (as defined by the 2003 Regulations) to receive them. This came into effect on 1 June 2003. 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.

6. To receive direct payments consent must be given. Where it is clear that the person who requires the services is unable to give the consent required, an attorney or guardian, with the relevant powers, may give that consent instead. In the case of a disabled child (under the age of 16 or aged 16 or 17 and unable to give consent himself) who requires services, a parent or a person with parental responsibility for the child, can give that consent.

7. Direct payments recipients may purchase the services they require from any local authority.

New provisions commencing on 1 April 2004

8. From 1 April 2004 direct payments will be extended beyond disabled people **to all community care and children's services client groups** (with the exception of certain groups of people who may be excluded by regulations). For example, this will make direct payments available to people who are assessed as in need of community care services because they are frail, fleeing domestic abuse or recovering from drug or alcohol problems.

9. Further guidance will be issued nearer the commencement date on how a local authority might implement this provision.

Consultation

10. We received 30 responses, including 16 from local authorities, when the draft guidance was issued for consultation on 13 March 2003. Wherever possible we have taken these comments on board. In particular, it was clear that there was some confusion in the original draft about:

- the rights of 16 and 17 year olds;
- powers an attorney or guardian might have in relation to receiving direct payments;
- who will become eligible in 2004; and
- ownership and responsibility for equipment and temporary adaptations.

These areas have been addressed. In response to the comments received we have also given more detailed guidance about direct payments for children's services as well as attorneys and guardians. Copies of the responses received will be available, on request (by E-mail to: alan.gold@scotland.gsi.gov.uk or by telephone 0131 244 4552) from the Executive shortly.

11. Under the auspices of "Direct Payments Scotland" a working group has been set up to look at issues relating to children's services. It is currently considering the length of respite breaks that can be bought with direct payments and how to set up a process for individuals to access Enhanced Disclosure checks.

"Direct Payments Scotland"

12. To assist local authorities and local support organisations develop direct payments in their area the Executive set up the 2 year project "Direct Payments Scotland" (DPS) in April 2001. The project has now been extended until March 2006. You can contact DPS by calling the helpline on 0131 558 3450 or by E-mail to info@dpscotland.org.uk.

Action

13. We ask that this guidance is distributed as widely as possible to staff involved with community care, housing support or children's services.

Contact points

14. Enquiries and comments about this circular should be addressed to Debi Garft (Tel: 0131 244 5455) at Scottish Executive, Health Department, Community Care Division 1, 2 East Rear, St Andrew's House, Regent Road, Edinburgh, EH1 3DG or by E-mail to debi.garft@scotland.gsi.gov.uk.

15. Copies of this guidance are available to other interested parties by contacting Gemma Perkins 0131 244 3523 (E-mail address gemma.perkins@scotland.gsi.gov.uk)

Yours sincerely

Thea S. Teale

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DIRECT PAYMENTS

SOCIAL WORK (SCOTLAND) ACT 1968: SECTIONS 12B AND C

POLICY AND PRACTICE

GUIDANCE

**The Scottish Executive
Health Department
Community Care Division: 1**

June 2003

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SOCIAL WORK (SCOTLAND) ACT 1968: SECTIONS 12B AND C: DIRECT PAYMENTS

POLICY AND PRACTICE GUIDANCE

Part 1: Introduction

Purpose

1. This guidance is issued under Section 5(1) of the Social Work (Scotland) Act 1968 (“the 1968 Act”) and takes effect from 1 June 2003. It sets out the Executive’s view of how local authorities can make the most of the new duty placed on them by Sections 12B and C of the 1968 Act to offer direct payments and advises on how they might implement this duty. It aims to offer advice and help to local authorities to set up a simple but effective system for making direct payments which contains safeguards which are not unnecessarily bureaucratic or time consuming.
2. This guidance replaces the policy and practice guidance issued under cover of circular **CCD: 8/2002** on 10 July 2002 and advises on how the direct payments legislation can be applied from 1 June 2003.
3. This guidance is divided into **5 parts**.
 - **Part 1** introduces direct payments.
 - **Part 2** explains the direct payments provisions included in section 7 of the Community Care and Health (Scotland) Act 2002.
 - **Part 3** advises local authorities on how they might implement the direct payments legislation from 1 June 2003. For example, who can receive them, what they can be used to buy and conditions attached to their use.
 - **Part 4** explains the importance of consultation, and providing information and user-led support locally.
 - **Part 5** describes how to make direct payments in practice, for example carrying out reviews and reassessments, monitoring arrangements and calculating the amount of a direct payments.
4. The Community Care (Direct Payments) Act 1996 (“the 1996 Act”) inserts sections 12B and 12C into the 1968 Act. These sections are further amended by section 70 of

the Regulation of Care (Scotland) Act 2001 ("the 2001 Act") and section 7 of the Community Care and Health (Scotland) Act 2002 ("the 2002 Act"). They now place a duty on local authorities, to offer direct payments to people of a description specified in regulations made under section 12B, enabling them to arrange and purchase the community care or children's services they have been assessed as needing. The Community Care (Direct Payments) (Scotland) Regulations 2003 ("the 2003 Regulations"), specify who cannot receive direct payments and certain conditions attached to their use.

5. A direct payment is a cash payment made by a local authority to an individual (or in certain circumstances his or her representative) who has been assessed as needing **community care or children's services (including housing support services and equipment and temporary adaptations)**. The local authority makes the payment instead of arranging the services it has assessed the person as needing. The payment is then used to secure the relevant services. So long as the local authority is satisfied that the person's assessed needs will be met through the arrangements made using the direct payments, it is relieved of its responsibility to arrange those services for that person.

6. Direct payments are a different way of fulfilling existing responsibilities to disabled people who require community care and children's services. This guidance is intended to supplement existing guidance to explain how the Executive sees direct payments fitting into the wider community care and children's services arena. When reading this guidance, local authorities will also find it helpful to refer to "*Five Steps: A Guide for Local Authorities to Implementing Direct Payments*" devised by Direct Payments Scotland¹ and issued to local authorities in April 2002. (Further copies are available from Direct Payments Scotland. See Annex B for contact details.)

7. Offering people direct payments to arrange their own services must not deter local authorities from developing services to meet the needs of certain groups of adults and children in line with their existing obligations. However, direct payments can a flexible method of purchasing services that would meet an individual's needs.

8. At present direct payments are only available to **adults and children** who meet the definition of "**persons in need**" in section 94(1)(b) of the 1968 Act, namely persons who

¹ See website at www.dpscotland.org.uk

suffer from illness or mental disorder or are substantially handicapped by any deformity or disability.

9. We know that direct payments present an opportunity to bring about improvements in the quality of life of people, **adults and children**, who choose to receive direct payments to manage their own services. It is inevitable that local authorities' control over this money is less direct than where they provide or purchase services directly and this can involve risk. On the other hand, day-to-day control of the money is passing to the person who has the strongest incentive to ensure that it is spent properly on the necessary services and is best placed to judge how to match the available resources to his or her needs.

10. Research¹ shows that there are few disadvantages associated with direct payments and that they can benefit not only the service user but also family members and the local authority. It recognises that peer support from a user-led support organisation should be an essential component of direct payments provision and available to all who wish to use the service. It also suggests that people's fears and anxieties are largely dissipated once they start direct payments and ways are found to overcome the barriers associated with their use.

11. Operating direct payments effectively can involve handling some complex issues, and it is worth taking time to think through all the areas covered in this guidance. It aims to give advice to enable local authorities to carry out their duty effectively whilst minimising the risks involved. Local authorities may find it helpful to designate a contact point within the authority, with responsibility for answering queries and for identifying and addressing any problems that arise.

12. In this guidance the term 'carer' is used to refer to someone providing assistance in an informal or unpaid capacity. It does not therefore, include people whom the individual pays to provide services using direct payments.

13. Direct payments can be made in lieu of community care services. **For the purposes of the direct payments legislation** "community care" services are defined by section 5A of the 1968 Act as "...services, which a local authority are under a duty or have a power to provide, or to secure the provision of, under Part II of the Act or section 7 (functions of local

authorities), 8 (provision of after-care services) or 11 (training and occupation of the mentally handicapped) of the Mental Health (Scotland) Act 1984". This definition includes **housing support services and equipment and temporary adaptations**. Since December 2001 direct payments have also been available to certain people for **children's services** provided under section 22(1) of the Children (Scotland) Act 1995 ("the 1995 Act").

Context, policy aims and objectives

14. The Executive's aim, in placing a duty on local authorities to offer direct payments, is to increase the independence of those requiring community care and children's services by giving them more choice and control over the way the services they require are delivered. The Executive believes that direct payments not only aid social inclusion but can also help deliver a more person-centred approach to the provision of services. It has therefore legislated to ensure that all local authorities offer direct payments to eligible people. This means that local authorities must make eligible people aware that there is an alternative to more traditional service delivery and that they have a choice.

15. Local authorities should seek to leave as much choice as possible in the hands of the individual, allowing people to address their own needs in innovative ways. At the same time, the local authority must continue to satisfy itself that the person's assessed needs are being met, and that the money is being spent appropriately and cost-effectively. Ultimately direct payments are about promoting independence, and this is achieved most effectively when they are introduced in a spirit of partnership between the local authority and the person who requires the service.

16. It is important to say at the outset, that by promoting direct payments the Executive is not advocating for traditional forms of service delivery to be abandoned. We recognise the high quality of the services arranged by local authorities. Furthermore, direct payments are not the only way in which local authorities can promote independence and give people more influence over the way the services they need are provided. It is important that local authorities continue to develop ways of making their services more person-centred and responsive to the needs and wishes of service users. We acknowledge that for a variety of

¹ Direct Payments: The impact on choice and control for disabled people- (Witcher et al 2000) published by the Scottish Executive and Direct payments for people with mental health support needs- (Heslop 2001).

reasons, many service users will prefer to have services arranged or provided for them rather than receive direct payments to make private arrangements themselves. Some people may however wish to use direct payments to purchase services from a local authority thereby giving them more control over the delivery of those services (See paragraph 64 to 67). Alternatively they may prefer a combination of local authority services and direct payments. What is essential however, is that people are given the opportunity to decide this for themselves.

17. Local authorities should not treat people who receive direct payments any more or any less favourably than people who receive services arranged by them directly.

Summary

A direct payment is a payment made by a local authority to an individual (or in certain circumstances his or her representative) who has been assessed as needing community care or children's services and who chooses to take up the direct payment route. The local authority makes the payment instead of arranging the services it has assessed the person as needing. The payment is then used to secure the relevant services.

Direct payments can aid social inclusion and help deliver a more person-centred approach to service provision.

Direct payments offer flexibility and therefore the services purchased with a direct payment do not have to be the same as those that the local authority would have arranged.

Peer support from a local user-led support organisation should be an essential component of direct payments provision and available to all who wish to use the service.

Part 2: The Community Care and Health (Scotland) Act 2002

Section 7 of the Community Care and Health (Scotland) Act 2002 introduces a number of provisions, which amend section 12B of the 1968 Act. These provisions will help make direct payments more widely available and increase take up amongst disabled people who require community care and children's services.

New provisions commencing on 1 June 2003

18. From 1 June 2003 local authorities can no longer choose whether or not to make direct payments available to disabled adults and children who live in their area. Instead that discretion is replaced by a duty to offer direct payments to all who are potentially eligible (as defined by the Community Care (Direct Payments) (Scotland) Regulations 2003) to receive them. In essence 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.

19. To receive direct payments consent must be given by the recipient of the payment. Where it is clear that the person who requires the services is unable to give the consent required, an attorney or guardian, given powers which would allow them to make decisions about direct payments, may give that consent instead. In the case of a disabled child (under the age of 18, but see below about direct payments for 16 and 17 year olds) who requires services under section 22(1) of the 1995 Act, a parent or a person with parental responsibility for the child, can give that consent. When considering making direct payments to a disabled 16 or 17 year old, local authorities must establish whether the young person can give the necessary consent before seeking consent from a parent, or a person with parental responsibility, for the young person. The local authority must establish for itself whether or not a person can give consent to direct payments.

20. In addition to being able to recruit staff directly and purchase services from private or voluntary sector providers, direct payments can now be used to purchase services from any local authority.

21. Direct payments can be made on a 'net' or 'gross' basis. Where they are made on a gross basis the local authority now has a legal mechanism for recovering any amount an individual has been assessed as being able to contribute.

22. **Direct payments are still for the time being only available to disabled adults and children.**

New provisions proposed for 1 April 2004

23. It is anticipated that from 1 April 2004 the duty to offer direct payments will be extended beyond disabled people **to all community care and children's services client groups** (with the exception of certain groups of people who may be excluded by regulations). This will make direct payments available to a range of people. For example, older people who need community care services because of frailty as well as people fleeing domestic abuse, people recovering from drug or alcohol problems, homeless people and children who require services because a parent is recovering from drug or alcohol problems.

24. This guidance does not give advice on how a local authority might implement this provision. Further guidance will be issued nearer the commencement date.

Summary

New measures have been introduced to help make direct payments more widely available to disabled people. From 1 June 2003:

- local authorities must offer direct payments to eligible disabled 16 and 17 year olds and adults
- attorneys, guardians, with the relevant powers, and parents can give consent to direct payments on behalf of the service user, and
- direct payments can be used to purchase services from any local authority.

Part 3: Scope of Sections 12B and C of the Social Work (Scotland) Act 1968

25. Sections 12B and C of the 1968 Act place a duty on local authorities to make direct payments available to certain disabled adults and children who wish to receive them.

26. Direct payments are an **alternative** to local authority arranged community care and children's services and therefore need only be offered at the point where the local authority would normally have agreed to provide the services. They must not put people who choose to receive local authority services at a disadvantage.

Who can receive direct payments?

27. Those eligible to receive direct payments are defined as certain disabled persons, assessed as in need of services, who are capable of managing direct payments, with or without assistance. However, before receiving direct payments the person requiring the service must give his or her consent. Where a person is over 16 and clearly unable to give consent, or is under the age of 16, Regulation 3 of the 2003 Regulations specifies certain categories of people who are able to give consent on behalf of the service user. Namely, parents and attorneys and guardians who have powers to accept direct payments.

28. The Regulations define a “person in need” by reference to the definition in Section 94(1)(b) of the 1968 Act. This might include people (adults or children) with any kind of disability for example, those with physical, including sensory disabilities, learning disabilities and people who are disabled by illness (for example those affected by mental illness, arthritis, cancer or by HIV/AIDS). Everyone to whom direct payments are made must give their consent (see paragraphs 82 to 98) to receiving direct payments. They must also be able to manage them alone or with assistance (see paragraphs 99 to 110). The following groups of people are eligible to receive direct payments:

- (a) Disabled adults to purchase community care services;
- (b) Disabled people aged 16 and 17 to purchase children's services;

- (c) Disabled people with parental responsibility to purchase the children's services their children have been assessed as needing;
- (d) Parents and people with parental responsibility for a disabled child to purchase the services the disabled child has been assessed as needing;
- (e) Disabled adults and 16 and 17 year olds to purchase housing support services; and
- (f) Attorneys and guardians, with the relevant powers can receive direct payments on behalf of disabled people who are unable to give consent to arranging their own services.

Who cannot receive direct payments?

29. Not everyone who is eligible for community care or children's services will be eligible for direct payments. The 2003 Regulations, (made under Section 12B(1)(b) of the 1968 Act) specify that direct payments may not be offered to certain people whose liberty to arrange services is restricted by certain mental health or criminal justice legislation. These include:

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

30. People in these groups are required to receive specific community care services. Offering them direct payments in lieu of those services would not give a sufficient guarantee that the person would receive the services required. Further details of restrictions are given in Regulation 2 of the 2003 Regulations.

Direct payments for adult community care services

31. Direct payments may only be offered to disabled adults who under section 12A of the 1968 Act, have been assessed as needing community care services. They can be used to purchase all community care services defined in section 5A of the 1968 Act except long term residential accommodation. (Paragraphs 76 to 79 give details of purchasing short breaks/respite with direct payments.)

Free personal care

32. **Disabled people aged 65 and over** may request direct payments to cover the element of personal care (at home) which is provided free of charge. Local authorities should refer to Executive Circular CCD4/2002: Free Personal and Nursing Care¹ for further information. However local authorities cannot insist that individuals only buy services from regulated providers Recipients may employ their own staff if they wish.

Community care assessments

33. Assessment is a crucial process. Getting the assessment right is the key to making direct payments work. To improve the results for people using community care services, the Executive introduced single, shared assessments. (Policy and practice guidance is set out in Circular CCD 8/2001: Guidance on Single, Shared Assessment of Community Care Needs².) Local authorities are expected to implement single, shared assessment for older people by 1 April 2003 and for other community care groups by 1 April 2004.

34. The needs assessment process will be the same regardless of whether the person being assessed is likely to receive services or direct payments. **There is no difference in the assessment of needs; the difference is in the delivery of the services required.** It is important that local authorities make this clear to individuals. In particular, it is important that the needs-led focus of the assessment is retained. The views of the individual and, where there is one, any carer should be fully taken into account in the assessment process (as

¹ See website at <http://www.show.scot.nhs.uk/sehd/ccd.asp>

² See Website at <http://www.show.scot.nhs.uk/sehd/publications/DC20011129CCD8single.pdf>

required by section 12A of the 1968 Act as amended by section 8 of the 2002 Act). The greater involvement the individual and their carer (where there is one) have in the assessment process and in the decisions reached about direct payments, the more likely it is that the direct payments will be a success. The assessment of needs and decisions about how these needs should be met should be part of one process. It is therefore essential that individuals be given information about direct payments before the assessment process begins.

35. A needs-led focus of assessment also considers how direct payments might aid preventative and rehabilitative strategies. A timely provision of direct payments may forestall the need for a more extensive provision of services in the future. Consideration should be given to how people could use direct payments to regain or retain their independence, and live in their own home, for as long as possible.

36. Before the local authority assessment process begins individuals should be encouraged, as part of a self-assessment process, to consider for themselves what assistance they might need.

37. Local authorities are reminded that the individual should be given a written copy of the personal/care plan at the end of the assessment process.

Direct payments for children's services

38. Section 22(1) of the 1995 Act relates to the provision of services for children in need. For this part of the 1995 Act a child is defined as being under the age of 18. It imposes certain duties on local authorities to safeguard and promote the welfare of children and where it is consistent with those duties to promote the upbringing of those children by their families. They should fulfil these duties by providing a range and level of services appropriate to the children's needs, whilst listening to and taking in to account the views of children. Section 22(3)(b) allows local authorities to make cash payments in lieu of children's services, but only in '**exceptional circumstances**'. In general, local authorities use this to provide money in emergencies rather than on an ongoing basis. This power is not well suited to the needs of people who wish to receive payments to arrange services themselves.

39. Whether they are arranging services or making direct payments, local authorities are reminded that they should not be providing services for children, under section 22(1), unless they can be defined as being in need. The definition of a child in need is very broad. It includes children, under the age of 18, who are disabled themselves, those who are affected adversely by the disability of any other person in the family, or those children whose health or development may be impaired or below a reasonable standard without services from the local authority. While the focus of services provided under section 22 is to support the child, services may be provided to the wider family if those services help to safeguard or promote the welfare of the child. An assessment under section 23 of the 1995 Act determines the needs of the child that arise from his or her disability or from the disability of someone in the family.

40. Section 22(1) does not define the type of services which local authorities can deliver. Rather it refers to providing a range and level of services to safeguard and promote the welfare of children in need and to promote the upbringing of such children by their families. Families and children are likely to have a wide range of needs and problems and therefore the services which will be required to meet those needs are likely to be wide-ranging. It is for each local authority to decide which services it should provide and in which circumstances, and this will not change as a result of the introduction of direct payments.

41. At present the direct payments legislation allows local authorities to only make direct payments in lieu of services provided under section 22(1) of the 1995 Act. The service purchased by the direct payment does not have to be the same as the service that would have been delivered by the local authority; it must simply meet the need that would have been met by the local authority service. For example, a disabled child who might have attended local authority facilities for various forms of assistance (as covered by section 22) may now choose to employ a personal assistant using a direct payment.

42. Local authorities are reminded that direct payments can only be used for services under section 22(1) of the 1995 Act and not for services under any other sections of that Act nor services provided by local authorities under the Education (Scotland) Act 1980.

43. Direct payments can also be used to purchase short breaks with a specialist careworker. Where the local authority is satisfied that the respite care bought with the direct payments will safeguard and promote the welfare of the child, that child does not become

"looked after" under the terms of section 25 of the 1995 Act. To avoid a child falling into the 'looked after' category it is important that the parent is in complete control of the respite arrangements. (Paragraphs 76 to 79 give details of how much respite a person can receive in any one 12-month period.)

Disabled parent

44. Disabled people who are parents can receive direct payments for services available under section 22(1) of the 1995 Act to assist them in their parenting role. In these circumstances, their child can be seen as a child in need due to the disabilities of his or her parent(s). They can also receive services under section 12 of the 1968 Act. This means that direct payments can be used to meet all the social care needs of them and their families that arise from their disability. Although two different pieces of legislation are involved it is important that the needs of the disabled person and their family are looked at in a joined up way. 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.

45. It is important that local authorities work in partnership with families to provide those services that will best meet the needs of the children. The needs of the child should not be looked at in isolation but within the context of the family situation. The provision of services that assist disabled parents who need practical help in bringing up their children is often the most effective means of promoting the welfare of their children. This applies equally in terms of direct payments.

Disabled 16 and 17 year olds

46. Disabled 16 and 17 year olds are able to take advantage of the flexibility of direct payments enabling them to make more decisions for themselves and to provide opportunities for them to have more control over their lives. Direct payments may only be used to purchase services the disabled 16 or 17 year old has been assessed as needing and not those services identified in the assessment to support other members of the disabled young person's family.

47. In making the decision to make a direct payment to a disabled 16 or 17 year old, it is vital that local authorities look to the young person before his or her parents when gaining consent to direct payments.

48. Where there is a difference of views between parents and disabled young people aged 16 and 17 about direct payments or the services they will be used to buy, provided that the young people have sufficient understanding to make informed decisions, local authorities should give precedence to their views. Where the young person receives services in the family home the views of the parent should also be taken into consideration. Young people should be made aware that independent advocacy may be of help to them in these circumstances. 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. The overriding requirement for the local authority is that whether by providing a service or a direct payment, its actions should promote and safeguard the welfare of the young person.

49. There may be situations where disabled young people will express their wish to manage direct payments themselves but it is apparent to their parents and to the local authority that they will not be able to do so in a way that will promote their welfare. This may be for a number of reasons, and may not be as straightforward as dealing with issues such as employment and accounts. If this is the case there may be the need to make appropriate arrangements to have payments managed for them by a suitable representative. (See sections on managing direct payments and support systems available.) Ultimately, local authorities have a duty to ensure that the arrangements put in place with direct payments will ensure the young person's safety and promote his or her welfare. Where this is not the case the local authority should explain, in writing, to the person why direct payments would be inappropriate. In these circumstances the local authority should consider whether it would be helpful to put the person in touch with a user-led support organisation that could offer advice about securing appropriate services.

People with parental responsibility for disabled children

50. Disabled children and their families may find it more arduous to access mainstream services, for example childcare, after school clubs and leisure activities. Sometimes by working with local authorities these difficulties may be overcome and children can access

mainstream services. However at times families with disabled children may not consider existing services provided or commissioned by their local authority suitable for their child and believe that they can make arrangements themselves, which will be more beneficial. Direct payments can enable people with parental responsibility for a disabled child to make such arrangements. Services for disabled children should be designed to give them the opportunity to lead lives that are as normal as possible. Direct payments to people with parental responsibility for a disabled child are provided within the framework of section 22(1) of the 1995 Act, which requires local authorities to provide a range of services to promote and safeguard the welfare of children in need.

51. Existing guidance accompanying the 1995 Act, on the integrated planning for children's services and recent publications such as the *For Scotland's Children*¹ emphasise the importance of:

- Promoting the upbringing of children within their families so far as this is consistent with safeguarding and promoting their welfare;
- local authorities working in partnership with families;
- listening to children and taking into account their views; actively involving children and parents where appropriate in assessments and decision-making; and
- having regard to issues of race, language, religion and culture.

52. Local authorities should work in partnership with parents in accordance with this guidance. Local authorities should only arrange direct payments when they are satisfied that the parent is a person who will make arrangements that are designed to safeguard and promote the welfare of the child. Local authorities must act in the best interests of the child. In doing so they should carefully consider whether it would be appropriate to give direct payments to parents who are subject to a Home Supervision Order or have been compulsorily removed from the home under child protection procedures. So long as the local authority is satisfied that the assessed needs of the disabled child and family will be met through the arrangements the parent is making using the direct payments, the local authority is relieved of its responsibility to arrange those services. Local authorities retain their responsibilities under the 1995 Act to assess and, where appropriate, review the needs of disabled children and their families in the normal way.

¹ <http://www.scotland.gov.uk/library3/education/fcsr-00.asp>

53. Local authorities must 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. *Working Together to Safeguard Children* (Department of Health et al, 1999), paragraph 6.27, comments that “the available UK evidence on the extent of abuse among disabled children suggests that disabled children are at increased risk of abuse.” It is important that people with parental responsibility for disabled children are fully alerted to the risks of employing staff directly. (See paragraph 144 for information about Enhanced Disclosure.)

54. It is essential that when employing people to work with children, parents are aware of their responsibilities to ensure the safety of the child. It is paramount that parents have a rigorous recruitment procedure in place, which should include the taking up of references. A local user-led support organisation can offer advice on recruitment matters, including whether it is possible to carry out an Enhanced Disclosure check on potential employees. Where a local authority is not satisfied that the arrangements the parent will make, or has made, will safeguard the child and promote his or her welfare, it would not be appropriate for the local authority to make direct payments available. In these circumstances the local authority should explain its reasons to the parent in writing. Such decisions must be made according to the circumstances of each case and local authorities must not make blanket decisions by refusing direct payments to all who wish to employ their own staff direct. It should also consider whether it might be appropriate to put the parent in touch with a local support organisation that could offer advice about securing appropriate children’s services.

55. The views of children should be listened to and taken into account in determining issues on direct payment. Children should be given appropriate help to express their views and wishes and should have access to independent advocacy when appropriate. Local authorities will need to handle such issues sensitively in terms of the family situation where there may be parental conflict with the views of the child.

56. Parents may use direct payments to purchase personal care services to meet the assessed needs of their disabled children. However, as children mature local authorities

should encourage parents to give greater weight to the child's views about how their personal care needs are to be met.

Direct payments for housing support services

57. Supporting People¹, a new policy and funding framework for the provision of housing support services, came into effect on 1 April 2003. Housing support services² are services other than care or housing management services that enable a person, aged 16 and over, to establish or maintain occupancy of a dwelling. These services are provided to help people live as independently as possible in their own homes and might include help with home safety and security or to set up a new tenancy. **Housing support services** come within the definition of community care services, as defined by section 5A of the 1968 Act. **Since 1 April 2003**, when responsibility for funding them transferred to local authorities, **disabled** people have been able to use direct payments to purchase these services. **From 1 June 2003** local authorities also have a duty to offer **disabled** people direct payments to purchase housing support services. As with other community care services the individual may contract with an unregistered service provider.

58. Disabled 16 and 17 year olds (or their parents) can access housing support services for children under section 22(1) of the 1995 Act.

59. For those aged 18 or over, if no needs other than housing support services are identified a "Simple Assessment" should be carried out looking only at the level and type of housing support service required.

Direct payments for equipment and temporary³ adaptations

60. The 1968 Act also places a duty on local authorities to offer direct payments to enable disabled people to purchase for themselves equipment and temporary adaptations, which would otherwise be provided by local authority social work services. This includes

¹ More information about Supporting People can be found on the Scottish Executive Supporting People website at: <http://www.scotland.gov.uk/housing/supportingpeople>

² Housing support services may carry a different meaning for the purposes of the Regulation of Care (Scotland) Act 2001.

³ Temporary as opposed to permanent adaptations, which are funded according to tenure.

equipment and temporary adaptations relating to a sensory impairment. Equipment and temporary adaptations relate to people of all ages, including children and will usually involve a larger initial payment, followed by subsequent amounts for after care and maintenance services as required. Local authorities are reminded that information provided about equipment and temporary adaptations should give details about receiving direct payments.

61. When making direct payments for an individual to purchase equipment or temporary adaptations, the local authority will need to bear in mind the specialist expertise that may be needed to ensure that equipment purchased is safe and appropriate. They will need to ensure that the individual knows how to use, arrange repairs to and maintain it. Ownership of the equipment (which may constitute part of an adaptation) or adaptation bought with a direct payment will lie with the individual and with it, responsibility for service and repair. Local authorities must clarify this with the individual at the outset. Local authorities should include an element in the direct payments to cover service and repairs where the individual is able to provide confirmation that he or she has an annual service agreement for the equipment/adaptation. Local authorities should also consider whether an element of funding is required to pay for specialist training to use the equipment. Careful consideration of all these points will need to be given when direct payments are used to purchase equipment and temporary adaptations.

62. Local authorities should consider whether to give people the option to donate equipment (and temporary adaptations) back to the local authority. In these circumstances the local authority will wish to ensure that the equipment being donated has been properly serviced, repaired and maintained and is still fit for purpose.

63. Direct payments cannot be used as a substitute for Home Improvement Grants for adaptations for disabled people or for any adaptation that would normally be provided by a landlord. Nor can they be used to purchase equipment that would normally be provided by the NHS.

Direct payments to purchase local authority services

64. People might wish to use their direct payments to contract directly with an agency/private provider/voluntary organisation for the services required, employ staff to

provide the services or purchase the services from a local authority. An individual may approach any local authority to secure the services he or she has been assessed as needing. This is intended to enable people to have more control over the services they receive, particularly in remote or rural areas, where the local authority might be the sole provider of the services required. It also opens up the possibility of adjacent local authorities working together to develop 'shared' services.

65. There is no duty placed on a local authority to sell services. Instead they can choose whether or not to sell services in any particular case. However, buying local authority services must not be a precondition of making direct payments.

66. The local authority should consider the request to purchase its services in the context of existing demands on its resources, ensuring first that the needs of the people to whom it has an obligation to arrange services are fully met. The services should be 'sold' at no more or no less than the full cost to the local authority of providing the services. Local authorities should have an appropriate accounting system in place to monitor sales as part of its financial monitoring arrangements for audit purposes.

67. Local authorities are not obliged to build in extra costs, for example additional travel expenses, which a person might incur as a result of purchasing services from another local authority. Local authorities may however consider it appropriate to include extra cost, such as travel, where provision by another local authority is the only way of meeting the needs of the individual.

Health services

70. Research has shown there can be distinct advantages for disabled people when they are able to manage their needs holistically. Direct payments cannot be used to purchase services provided by relevant NHS bodies. However where a package of support includes jointly commissioned services with health for example, skincare, the management of pressure sores, the administration of percussive physiotherapy, local authorities are encouraged to work with their NHS partners to provide a joint direct payments package wherever possible, covering health and community care.

71. Under the Community Care (Joint Working etc.) (Scotland) Regulations 2002 ("the 2002 Regulations"), local authorities have the power to delegate the functions of making direct payments to relevant NHS bodies and the 2002 Regulations allow for the pooling of funds for this purpose. Pooled budgets will enable NHS bodies and local authorities to create more holistic and flexible packages, supported by direct payments. Local authorities are encouraged to work with their NHS partners in accordance with the 2002 Regulations, subject to joint outcomes from the pooled fund being agreed in advance of establishing the fund.

72. Where the direct payments package covers continuing health services local authorities may need to involve NHS staff in the training of staff employed by the individual to ensure that procedures are carried out correctly. Likewise staff may need to be trained in the use of specialised equipment.

73. Local authorities will also need to develop protocols around the assessment and monitoring of direct payments arrangements in liaison with NHS bodies. For effective monitoring to be carried out, those involved need to have the necessary expertise to judge whether the assessed needs are being met. In most instances this will mean that health care staff will need to monitor the fulfilment of healthcare needs.

74. Issues surrounding employer liability in the event of an accident or error by staff providing joint packages must be discussed with the individual and his or her family or carers etc. in advance, so that they understand their responsibility. In particular it is important that local authorities make people aware that user-led support organisation can give individuals advice about taking out an insurance policy to cover liability. Local authorities and NHS partners concerned about liability in the event of an error or negligence should contact their legal advisors.

75. Where it is not possible for direct payments to be made in lieu of the health care element of a joint package, local authorities should work with their NHS partners to ensure that the services required are delivered in such a way to maximise independence for the individual. In particular it should not impede the individual's ability to make choices about the services being purchased with direct payments.

Residential accommodation and respite

76. Direct payments may not be used to purchase long-term stays in residential accommodation. They may however, be used to purchase short breaks (or respite) in a care home subject to the maximum period specified by the 2003 Regulations. For children this might take the form of a short break with a specialist careworker. Local authorities should check the latest Regulations, but currently Regulation 6 of the 2003 Regulations specifies that where two periods in residential accommodation are less than 4 weeks apart, they should be added together to make a cumulative total. The cumulative total, calculated in this way, cannot be more than 4 weeks in any twelve-month period. However, if the two periods are more than 4 weeks apart they are not added together. For example, someone might have a one-week stay in residential accommodation every 6 weeks. Because each week in residential accommodation is more than 4 weeks apart, they are not added together. The cumulative total is only one week and the 4-week limit is never reached. Another person might have three weeks in residential accommodation, 2 weeks at home, and then another week in residential accommodation. The 2 periods in residential accommodation are added together to make 4 weeks, so the person cannot use their direct payments to purchase any more residential accommodation within a 12-month period.

77. People can receive additional periods in residential accommodation once they have reached the 4-week maximum but they cannot purchase it with direct payments. If the local authority considers that further residential accommodation is needed, it can still arrange and fund residential accommodation for the person in the traditional way.

78. The restriction on the length of stay in residential accommodation, which can be purchased with direct payments, applies to adults and children.

79. Local authorities should consider how direct payments could assist people leaving residential accommodation. Local authorities may make direct payments available before the person leaves the care home to assist them during the transition from a care home to their own home.

Employing close relatives

80. Regulations made under section 12B(3) of the 1968 Act (currently the 2003 Regulations) prevent people using direct payments to secure services from their partner (i.e. the other member of a married or unmarried couple), including same sex couples, or a close relative living in the same household. A close relative in this context is a parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, stepson or daughter, brother, sister or the spouse or partner of any of the foregoing.

81. In addition, local authorities should not allow people to use direct payments to secure services from a close relative living elsewhere or from someone else living in the same household as the direct payments recipient. This restriction is not intended to prevent people using their direct payments to employ a live-in personal assistant (provided that that person is not someone who would be excluded automatically by the regulations). The restriction applies where the relationship between the two people is primarily personal rather than contractual; e.g. if the people concerned would be living together regardless of any employment relationship. A local authority may decide that an exception to the rule about employing a close relative who does not live in the same household is justified, if it is satisfied that that is the most appropriate way of securing the relevant services. For example it may benefit people who have difficulties interacting with strangers.

Giving consent

82. The 1968 Act authorises local authorities to make direct payments only with the consent of the person who will be in control of the payments. This will usually be the person who requires the service, if he or she is 16 or over, but could also be an attorney or guardian or parent. (Paragraphs 82 to 88 therefore refer to the person giving the consent, who may or may not be the service user). Direct payments give disabled people greater control and independence, but this increased freedom is inevitably accompanied by increased responsibilities. When people consent to direct payments, whether for themselves or the person they are representing, they take on the responsibility for arranging and purchasing the services to which the payments relate. This involves ensuring that the person who needs the services receives the appropriate services to an acceptable quality. Where a person purchases children's services with direct payments, that person has a responsibility to ensure that the

services bought will ensure the safety of the child and promote his or her welfare. It can also involve taking on legal responsibilities (e.g. as an employer, or by contracting with an agency). The individual (either on his or her own or with assistance) is also accountable to the local authority for the way in which the money is spent. These responsibilities may involve a substantial commitment in terms of time and energy, and should not be underestimated. Local authorities will wish to establish that each person appreciates what is involved and believes that he or she would be able to manage the direct payments, whether alone or with help. (Paragraphs 99 to 110 give more details about managing direct payments.)

83. Local authorities should only make direct payments to a person they are satisfied appreciates and accepts the responsibilities involved. However local authorities should note that an individual may receive as much assistance as he or she may require for understanding and giving consent to direct payments.

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

85. In particular, authorities should make people aware that any contract they make for the provision of services will involve legal responsibilities, and that if the person contracts directly with an individual they will be regarded as an employer. Local authorities should make clear to each person that it is his or her own responsibility to ensure that he or she is aware of, and complies with, any legal responsibilities, at the same time making the person aware of local support groups that will be able to help. Where an Independent Living Trust (see paragraphs 126 to 128 about supported decision making) has been established, the trustees legally take on employer responsibility for the disabled person.

86. The local authority should also make clear that it would arrange services in the normal way if a person decides not to accept direct payments. Having offered direct payments, the local authority should make sure that the person appreciates that he or she is under no obligation to accept them. It should be made clear at every stage that the person has the option of withdrawing his or her consent to receive direct payments at any time. Local

authorities should discuss with a person who is to receive direct payments what he or she should do if he or she no longer wishes to receive them.

87. 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. People may ask a local independent support organisation for help to resolve the matter. If it is not possible to resolve these matters through discussion, local authorities should remind people in this situation of their right to use the complaint procedure.

88. Individuals should be given time to consider the implications of taking on direct payments and the responsibilities involved. During this period the local authority may need to arrange services for the individual rather than leave him or her without services or rush him or her into making a decision about direct payments. Local authorities may also wish to give people the opportunity to reconsider a decision not to accept direct payments or to stop receiving direct payments, particularly if they change their minds as a result of a change in their circumstances. If someone who had initially expressed an interest in receiving direct payments decides not to accept them, the local authority may wish to discuss with him or her the reasons for that decision.

The service user

89. The legislation allows disabled people aged 16 and over to give consent to receiving direct payments. In judging that the service user appreciates what is involved, the local authority needs to be satisfied that the individual knows that he or she has a choice and that he or she can receive help from others to make that choice.

90. Local authorities must not exclude whole groups of people from being deemed competent to consent to direct payments. Instead, they should start from the premise that each person, aged 16 and over, has the capacity to consent to direct payments, and that they may require being given suitable support. In particular local authorities are reminded that, under the Adults With Incapacity (Scotland) Act 2000, they should not make decisions about an individual's capacity to consent to direct payments on the basis of the individual's capacity to give consent in other areas of his or her life.

91. Where an individual's capacity to understand and accept the responsibilities of direct payments is called into question, local authorities should first endeavour to ensure that the individual has access to ongoing supported decision-making mechanisms. This could take the form of a User Controlled Trust¹, a 'Circle of Support'², or advocacy (see paragraphs 129 to 131). (Decision-making mechanisms, such as User Controlled Trusts, cannot give consent on behalf of the disabled person. Instead, they support the disabled person in making decisions.) Local authorities should then consider whether the support available could enable them to appreciate what direct payments could mean for them, and whether the support could enable them to manage direct payments. At the same time the individual should remain the person who is in control. The way in which people give consent will vary greatly between individuals. Giving direct payments need not depend on the person being able to say, "I understand", but on the evidence that they will be in control of the use to which the direct payments are put. Only once such support is known to be unavailable and reasonable doubts can be shown to remain, should the local authority consider refusing direct payments to the service user.

Attorneys and guardians

92. Where a local authority has followed the guidance above and is satisfied that the person who requires the services cannot give consent to receiving direct payments, the person's attorney or guardian may consent to receive them on his or her behalf. This should be seen as a 'last resort' after every attempt has been made to support the person to make that decision him or herself.

93. This means that people, who have never had the capacity to consent to direct payments, as well as those whose capacity changes, can now benefit from them. It may be that an individual's assessed needs change and he or she is no longer able to give consent to receive direct payments in lieu of the new services. It is envisaged that the new powers for attorneys and guardians to consent to direct payments will be of most help to the disabled

¹ A User Controlled Trust or Independent Living Trust is an obligation binding a trustee to deal with property or money in a particular way, for the benefit of one or more beneficiaries. The Trust is witnessed, and registered with the Inland Revenue.

² A Circle of Support is a group of supporters who help an individual achieve their goals. It is not a professional entity; its members are people who have a strong commitment to that individual.

person in these circumstances because, rather than cease direct payments, the attorney or guardian may give the consent needed for the new payments arrangements to continue. This means that direct payments can continue when a person's condition fluctuates or deteriorates to the point that they are no longer in control of the direct payments.

94. Attorneys and guardians must act within the general principles of the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act") which are that all decisions made on behalf of an adult with impaired capacity must:

- Benefit the adult;
- Take account of the adult's wishes, if these can be ascertained;
- Take account of the views of relevant others, as far as it is reasonable and practical to do so;
- Restrict the adult's freedom as little as possible while still achieving the desired benefit, and
- Encourage the adult to use existing skills or develop new skills.

95. Local authorities should not make direct payments to an attorney or guardian unless they are satisfied that he or she appreciates and accepts the responsibilities he or she has to the individual receiving the services and the local authority.

96. Direct payments should only be made to attorneys and guardians who have been granted the relevant powers, under the 2000 Act, to act on a client's behalf. These powers are strictly interpreted and this means that when it comes to legal interpretation of the powers, there is no possibility of deducing implied powers. For attorneys, this means that the granter, while capable, has to give the attorney specific powers. This will usually take the form of a power to claim and receive on behalf of the granter all pensions, benefits, allowances, financial contributions, repayments, rebates and the likes to which the granter may be entitled. (Local authorities should note that it is possible under the 2002 Act for different persons to hold different powers in relation to the same adult. Potentially in relation to financial matters the appointee may be a company or postholder.) In welfare powers there is often a form of words indicating that the attorney "may decide what care and accommodation may be appropriate for me. Most commonly guardianship orders specify a range of powers delegated to one or more guardians. However, it is possible for one guardian to be given powers over welfare and financial matters. Local authority must ensure that guardians and

attorneys have both powers relating to personal welfare and financial matters and therefore do in fact have the necessary powers to act on a person's behalf in relation to receiving direct payments. Local authorities should request documentary evidence to confirm attorney or guardian status and details of the powers granted.

97. The Public Guardian has a duty to receive and investigate all complaints regarding the exercise of functions relating to the property or financial affairs of an adult made in relation to guardians or continuing attorneys. Local authorities have a responsibility to investigate complaints in relation to welfare and the Mental Welfare Commission has a role in protecting the interests of adults with incapacity where the incapacity is as a result of mental disorder.

Parents

98. A parent or person who has parental responsibility for a child (aged under 18) may give consent to receiving direct payments to purchase the services the child has been assessed as needing. Local authorities must however satisfy themselves that the parent giving the consent will make arrangements that will ensure the safety of the child and promote his or her welfare. (Paragraphs 38 to 56 give further details of direct payments for children's services.) In the case of a 16 or 17 year old who requires services the local authority must first seek consent from the young person, ensuring that he or she has the support required to help him or her make that decision. Only where it is clear that the young person is unable to give consent should the local authority look to a parent for consent.

Managing payments

99. Local authorities should only offer direct payments to people whom they consider will be able to manage them, either alone or with assistance. This applies regardless of whether they are received by the person who requires the service, a parent or an attorney or guardian. The judgement as to whether someone is able to manage must be made on an individual basis, taking into account the views of the individual him or herself. As with all assessments, professionals from other fields may be involved where appropriate.

100. People may receive as much assistance as they require with managing the money but they remain accountable for the way it is spent. People may ask carers, family members, User Controlled Trusts, Circles of Support, peer support or other third parties to help them manage

direct payments. They might also choose to buy in assistance, e.g. using a payroll service. There is no restriction on who may help a person in this way, although the restrictions on paying relatives described in paragraphs 80 and 81 will apply if the local authority has agreed that the direct payments can be used to pay someone to help in this way. With the individual's consent the payments may be made to a third party but the person who gives consent to the payments must retain control over how they are spent. This does not necessarily mean that the person who requires the services must authorise every transaction. People may express a preference about how a service is to be provided, and delegate the details to a third party. However, it must be open to the individual to overrule any decisions made by the third party. Direct payments are intended to facilitate independent living, not to switch from dependence on the local authority to dependence on a third party. Local authorities should satisfy themselves that the relationship between the individual and the third party has been discussed and agreed before direct payments begin. They must also be satisfied that the individual is aware that he or she can receive the payments direct.

101. If the authority concludes that someone could only manage direct payments with help, it should satisfy itself that appropriate help is available over a sustained period before deciding to offer direct payments. Where significant help is being provided, the local authority will need to ensure that any monitoring and review procedures involve direct contact with the individual for whom the payments are made, if necessary in the absence of the person who is helping him or her. This is to ensure that the individual is content with the way in which the direct payments are being used. Both local authorities and people receiving direct payments should also be aware of the potential conflict of interest if the individual secures services from the same person who is helping him or her to manage the direct payments. The same applies where an attorney or guardian intends to provide services for the individual. For that reason the Executive advises that the person helping to manage the direct payments or giving consent to direct payments on behalf of the service user should not be the provider of the service being paid for by the direct payments.

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

103. When looking at a young person's ability to manage, the degree of responsibility involved will depend on the size of the support package. For example, a young person may be able to manage part of their support package via direct payments but would not be able to manage the full package. The ability to manage may change as the young person gains more experience. The local authority may want to make transitional arrangements whereby initially the young person manages only a small 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.

104. Some people with fluctuating conditions, such as mental health service users, may only require help at certain times. It is important that local authorities satisfy themselves that individuals have support in place when they need it.

105. Local authorities should ensure that they handle sensitively discussions about a person's ability to manage direct payments, and include their carer, family and supporters wherever necessary. This is particularly important where the authority decides not to offer someone direct payments because it does not consider that, even with assistance, the individual will be able to manage them.

106. If a local authority has any doubts about a person's ability to:

- express their personal choices and preferences (with assistance to communicate their views or preferences if necessary) between different types of service;
- (with assistance) be able to keep the necessary records;
- (with assistance) appreciate and cope with the legal responsibilities that may arise if he or she becomes an employer;
- ensure that he or she receives services he or she has paid for; or
- to manage direct payments on an ongoing basis (as opposed to having a fluctuating or deteriorating condition which may affect his or her ability to manage),

then they should consider what assistance would enable the person to manage that aspect. They should not take it as an automatic indication that the person is unable to manage. For example, the Executive envisages that people might receive assistance with keeping records, management of day-to-day relationships with staff or operation of PAYE. If someone does

not have access to the help he or she needs, the local authority should put the person in touch with a local support organisation who will be able to arrange assistance. It may also wish to consider offering to arrange training to assist direct payments recipients to manage. Local authorities must, however, ensure that they 'step back' from the day to day management of the direct payments and service provision or they could be considered responsible for employment issues.

107. It is a key principle of direct payments that it is the person who gives consent to direct payments who controls the money. Local authorities need to satisfy themselves that the person giving the consent is in fact in control of how the money is spent and that control does not pass to the third party, (for example the person helping to manage the payments). This may need delicate negotiation, particularly where the third party is a carer, close relative or friend who may be making sacrifices in order to provide assistance, or who might have their own interest in the way direct payments are used. Allowing more time for the assessment process may help the local authority to ascertain who will be in control. Ensuring that the local authority talks to the person on their own, or if an interpreter is needed that he or she is not the person who would be helping to manage the direct payments, is also likely to help this decision.

108. Local authorities will need to consider how to treat someone with a fluctuating condition, for example a mental health service user, which affects his or her ability to manage direct payments. In these circumstances there is a need to plan ahead and make arrangements whereby a designated person or group of people (i.e. circle of support, trustees) can be given permission by the user to take over during a period when he or she is unable to manage. Having some form of advance planning or advance directive should be considered an essential component of direct payments for people whose condition may fluctuate or deteriorate over time. This would ensure that when they become ill they retain as much control and choice as possible of the arrangements and are able to regain full control if they become well again. This type of advance directive along with 'Living Wills' or User Controlled Trusts may help prevent a recipient reverting to local authority provision. Advance Directives allow people with mental health support needs to state in writing what needs they have if they become particularly distressed or unable to manage. For example a person could write down what a support worker should do if they have a crisis, or write guidelines for how to assess risk, or provide a list of useful telephone numbers that the

support worker could phone for advice or information if necessary. (For more information on advance directives see *Direct payments for mental health users/ survivors: A guide to some key issues*)¹.

109. If the person's condition is likely to deteriorate to the point where he or she is unable to manage even with assistance, the local authority might consider ways of enabling the person to receive direct payments while able to manage. A back-up system controlled by the local authority must be set up and triggered during periods when the person is unable to manage. Equally, local authorities might decide to offer direct payments to people whose condition means that they are likely, at some point in the future, to lose the ability to manage permanently. In those circumstances they will still need to satisfy themselves that safeguards are in place to alert them in such circumstances. 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. In such cases the local authority should make it clear to the individual that he or she can decide to stop receiving direct payments at any time and receive local authority services instead.

110. If the local authority concludes that someone would not be able to manage direct payments, it is good practice to discuss the reasons for the decision with the person, particularly if he or she disagrees. Although the person may continue to be unhappy with the decision, the offer of an explanation is an important indication that the matter has been considered seriously. The authority should also make the individual aware that they can use the complaints procedure (see paragraph 188) to challenge the local authority's decision not to offer direct payments.

111. **Direct Payments Scotland** can offer advice and put disabled people and local authorities in touch with local support organisations. They have been set up with funding from the Scottish Executive to:

- increase awareness of direct payments amongst community care and children's services users, local authority staff and service providers;
- establish and develop local user-led support organisations;
- establish a national information service and provide good practice exchange;

¹ Published by the National Centre for Independent Living.

- identify and address training needs for support organisations and local authority staff, and
- develop a model to help local authorities manage increased take up of direct payments.

See Annex B for further contact details.

Emergency assistance

112. Making direct payments, rather than arranging actual services, does not affect a local authority's function of providing emergency assistance under Section 12 of the 1968 Act or Section 22 of the 1995 Act. If the authority considers the circumstances to be so exceptional as to require such assistance, they may provide it in respect of the services to which the direct payments relate (see Section 12C (3) of the 1968 Act).

Summary

Direct payments can be offered to disabled adults who, have been assessed as needing community care services under section 12A of the 1968 Act.

They can also be offered to:

- disabled 16 and 17 year olds;
- disabled parents, whose children require services, and
- parents of disabled children,

in lieu of children's services provided by local authorities under section 22(1) of the Children (Scotland) Act 1995.

They can be used to purchase respite breaks, housing support services and equipment and temporary adaptations.

Disabled people, aged 16 and over, must give consent to receive direct payments but they can receive as much support as they need to reach a decision.

Where the person who requires the services is clearly unable to give consent an attorney or guardian, with the relevant powers, can give the consent.

Parents can give consent to and receive direct payments to purchase the children's services for their disabled children.

The local authority must be satisfied that the person who receives the direct payments is able to manage the arrangements. Recipient can have as much help as they need.

Local authorities should only make direct payments in lieu of arranging children's services when they are satisfied that the arrangements made by direct payments will safeguard and promote the welfare of the child.

Part 4: Consultation, information and support

Consultation

113. Local authorities are required to seek the views of representatives of people who use community care and children's services when preparing their Community Care or Children's Services Plans. This should include representatives of people who receive or are likely to receive direct payments and their carers.

114. The purpose of direct payments is to put more control in the hands of people who need the services and this should start right at the beginning of the process. It is important that local people should be consulted fully as local arrangements for direct payments are set up. Local authorities should consult representatives of people who might wish to receive direct payments and others with an interest, including local support organisations and service providers, when considering how to implement the direct payments provisions in sections 12B and C of the 1968 Act. They should also take care to avoid focusing on one group of potential users to the exclusion of other groups and should not make the assumption that organised groups necessarily represent the views of all users or carers in the locality.

115. In particular, care should be taken to include the views of people with different needs, people from black and minority ethnic backgrounds and people of different ages. Local authorities should consult older people, parents of disabled children and people aged 16 and 17 who have previously been unable to access direct payments and seek their views on implementing them. They should also consult people with learning disabilities or sensory impairments or people who are mental health services users who may not previously have been offered direct payments. . The views of carers and of potential service providers will also be important. Whatever form the consultation takes, it is important that people who have been consulted receive feedback timeously about what has happened, and how their views were taken into account. It is also important that the lines of communication remain open, so that the local authority remains responsive to users' views over time.

Information

116. Disabled people **must** be made aware that there is an alternative to local authority arranged community care and children's services (including housing support services and equipment and temporary adaptations). Direct payments must, therefore, be included in information provided about the services that local authorities already provide. More detailed information about direct payments must be made available separately in formats that are accessible to people with different forms of disability and to people whose first language is not English. Consulting a local user-led support organisation might be helpful to ensure that information is presented in accessible formats.

117. Some people 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 that they replace. Information provided should also give details of the support available to people locally and nationally.

118. A guide for people who would like more information about receiving direct payments will be available from the Executive or Direct Payments Scotland in July 2003. This should be made available to people as an introduction to direct payments. An Executive booklet to help people with learning disabilities will also be available in the summer of 2003.

119. The Executive expects to see information about direct payments in local authority Community Care Plans. We also expect Partnership in Practice agreements (PiPs) to set out how the local authority will help people with learning disabilities and people with autistic spectrum disorders access direct payments. PiP agreements set out plans for implementing *The same as you?*, including plans to put in place local area co-ordinators to promote direct payments for people with learning disabilities. Local area co-ordinators will get to know people with learning disabilities and their families in their local communities and help identify their needs and ensure they are met. They must be able to help people with learning disabilities and people with autistic spectrum disorders access direct payments.

120. **Direct Payments Scotland** has produced a Five Steps Guide¹, which helps local authorities to plan and set up direct payments. (See Annex B for contact details.)

Support

121. Research² shows that developing a support system is a prerequisite of a successful direct payment provision. Research also shows that the existence of a local user-led support organisation reduces the work of the local authority. It is therefore **imperative** that local authorities arrange for people to have access to this type of support particularly in the early stages. A support service helps to produce better outcomes for both direct payments recipients and local authorities. The level of investment a support system needs will partly depend on the type of service provided. It also needs to be proportionate to the expected number of people receiving direct payments - the more people that receive direct payments, the more support workers will be needed. It is important that the support comes from a user-led organisation, which should require service users on the management committee and may have service users as employees.

122. This section should be read in conjunction with *Five Steps - A Guide to Providing Direct Payments Support Services (2002)* produced by **Direct Payments Scotland**. It has also produced a fact sheet on *The Role of the Support Organisation*. (See Annex B for contact details.)

123. People who receive direct payments may need particular support when they first take on responsibility for managing their own services. People who are becoming employers for the first time may benefit from having access to someone with expertise in employment issues, or to a payroll service which will assist them with tax, National Insurance or other matters. A user-led support service may also be able to provide practical assistance. For example it could hold a list of local agencies, help contracting with agencies, help people to

¹ Five Steps: A guide for local authorities implementing direct payments (2002)

² Direct Payments: the impact on choice and control for disabled people - Witcher et al - Scottish Executive (2000) also Creating Independent Futures - An Evaluation of Services Led by Disabled People - Barnes et al, (2000) The Disability University of Leeds.

draft advertisements, job descriptions and contracts, provide rooms for interviews and assistance with interviewing, or act as an address for responses to advertisements. A support service might also arrange training, for example in budgeting or assertiveness skills. Scottish Personal Assistants Employers Network (SPAEN) can also provide advice and information about employing personal assistants. (See Annex B for contact details.)

124. People who receive direct payments may also find it helpful to have access to advocacy support. A support service may be well placed also to act as an advocate for local users as a group, particularly when the local authority is considering changes to the provision. 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.

125. Local authorities should also consider whether it would be helpful for other people to have access to any support service. For example, carers may need advice about how direct payments work, particularly if they are assisting their friend or relative with managing the payments. Attorneys and guardians might find this helpful as well. People who are self-funding their services may also welcome the advice of a support service. It may also be helpful for employees of people receiving direct payments to have access to training or support.

Supported decision making

126. The Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act") sets out a framework for regulating the intervention in the affairs of an adult who has impaired capacity in a wide range of property, financial and welfare matters. Any intervention should be consistent with the 2000 Act's principles. It starts from the premise that everyone has the capacity to consent until proved otherwise. Under the 2000 Act a person will not be treated as being incapable of giving consent to direct payments purely on the basis that he or she has, or are suspected of having a learning difficulty. Similarly, an individual person will not be treated as being incapable of making a decision about one aspect of his or her life, simply because he or she has been deemed incapable in other areas.

127. Each decision relating to capacity can only relate to that particular decision making area. Local authorities need to be clear about what choices and decisions are involved in consenting to direct payments. For example is the individual consenting to stay in his or her own home, or to be able to choose a support worker, or to go on a college course one day a week instead of to the day centre? An assessment about capacity to consent needs to be clear about an individual's ability to express preferences about all areas of their life in order for a judgement to be made about the choice and control an individual has over the decision to have direct payments and what this will mean for them.

128. Research¹ has shown that people with learning difficulties, when given the right support, can exercise control over their own services enabling them to achieve a better quality of life. It is important to put in place appropriate safeguards (i.e. supported decision making in the form of a User Controlled Trust, 'Circle of Support', or advocate) so that people who might be regarded as being vulnerable are not exploited or exposed to risk from abuse. It is also necessary to ensure that control does not slip or pass to third parties. Local authorities should satisfy themselves that the support structure is appropriate and that adequate time is allowed for the relationship to develop between the individual and the people providing the support. Supported decision making is the best way to ensure an individual is able to consent to and exercise appropriate choice and control over direct payments. This approach emphasises the right of people to whatever assistance they need in order to be self-determining. It also highlights the process of making decisions. Further information on this is available in Values Into Action publications².

Independent advocacy

129. It is essential that local authorities ensure that people are able to access an independent advocacy service in their area. Local authorities must ensure that independent advocacy plays a role in the successful operation of direct payments. Where local support organisations also provide an independent advocacy service it is important that the operations are kept entirely separate.

¹ Making Decisions – Values Into Action (2001) and Funding Freedom 2000 - Values Into Action (1999).

² Trusting Independence: A Practical Guide to Independent Living Trusts; (2) Making Decisions: best practice and new ideas for supporting people with high support needs to make decisions, and (3) Funding Freedom: People with Learning difficulties Using Direct Payments.

130. In general, independent advocacy can help to:

- promote respect for the rights, freedoms and dignity of people, both individually and collectively;
- ensure people receive the care or services to which they are entitled, and which they wish to receive;
- enhance people's autonomy;
- assist people to live as independently as possible and in the least restrictive environment; and
- help protect disadvantaged people from abuse and exploitation.

131. The Minister for Health and Community Care has been explicit in his expectation that all NHS Boards, in partnership with their local authority planning partners, should ensure that independent advocacy is available to all those that need it. Further assistance and copies of the guidance¹ are available from the Advocacy Safeguards Agency (see Annex B for details).

Summary

Local people and local organisations representing people who use direct payments should be consulted fully about direct payments. Carers and service providers should also be involved in the process.

Detailed information about direct payments must be made available separately in formats that are accessible to people with different forms of disability and to people whose first language is not English.

Local authorities must ensure that independent advocacy plays a role in the successful operation of direct payments.

Information about direct payments should be included in Community Care Plans and Partnership in Practice agreements.

It is essential that local authorities arrange for people to have access to local user-led support, if they wish.

Supported decision making in the form of a User Controlled Trust or a Circle of Support can help the individual exercise control and choice and put in place safeguards to protect the individual from abuse or exploitation.

¹ Advocacy: A Guide to Good Practice; Independent Advocacy: A Guide to Commissioners and Independent and Advocacy: A Guide to Commissioners, Supplement.

Part 5: Direct payments in practice

Assessment for direct payments

132. Direct payments can only be offered to someone who has been assessed as needing either community care or children's services (or in the case of parents, where their children have been assessed as in need of services). The decision to offer direct payments therefore follows the assessment of an individual's needs and capacity (with support if necessary) and the decision that provision is to be made in some form.

133. In addition to the local authority's assessment of the person's needs, if the person has expressed an interest in receiving direct payments and is eligible then the process will need to include an assessment of whether direct payments are appropriate. In particular, it will be necessary to build in time to assess whether the person is able to manage them. The person also needs time (and possibly support) to think through the implications of taking on direct payments and to consider whether this is what he or she wants. Local authorities should make the person (and their supporter(s) or representative(s)) aware of the possibility of receiving direct payments at an early stage to give as much time as possible to think about it. Local authorities should also give the person as much information as possible about what receiving direct payments will involve, before asking the person to make their decision.

134. Some people may already have clear views about the activities with which they need assistance. Others may need help or encouragement to play a more active part in the process. This may mean practical assistance, such as providing interpreters for those who are unable or find it difficult to communicate in spoken English, more intensive advocacy support to help people to think through and ask for what they need, or simply allowing them more time. In some areas, self-assessment forms designed by user groups have been used to prompt people to think through the tasks with which they need assistance before their needs are assessed by the local authority.

Carers and assessments

135. It is already good practice for local authorities to involve carers wherever appropriate in the assessment of the person they care for. The 2002 Act now formally requires local authorities to take account of the contribution of carers who provide (or intend to provide) "a substantial amount of care on a regular basis", and to take account of the views of the carer and the person they care for before deciding what services to provide to the cared-for person. They are to be regarded as key partners in the provision of care. Carers should be consulted and taken into account in the assessment process irrespective of whether the person being assessed is likely to be offered direct payments or services after the assessment.

136. Carers are also entitled to an assessment in their own right of their ability to care. Local authorities have a duty to carry out an assessment of a carer's ability to care if the carer requests this and is providing "a substantial amount of care on a regular basis" (under section 12A of the 1968 Act, as amended by the 2002 Act). The 2002 Act also gives local authorities a duty to inform carers that they may be entitled to such an assessment. A carer's assessment may be carried out separately, or combined with the assessment of the cared-for person.

137. The 2002 Act does not however, give carers an entitlement to receive services or direct payments in their own right. The purpose of any carer's assessment is to establish what level of care the carer is able or willing to provide, and establish what resources the carer needs to help them in their caring role, and maintain their own health and well being. Since carers have extensive experience and knowledge of the person they care for, an important aspect of the assessment is to seek the carer's views on the support needs of the person they care for.

138. In addition to taking account of the carer's views and contribution (see paragraph 135), the local authority must take account of the results of the carer's assessment, whether it is carried out separately, or as part of the assessment of the person they care for, in making decisions about the services to be provided to the cared-for person. This duty is not affected by the possibility that the cared-for person may be offered direct payments instead of

services. The Executive issued guidance in March 2003 about carers' rights to assessment following the 2002 Act¹.

Deciding how direct payments are to be used

139. In order to satisfy itself that the person's assessed needs will be met, each local authority should discuss with anyone to whom it proposes to offer direct payments, how that person intends to secure the assessed services. Local authorities should make clear to people, before they start to receive direct payments, what the money may or may not be spent on, the conditions attached and how much flexibility the person has over the way the money is spent. Local authority will wish to bear in mind that the aim of the policy is to give people more choice and control over the provision of the services (including equipment and temporary adaptations) they are assessed as needing. To achieve this, some flexibility over the way the money is spent will be necessary. The service purchased with a direct payment does not have to be the same as the service that the local authority would have arranged. The important thing is that the local authority is satisfied that the service will meet the assessed needs of the disabled person. However it is important to bear in mind the Regulations, which prevent people from using direct payments to secure services from their spouse, partner or a close relative living in the same household (paragraphs 80 and 81 refer).

140. By exploring innovative and creative options, it may be possible to identify alternatives that both cost less and meet the individual's needs more effectively. Where the individual's needs fluctuate over time, it will be important to discuss in advance how the direct payments will be used to secure a package of assistance which varies according to need. Local authorities may also wish to consider offering someone a combination of direct payments and services. A local user-led support organisation could offer help if the individual has any concerns about how direct payments could be used.

Purchasing services

141. Apart from the prohibitions set out in regulations or this guidance, local authorities should allow people to purchase services from anyone who is able to provide a service which will meet the individual's assessed needs. Local authorities cannot insist that a person

¹ <http://www.scotland.gov.uk/library4/HD/CCD2/00017023.aspx>

contracts only with an agency or service provider (in which case to provide these services the agency or provider may require to be registered with the Scottish Commission for the Regulation of Care ("the Care Commission")). Disabled people may contract with or employ individuals who are not regulated by the Care Commission, provided that those individuals do not fall within the list of persons excluded by Regulation 4 of the 2003 Regulations. (Paragraphs 80 and 81 give more details.)

142. Following the 2001 Act, certain community care services are subject to independent regulation by the Care Commission against subordinate legislation and national care standards. The Care Commission has been regulating day care provided by local authorities and independent and voluntary agencies (along with a range of other community care services, including those offender accommodation services, which were previously regulated) since 1 April 2002. Housing support service providers and child-care agencies have been subject to regulation by the Care Commission since 1 April 2003. Individuals providing childminding services are also required to be registered. Home care services will fall to be regulated - for the first time - from a later date, as will some other services such as the remaining offender accommodation, adult placement, adoption and fostering. An individual who wishes to purchase a registered service will now be able to find out about its quality from the Care Commission. Local authorities should make individuals aware that inspection reports on registered services, including any conditions on the registration, will be made available, by the Care Commission, to the general public by a variety of means including through the Internet¹.

143. While local authorities may only provide registered services, people who use direct payments can buy registered and unregistered services. It should be made clear to individuals that the new regulatory system does not cover situations where an individual employs a person directly whether paid for through direct payments or otherwise. In these circumstances the responsibility for ensuring the quality of service rests with the individual.

Enhanced Disclosures

144. The Executive is working with "Direct Payments Scotland" to establish a mechanism for direct payments recipients to access enhanced disclosures on the people they are about to

employ if they so wish. However it should be stressed that disclosure checks alone do not guarantee that a person is suitable to provide services, particularly children's services. Potential employers should be advised of the importance of having a rigorous recruitment procedure in place where the taking up of references is essential. The local authority should ensure that individuals are made aware of organisations that can offer help with these services and that the individual has all the assistance he or she needs.

Care/personal plans

145. Local authorities are reminded of existing guidance¹, which states that services to be provided or arranged and the objectives of any intervention should be agreed in the form of a care/personal plan, a written copy of which should be given to the individual and their carers. Similarly when planning services for a child, a local authority should draw up a plan in writing with the family. This guidance applies equally where direct payments are provided in lieu of services.

146. Care/personal plans in relation to direct payments will need to cover all the areas discussed between the local authority and the individual and set out clearly what has been decided. The plan should make clear to the individual what the money may or may not be spent on and how much flexibility he or she has in the way in which the money is spent. It should also include the type of variations to the package of services which the local authority would expect to be asked to approve in advance, the information the individual will be expected to provide for audit purposes and any other conditions which the local authority has set. Annex A to this guidance contains a checklist of points, which should be sorted out before direct payments start and which should be covered in the care/personal plan.

147. The Executive recommends that a contract be drawn up between the local authority and the individual. This document should set out, in easy to understand language, the duties of the local authority as well as the individual. "Direct Payments Scotland" can provide a sample letter of agreement for information. However, local authorities may wish to discuss the contents of such a contract/agreement with their legal advisers.

¹ See website at www.carecommission.com

Best value

148. Local authorities are reminded that they are required to operate within the principles of long-term best value. A local authority should consider carefully the cost-effectiveness of making direct payments against the services or equipment and temporary adaptations that it would otherwise arrange. For example, direct payments may necessitate a slightly higher investment to achieve long-term benefits and savings. In any comparison between the cost of direct payments and the cost of a service, the local authority should use the full cost of each, taking account of any administrative costs and other overheads. Local authorities may, if they choose, make direct payments at a greater cost than the cost of arranging the equivalent service. In considering whether the increased cost is justified, the local authority should take into account such factors as whether the person would be able to do more or to have a higher quality life or live more independently with direct payments. It is important for local authorities to recognise that there may be start up cost especially if the person decides to employ his or her own staff which may decrease once arrangements are in place.

Calculating the amount of direct payments

149. It is up to each local authority to decide on the amount of direct payments and on what they are supposed to cover. The Executive is not setting any limit on the maximum or minimum amount of payment, either in the amount of services it is intended to purchase, or on the value of the direct payments. The 1968 Act requires local authorities to make direct payments at a rate, which is equal to the local authority's estimate of the reasonable cost, (based on the principles of best value in paragraph 148 above) of his or her securing the provision of the preferred service. This means that direct payments must be sufficient to enable the recipient legally to secure a service of a standard that will satisfy the local authority that the person's needs are being met. Local authorities should consider the arrangements which each individual proposes to make when deciding on the value of payments. The following should be included in calculating the value of payments to employ personal assistants:

- Employers National Insurance;
- Employers Liability Insurance;

¹ Circular SWSG 11/91 Community Care in Scotland - Assessment and Care Management. See website at <http://www.scotland.gov.uk/library/swsg/index-f/c087.htm>

- Holiday pay;
- Sick pay & cover;
- Maternity pay & cover;
- Adoption pay & cover;
- Paternity pay & cover, and
- fees for payroll and bookkeeping.

In order to encourage good employment practice local authorities should also consider including the following in the direct payments calculation, where appropriate:

- training costs;
- emergency cover for staff absence;
- travel, subsistence and other costs likely to be incurred by a personal assistant to ensure that the personal assistant is not out of pocket, and
- administration - advertising, recruitment expenses.

Local authorities will need to discuss with the individual the arrangements that he or she is planning to make to meet these costs.

150. However, the local authority cannot be required to make direct payments to cover specific costs where there is a more cost-effective way of securing the service (whilst still enabling the individual to meet any legal requirements). Nor is the local authority obliged to fund particular costs which are incurred by the individual on a discretionary basis, which are not therefore essential in order to secure the service. Local authorities have discretion to decide whether to include an amount in the direct payments for costs, which they are not obliged to cover. Local authorities should bear in mind that if they set rates for personal assistants, which are too low, the individual might find it difficult to recruit and retain suitable staff.

151. The local authority should also discuss with the individual whether there are start up costs for the recipient, and what these costs might be, for example recruitment costs, and adjust initial payments accordingly.

152. There may be cases where an individual thinks that the total value of the direct payments should be greater than the local authority proposes and/or that his or her contribution should be less than the local authority proposes. In such cases, the local authority is under no obligation to increase the amount offered above the level which it considers reasonable to enable the recipient to secure the relevant services, taking account of the individual's contribution. (This is subject to the provisos in paragraph 149, which states that direct payments must be sufficient to enable the recipient legally to secure the required

service.) The local authority may decide to increase the amount nevertheless enabling the person to secure his or her preferred service if it is satisfied that the benefits of doing so outweigh the costs, subject to it still being cost-effective in comparison with services arranged by the local authority. The Executive encourages a consultative approach to reaching a decision about the level of direct payments. However, where a case cannot be resolved through discussion, the local authority should advise the individual that he or she might pursue the matter through the local authority's complaints procedure (see paragraph 188).

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

154. Direct payments recipients can use their own resources, for example ILF or Access to Work monies, to purchase additional or better quality services to those in their care/personal plan if they wish.

155. The Executive recommends that local authorities consider Factsheet 6¹ produced by "Direct Payments Scotland", which offers advice on how to calculate the amount of a direct payment.

¹ <http://www.dpscotland.org.uk/2002dp/factsheets/factsh6.asp>

Assessing a service user contribution

156. The 1968 Act enables the local authority to require the individual to make a financial contribution to the cost of the community care services he or she requires, by making direct payments of less than its estimate of the reasonable cost of securing the provision of the service concerned. Direct payments can therefore be made net of the contribution which the individual is expected to make. This is equivalent to local authorities' power under section 87 of the 1968 Act to levy a charge for services that they arrange.

157. There should always be fair and equitable treatment between people who receive services from the local authority and direct payments recipients. Therefore, in considering whether, and if so how, to ask individuals to make a financial contribution, local authorities should treat people who receive direct payments as they would have treated them under the local authority's charging policy if those people were receiving the equivalent services. In particular, local authorities are reminded that since 1 July 2002, people **aged 65 and over**, have been able to receive personal care services (at home) free of charge. Therefore, where a disabled person aged 65 or over, chooses to receive direct payments to purchase this element of personal care (at home) the individual should not be asked for a contribution. (Local authorities should refer to Executive circular CCD4/2002: Free Personal and Nursing Care¹, particularly Section 5: Payment Mechanisms.)

158. Payments may also be made on a gross basis whereby the recipient receives payment for the full cost of the service and his or her assessed contribution can be recovered at a later date. In particular gross payments may be more appropriate for people, who are also receiving housing support services, as these are generally paid on a gross basis. Local authorities should take into account the views of users before deciding which approach to adopt.

159. Local authorities must ensure that when applying their charging policies to people who receive direct payments they must do so fairly and equivalently with people who receive services. Local authorities should refer to the Executive's circular No: SWSG 1/97: Charging

¹ See website at <http://www.show.scot.nhs.uk/sehd/ccd.asp>

for Adult Non-residential Sector Care¹ and CoSLA's guidance to local authorities on charging for non-residential care. While this is relevant in respect of housing support services it should be noted that people in receipt of housing benefit and those receiving housing support services on a short -term basis (up to 2 years) will receive these services free of charge. Also people who receive housing support services previously funded from the Special Needs Allowance package will also receive direct payments free of charge. Details can be found in the Supporting People Charging and Financial Assessment guidance².

160. Under section 22(4) of the 1995 Act, local authorities have discretionary powers to charge contributions for children's services where the means of the family are sufficient.

Making payments

161. It is up to local authorities to decide how frequently payments should be made. To ensure that people are in a position to pay for services as they are purchasing, it is good practice to make payments in advance. It is important that where direct payments are financed from more than one local authority budget the individual receives one single payment to cover all the services he or she has been assessed as needing. Local authorities will need to set up mechanisms that enable them to monitor payments which are made and which minimise the risk of money being misspent. In considering what procedures to put in place, local authorities should bear in mind the likely effect of different options on the circumstances of people who are likely to receive direct payments. Whatever the arrangements for payment, they will need to be reliable, as late or incorrect payments may put at risk the persons' ability to secure the services they need. The local authority may also need to set up procedures for making additional payments in emergencies, for example if needs change or regular payments go astray. Local authorities should tell people, before direct payments begin, how and when the payments will be made. Where payments are made directly to a bank account a written statement of the payment details should be sent to the individual for information.

¹ See website at <http://www.scotland.gov.uk/library/swsg/index-f/c172.htm>

² http://www.scotland.gov.uk/housing/supportingpeople/charging_financial_assess.asp

Monitoring direct payments

162. Consenting to receive direct payments means the individual taking on the responsibility for securing services to a standard which both the individual and the local authority consider is appropriate. The local authority is relieved of its responsibility to arrange services for that person, so long as it is satisfied that the needs to which the payments relate will be met through the arrangements made with the payments. However local authorities should not make assumptions that someone who is not receiving services to their satisfaction cannot manage direct payments. It follows that the local authority will need to set up monitoring arrangements so as to satisfy itself that arrangements are meeting needs.

163. Monitoring arrangements should be consistent both with the requirement of the local authority to be satisfied that the person's needs are being met and with the aim of the policy to increase choice and independence. Local authorities should seek to focus on whether the person's needs are being met, rather than on the service being delivered in a certain way. The local authority should discuss with the individual what steps it intends to take to fulfil its responsibilities in this area.

164. Each local authority will need to ask itself how it would know if someone was experiencing difficulty managing direct payments. It may be appropriate to rely on someone who has been managing his or her own services for some time to ask for extra help if he or she needs it. However, local authorities should not rely on people asking for help, particularly when someone begins to receive direct payments for the first time. Regular reviews should be arranged to ensure that the local authority has an opportunity to discuss the direct payment's arrangement with the individual (see paragraphs 170 to 172). Where a local authority wishes to ask the person whether he or she is satisfied with the services he or she is securing, it should ensure that it communicates directly with the person wherever possible. Local authorities should seek to ensure that people do not feel inhibited from expressing reservations about the services they are purchasing, or about any other problems they are having in managing their direct payments, by a concern that their direct payments will be stopped automatically or arbitrarily. A local independent support organisation or independent advocacy service may help some people raise issues, which are giving concern.

165. Direct payments packages which include health services will require to be monitored by personnel with the necessary expertise to judge whether these particular assessed needs are being met. In most instances this will mean that health care staff will need to be involved in the monitoring process.

166. Each local authority should also set up financial monitoring arrangements for audit purposes, to fulfil its responsibility to ensure that public funds are spent on the intended services. CIPFA have produced guidance for local authorities on this point and local authorities should ensure that up to date advice is being used.

167. For direct payments to work, it is essential that these two forms of monitoring are co-ordinated. The financial monitoring should be carried out by a finance officer and monitoring of the services by the care manager/social worker. It is essential that that monitoring information is exchanged internally and that all those involved understand the purpose of direct payments, and the role that the local authority's monitoring plays in the successful operation of the policy. In particular, information from both forms of monitoring should be considered in any decision to change the level of, or to stop, direct payments.

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

169. Local authorities should discuss with recipients the information they will be expected to provide and the way in which monitoring will be carried out. Direct payments should not begin until the recipient has agreed to any conditions, which are necessary for monitoring purposes.

Reviews and reassessments

170. It is essential that local authorities carry out regular reviews of the direct payment arrangements. The fact that the local authority is making direct payments rather than arranging services itself does not affect its responsibility to review the services the person

receives at regular intervals. The projected timing of the first review should be set when direct payments begin. People should be made aware that they might request a review sooner if their circumstances change. The purpose of the review remains to establish whether the objectives set in the original care/personal plan are being met. However at review time the local authority will also wish to be satisfied that the individual is protected from exploitation and abuse. The local authority will wish to speak to the individual on his or her own during the review. If the individual needs support the local authority should ensure that the person giving the support is not the person helping to manage the direct payments or the person providing the services. Local authorities may also wish to speak to family members, carers etc. to satisfy themselves that the person is not experiencing any difficulties with the services being bought with the direct payments. A local user-led support organisation or independent advocacy service may help some people raise issues, which are giving concern. Where an attorney, guardian or parent is consenting to the direct payments the local authority will also wish to discuss arrangements with them.

171. It may be helpful to consider first whether the person's needs have changed, before moving on to review how he or she is managing direct payments and how well direct payments are working.

172. Local authorities should follow existing guidance on carrying out reviews. While an individual's needs should be reassessed at least every 12 months, initially at least the review of how the direct payments are working may require to take place more frequently. Following the review, the amount of direct payments may need to be increased or reduced.

When difficulties arise

173. Difficulties can be minimised by good assessments, clarity (e.g. about what the money can be used for), effective monitoring and reviews, appropriate support arrangements (where these are necessary) and by discussing potential areas of difficulty, and how they will be handled, with the individual before direct payments begin. It is important not to assume that when problems do arise that the individual cannot manage the arrangements. Peer support from a user-led organisation can play an important part in helping people to work through any difficulties.

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

175. Examples of contingency plans which people who receive direct payments might make include making arrangements with independent agencies for emergency cover, or recruiting personal assistants who are prepared to work additional shifts at short notice when necessary. However, it remains possible that difficulties will arise which have not been anticipated and which cannot be covered by the arrangements the individual has made. In these circumstances, it will be helpful if the direct payments recipient knows they can contact a named individual in the local authority or a local support service whom they can ask for help.

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

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

- *Have the person's needs changed?* If so, the person's needs should be reassessed and the level of direct payments should be reviewed.
- *Is the amount of money sufficient to enable the person to secure the relevant services?*
It may be that experience shows that there are other costs which were not taken into

account when the cost was calculated initially, or that anticipated costs have not, in fact, arisen. It may be necessary to review the level of direct payments.

- *Is the person still able to manage direct payments?* Local authorities need to continue to be satisfied that people can manage direct payments. However, difficulties will not necessarily mean the person cannot manage. There is inevitably a learning process when people begin to receive direct payments and people may make mistakes, but still be capable of managing direct payments in the longer term. Even experienced direct payments recipients may have problems at times but with some support, be capable of overcoming them.
- *Does the person wish to continue receiving direct payments?* As long as the local authority considers direct payments are appropriate, it should attempt to enable people to overcome difficulties and prevent them becoming discouraged when they experience difficulties. However if someone has decided that he or she no longer wishes to receive direct payments, then the local authority should enable him or her to switch to services.
- *Has all the money been spent on the services for which it was intended?* If the money has been diverted to other purposes there may be a case for considering seeking repayment. There may be a case for requiring repayment of some of the money even where the person has secured services to meet his or her needs, for example if he or she has secured the service for less than the expected cost and so there is a surplus. However the local authority should bear in mind that there might be a good reason for a recipient to build up a surplus, e.g. to pay his or her employee's quarterly PAYE. The local authority should explain before someone begins to receive direct payments the circumstances in which it would seek repayment.
- *Have services for which the person has paid been received?* If not, then it is the responsibility of the individual to seek a refund from the service provider. If the local authority has made further provision for services to meet the same needs or if the services were not received because they were no longer required, then it may wish to consider requiring repayment of the direct payment from the individual.
- *Has the money been spent wisely?* If not, the person may need more support to enable him or her to manage, or the local authority may decide that he or she is not capable of continuing to manage direct payments and should receive services instead.
- *Are the services being purchased safeguarding the person's welfare?* If there is any doubt local authorities should speak to the individual receiving the services on his or

her own (whenever possible) and review the services being purchased with them. Where an attorney, guardian or parent is consenting to the direct payments the local authority will also wish to discuss arrangements with them.

178. Since the introduction of direct payments concerns have been raised as to whether or not local authorities could be held liable for the actions of the recipient. There are particular concerns about local authorities being held liable for the way in which recipients treat their employees and children being abused by personal assistants. It is important for local authorities to discuss these issues with their legal advisers where they are concerned. Local authorities should also discuss what might happen in these circumstances with recipients and carers as part of their overall planning, monitoring and reviewing of the way in which they operate direct payments. In particular a local authority will wish to stress that it cannot help directly with the recruitment of staff (i.e. advertising, interviewing and selection), or get involved with terms or conditions of employment. Local authorities should make individuals aware that user-led support organisations hold details of companies offering appropriate insurance to cover employer's liability.

Seeking repayment

179. The 1968 Act enables local authorities to require some or all of the money they have paid out to be repaid if they are not satisfied that it has been used to secure the services (or purchase the equipment or temporary adaptation) to which it relates. They may also require repayment if the person has not met any condition, which the authority has properly imposed, and those imposed by the regulations. Local authorities which decide to require repayment by someone who they know is also receiving payments from the Independent Living Funds (ILFs)¹ should inform the ILFs as soon as possible and should seek to agree if possible a common approach if the ILFs are also seeking recovery.

180. It is up to the local authority to decide when it is appropriate to seek recovery. However local authorities should bear in mind that this power is intended to enable them to recover money which has been diverted from the purpose for which it was intended, or which has simply not been spent at all. It should not be used to penalise honest mistakes. Local

¹ ILF website is available at: <http://www.ilf.org.uk>.

authorities should be satisfied before they start to make direct payments, that people who receive them understand all of the conditions they will be required to meet. Additional conditions should only be imposed insofar as they are necessary to ensure that the objectives of the Executive's policy in relation to direct payments are met and that the local authority's responsibilities (e.g. to monitor the use to which public funds are put) are discharged. Local authorities should take into account hardship considerations in deciding whether to seek repayments. When considering whether to recover unspent funds, local authorities should also bear in mind that there may be legitimate reasons for a recipient to build up an apparent surplus. This might involve outstanding legal liabilities, for example to pay an employee's quarterly PAYE, contingency funds to cover such eventualities as sick leave or to pay outstanding bills from an agency.

181. Local authorities should discuss with individuals, before direct payments begin, the circumstances in which it might wish to consider seeking repayment.

Discontinuing direct payments

182. Local authorities should not automatically assume when problems arise that the solution is to discontinue direct payments. If the local authority does decide to withdraw direct payments then it will need to arrange the relevant services instead, unless the withdrawal was following a reassessment after which it concluded that the services were no longer needed.

183. Either the local authority or the individual may decide at any time that they no longer wish to continue with direct payments. For example direct payments may be discontinued because:

- the local authority is not satisfied that the person's needs are, in fact, being met;
- the person is no longer able to manage direct payments;
- the person no longer requires a service, or
- the local authority has had cause to seek repayment of funds and has reason to fear that further payments may be misspent.

184. Clearly, wherever possible, the decision to discontinue should follow discussion with the individual and any carer, and the local authority should, in any case, keep the individual informed throughout the process. The local authority may also need to keep in touch with the ILFs and share information where appropriate in cases where the individual is also receiving ILFs funding.

185. The local authority should inform people as soon as possible if it is considering discontinuing direct payments, and if appropriate give them an opportunity to demonstrate that they can continue to manage direct payments. Local authorities should set a minimum period of notice, which will normally be given before direct payments are discontinued, and include it in the information to be provided to people who are considering direct payments. It may be necessary in exceptional circumstances to discontinue direct payments without giving notice. For example where a child is the service user and it is clear that his or her welfare is in not being safeguarded. In considering this course of action, local authorities will first need to take account of the individual's contractual responsibilities with a service provider or an employee. They will also have to take into consideration any outstanding financial liabilities the individual may have. Local authorities should explain to people, before they begin to receive direct payments, the circumstances in which they might be discontinued with no notice and discuss with them the implications this has for the arrangements that people might make.

186. There may be circumstances in which the local authority wishes to discontinue direct payments temporarily. For example when a person does not require assistance for a short period because he or she is in hospital, or because his or her condition improves. Similarly when a person is temporarily unable to manage direct payments (perhaps again due to fluctuation in his or her condition or the support available). In these cases, the local authority will need to discuss with the person how best to manage. The aim should be to enable the person to resume responsibility for his or her own services after the interruption, if that remains his or her wish. The local authority might decide to take over the management of the person's arrangements in the interim. In considering whether it is practical, desirable and cost-effective to maintain the person's arrangements, the local authority should bear in mind any contracts into which the person has entered. For example the local authority will not be able to take over a contract with a service provider which is not registered with the Care Commission. Likewise it may not be practicable for the local authority to take over the

employment of a personal assistant. The local authority should discuss with the person before starting to make direct payments what could happen in the event that direct payments are discontinued, albeit temporarily.

187. Where direct payments are discontinued, some people may find themselves with ongoing contractual responsibilities or having to terminate contracts for services (including possibly making employees redundant). The local authority will wish to discuss this with people before they begin to receive direct payments and agree how this would be handled. Local 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, the local authority should bear in mind that it may be difficult to recover money paid for services which were not in fact delivered. Local authorities should also consider that before his or her death the recipient might have incurred liabilities, which should legitimately be paid for using the direct payments. For example, he or she received services for which payment had not been made at the time of death. There may also be occasions where additional funding is required to settle liabilities in full.

Complaints procedures

188. Local authorities are required to operate a procedure for considering any representations (including any complaints) which are made to them with respect to the discharge of their functions or about any failure to discharge those functions. People who receive, or consider receiving, direct payments are entitled to have access to this procedure in the same way as anyone else for whom the local authority has a power or a duty to provide a service. It is important to ensure that people are aware of the complaint procedure, particularly when they are informed of a decision they may not welcome. People may make complaints about any action, decision or apparent failing of the local authority, but not about services which they have secured from independent providers (including people they employ directly) using direct payments. People should address any complaints that they have about the services they receive to the service providers. Alternatively, a complaint can be made to the Care Commission about any registered service or, indeed, about the actions of the Care Commission itself. Individuals will have recourse through the Scottish Public Services Ombudsman once all other avenues have been exhausted. Support organisations such as

SPAEN or the Independent Living Centres can provide information and advice about how to conduct a complaint.

Resources

189. Direct payments are an alternative to services that would otherwise be arranged by the local authority, so direct payments must be met from within existing overall resources. Direct Payments Scotland is working with four local authorities to carry out a finance action research project to consider how they might manage an increased take up of direct payments from 1 June 2003. In particular the work will focus on how existing budgets can be made more flexible and how a move towards direct payments might affect local authorities fixed resources. The project will conclude in autumn 2003 and the findings will be made available to all local authorities.

Statistical monitoring

190. The Executive will continue to monitor the progress of direct payments on a local authority basis. In particular it will be monitoring whether local authorities are carrying out their duty to offer direct payments to eligible people. Statistical Form F1 will be issued at the end of March each year for this purpose. A copy of the current form can be found in Annex D. Local authorities are advised to make sure that this information is collected throughout the year to ensure that the form can be completed in April each year.

Summary

Getting the assessment right is the key to making direct payments work.

Before consenting to direct payments, local authorities should be satisfied that individuals are clear about:

- their responsibilities;
- where they can get help, should they need;
- what the money may or may not be spent on;
- monitoring arrangements;
- payment details, for example, how much and how often;
- the amount of user contribution, and
- any other conditions attached to their use.

Direct payments must be made a rate that will enable the recipient legally to secure a service of a standard that will ensure that the person's needs are being met.

There should always be fair and equitable treatment between people who choose local authority services and direct payments recipients; this applies equally to charging arrangements.

It is essential that local authorities carry out regular reviews and monitor arrangements to satisfy themselves that:

- the individual is protected from exploitation and abuse;
- the individual's needs are being met, and
- the payments have been used as intended.

Peer support from a user-led organisation can help people to work through any difficulties.

Contingency plans are essential.

People must be made aware of the complaints procedure.

Annex A: Checklist for care/personal plan for direct payments

- What are the person's needs as identified in the assessment?
- To which of these needs do the direct payments relate?
- How will the person secure the appropriate services?
- What variations to the way in which the direct payments are used does the local authority expect to be asked in advance to approve?
- What support (if any) does the person 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?
- What arrangements will the local authority make when the person's emergency cover breaks down?
- How much money (giving a breakdown) does the local authority consider necessary to secure the appropriate services?
- How much of this total will the local 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 local authority propose for monitoring? How often? What information should the person provide? What access will be required to the person's home or financial records?
- What information does the local authority require for audit purposes, and when?
- 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 local authority consider discontinuing direct payments (permanently or temporarily)?
- How will the local authority and individual handle any temporary gap in direct payments being made?
- How much notice will be given if the local 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 local authority seek repayment?
- Has the client been made aware of the local authority's complaints procedure?

Annex B: Support organisation details

The following organisations may be able to give you information:

Direct Payments Scotland

27 Beaverhall Road

Edinburgh

EH7 4JE

Telephone Helpline: 0131 558 3450; Fax: 0131 558 5201; Minicom: 0131 558 5202

Email: info@dpscotland.org.uk ; www.dpscotland.org.uk

National Centre for Independent Living

250 Kennington Lane

London

SE22 5RD

Telephone: 0207 587 1663; Fax: 0207 582 2469

Email: ncil@ncil.org.uk ; www.ncil.org.uk

Scottish Personal Assistants Employers Network (SPAEN)

117-127 Brook Street

GLASGOW

G40 3AP

Telephone: 0141 550 4455; Fax: 0141 550 4858 Minicom: 0141 554 6482

Values Into Action

Oxford House

Derbyshire Street

London

E2 6HG

Telephone: 0207 729 5436; Fax: 0207 729 7797

E-mail: general@viauk.org ; <http://www.viauk.org>

People First (Scotland)

34b Haddington Place

Edinburgh

EH7 4AG

Telephone: 0131 478 7707; Fax: 0131 478 7404

E-mail: P1stScotland@aol.com

Lothian Centre for Integrated Living (LCIL)

Norton Park

57 Albion Road

Edinburgh

EH7 5QY

Telephone: 0131 475 2350; Fax: 0131 475 2392

E-mail: lcil@lothiancil.demon.co.uk ; <http://www.lothiancil.org.uk>

Centre for Independent Living in Glasgow (CILIG)

117-127 Brook Street

Bridgeton

Glasgow

G40 3AP

Telephone: 0141 550 4455; Fax: 0141 550 4838; Minicom: 0141 554 6482

UPDATE

27 Beaverhall Road

Edinburgh

EH7 4JE

Telephone: 0131 558 5200; Fax: 0131 558 5201; Minicom: 0131 558 5202

E-mail: info@update.org.uk

Advocacy Safeguards Agency

91 Hanover Street

Edinburgh

EH2 1DJ

Telephone: 0131 718 4373; Fax: 0131 718 4374

E-mail: jsnell@advocacysafeguards.org

Scottish Consortium for Learning Disability

Room 16, Adelphi Centre

Commercial Road

Glasgow G5

Telephone: 0141 418 5420 (fax 0141 429 1142)

E-mail: administrator@sclld.co.uk; <http://www.sclld.co.uk>

Annex C: Other sources of information

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

Direct routes to independence: A guide to local authority implementation and management of direct payments – published by the Policy Studies Institute (1999)

Five Steps: A guide to local authorities implementing direct payments – published by Direct Payments Scotland (2002)

Five Steps: A guide to providing direct payments support services– published by Direct Payments Scotland (2002)

Everything you need to know about getting and receiving direct payments – published by the National Centre for Independent Living (3rd edition 2001)

A guide to receiving direct payments – published by the Scottish Executive (2002)

An easy guide to receiving direct payments – published by the Department of Health (2000)

A rough guide to managing personal assistants – published by the National Centre for Independent Living

Direct Payments: the impact on choice and control for disabled people - published by the Scottish Executive (2000)

Direct what? – a study of direct payments to mental health service users – published by the Scottish Executive (2002)

Direct payments for mental health users/survivors: A guide to some key issues – published by the National Centre for Independent Living

Making decisions: best practice and new ideas for supporting people with high support needs to make decisions – published by Values Into Action (2001)

Funding freedom 2000: people with learning difficulties using direct payments – published by Values Into Action (1999)

Trusting independence: a practical guide to independent living trusts – published by Values Into Action (2001)

Ways to work – converting day services – published by SHS Trust

Your right to independent living - A guide to independent living, direct payments, ILF, and being an employer has template forms, guides on self assessment etc.– published by Lothian Centre for Integrated Living, (3rd edition summer 2002)

The same as you? – published by Scottish Executive (2000) available at <http://www.scotland.gov.uk/ldsr>

Direct payments: frequently asked questions – published by Scottish Consortium for Learning Disability (2002) - available from Direct Payments Scotland

Creating independent futures, an evaluation of services led by disabled people - published by The Disability Press, School of Sociology and Social Policy, University of Leeds (2000)

The future challenge for direct payments - published by Disability and Society, 17, 7, pp. 797-808- Carmichael, A. and Brown, L. (2002)

Social work and direct payments - published by Bristol, Polity Press- Glasby, J. and Littlechild, R. (2002).

Direct payments: issues for service providers - published by Community Care Providers Scotland - (written by the voluntary sector) (2002)

For further details about these publications please contact Direct Payments Scotland.

Annex D: F1 Statistical return form

THE SCOTTISH EXECUTIVE

Social Work Statistics Unit

FINANCIAL PROVISION 2003

Name of Local Authority:	
Contact name:	
Telephone number:	

Completed forms should be emailed to:

SWStat@scotland.gsi.gov.uk

Or sent directly to:

The Scottish Executive Health Department
Social Work Statistics Unit
Room 2N:08
St Andrews House
EDINBURGH
EH1 3DG

Complete forms are required by 27 April 2003.
If you have any queries, please contact Steven Gillespie on (0131) 244 3777.

A: FINANCIAL PROVISION

Details of financial assistance given in period 1st April 2002 to 31st March 2003 (cash or vouchers). This should **only** include payments made under Section 12 of the Social Work (Scotland) Act 1968.

Table 1: Payments made under section 12 of the Social Work (Scotland) Act 1968

Details of Financial Provision	Number of Payments	Amount of Grant/ Loan	Amount Recovered
Energy			
Rent			
Travel			
Food			
Asylum Seekers			
Other			
TOTAL			

Details of financial assistance given in period 1st April 2002 to 31st March 2003 (cash or vouchers). This should **only** include payments made under Section 22 and 25 of the Children (Scotland) Act 1995.

Table 2: Payments made under section 22 and 25 of the Children (Scotland) Act 1995

Details of Financial Provision	Number of Payments		Amount of Grant/ Loan	Amount Recovered
	Section 22	Section 25		
Energy				
Rent				
Travel				
Food				
Day Care for Children in need				
Asylum Seekers				
Other				
TOTAL				

B: DIRECT PAYMENTS

Section B refers to payments made under the Section 12B of the Social Work (Scotland) Act 1968. Direct payments are cash payments made directly by the Local Authority to a disabled person to purchase services the Local Authority would normally arrange. That person has complete control of the payments and responsibility for how they are spent.

Please include details of direct payments made in period 1st April 2002 to 31st March 2003.

Number of Clients

Client Group	Age			
	16-17 years	18-64 years	65 + years	Total
People with Physical Disabilities				
People with Learning Disabilities				
People with Mental Health Problems				
Disabled Parents *				
Other, please specify below				
Total				

* See Community Care circular number CCD9/2001 for further information. From 20th December 2001, disabled parents were able to access direct payments to purchase Children's services.

Value of Payments

Client Group	Age			
	16-17 years	18-64 years	65 + years	Total
People with Physical Disabilities				
People with Learning Disabilities				
People with Mental Health Problems				
Disabled Parents *				
Other, please specify below				
Total				

If you have included any payments in the 'Other' client group category then please specify the reason for making the direct payment below:

Annex E: "Direct Payments Scotland" factsheets

Factsheet 1

Proposed Changes to the Direct Payments Regulations

Factsheet 2

The role of the Direct Payments Organisation

Factsheet 3

Monitoring and Review of Direct Payments

Factsheet 4

The Basics of Business Planning

Factsheet 5

Models of Disability

Factsheet 6

Calculating a Direct Payment

Factsheet 7

Direct Payments and Support from Agency Providers

Factsheet 8

The Basics of Fundraising

Factsheet 9

Running a Payroll Service

Factsheet 10

Help with Consenting To and Managing Direct payments