

A summary of changes to direct payments

What are direct payments?

Direct payments are monetary payments made by councils directly to individuals who have been assessed as having eligible needs for certain services. Subject to a few exceptions, councils must offer people who qualify for services the option of having a direct payment if they are eligible for this. Direct payments are one way in which people can direct their own support by purchasing the assistance or services that the council would otherwise provide. They are crucial to delivering the personalisation agenda as set out in *Putting People First*.

What is changing?

From 9 November 2009, important changes will take place. New regulations will extend the direct payments scheme to people who lack the capacity to consent, and to people with mental health problems who are subject to mental health and certain criminal justice legislation.

Guidance for councils on direct payments has been updated to reflect these changes. This leaflet sets out these changes and explains where you can find more information.

Direct payments for adults lacking capacity to consent

From November 2009, all councils must offer direct payments to certain eligible adults who lack the capacity to consent to receive them. Direct payments can now be made to a willing and appropriate 'suitable person', such as a family member or friend, who receives and manages the payments on behalf of the person who lacks capacity.

People benefiting from this extension of the direct payment scheme may include, for example, some adults with head injuries and some people with dementia. In addition, severely disabled children moving into adulthood, who would previously have lost the direct payments they received as a child, can now continue to receive them on reaching the age of 18.

The guidance describes the process to be followed for appointing a suitable person, the conditions to be met by the suitable person, and includes advice on disputes, when advocacy may be appropriate, approaches to risk, and safeguarding. (See paragraphs 184 to 206 of the guidance for details.)

Direct payments for people subject to mental health legislation

Councils now have the same duty to offer direct payments to eligible people who are subject to mental health legislation as they do to anyone else in all but the following cases:

- People who are on conditional discharge from hospital under the Mental Health Act 1983 or the Mental Health (Care and Treatment) (Scotland) Act 2003, where councils will now have a power (but not a duty) to offer direct payments.
- In respect of a service which a person is obliged to accept as a condition of relevant legislation*, councils are not required to offer direct payments for that particular service – but have a power to do so. This includes conditions attached to guardianship, leave of absence from hospital or a community treatment order under the Mental Health Act 1983 and certain provisions in criminal justice legislation. (This means that councils now have a duty to offer direct payments to such a person in respect of a service which is not the subject of a condition if the person is eligible.)
*(All the relevant legislation is listed in Schedule 2 of the new regulations. See also the bullet points in Annex B of the guidance.)

People who are still excluded

People who are subject to drugs and alcohol-related provisions of some criminal justice legislation remain excluded from receiving direct payments. The legislation in question is listed in Schedule 1 of the new regulations. (See also Annex C of the guidance.)

Where can I find out more?

For more information on Direct Payments, please see the updated guidance for councils, *Guidance on direct payments for community care, services for carers and children's services*. The user guide, *A guide to receiving direct payments from your local council*, has also been updated.

The guidance for councils, the user guide and the new regulations can be found on the Department of Health (DH) website at:
www.dh.gov.uk/en/SocialCare/Socialcarereform/Personalisation/Directpayments/DH_076522

The guidance (ref 296235) and user guide (ref 296787) are available in hard copy from the DH order line by visiting: www.orderline.dh.co.uk.