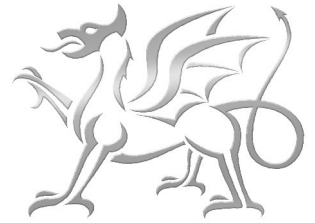


Number: **WAG10-12242**



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

www/cymru.gov.uk

Direct Payments Guidance

Community Care, Services for Carers and
Children's Services (Direct Payments) (Wales)
Guidance 2011

CONTENTS

Foreword	7
Glossary	8
1. Introduction	
The legislative basis for direct payments	11
Key changes made by the Regulations	12
Scope of direct payments legislation	12
Overview of direct payments	14
2. Developing direct payments services locally	
Consultation	17
Commissioning	17
Support services	17
Independent advocacy	20
Support for young disabled people	20
Complaints procedure	21
3. Consent, capacity and ability to manage	
Consent	22
Capacity to consent	23
Assessing capacity to make a decision	23
Fluctuating capacity	24
Ability to manage	26
Advice on making decisions about the ability to manage	27
Long-term considerations	28
Enduring and lasting powers of attorney	28
Representatives	29
4. Using direct payments	
Support for people with communication difficulties	30
Setting up direct payments	30
Assessment and care plans	31
Short-term needs	32
Short term care in a care home	33
People in residential care	33
Equipment	34
Calculating the amount of direct payments	35
Financial contributions	36
Making payments	37
Transfer to direct payments from direct provision	38
Monitoring payments	38

5. Specific delivery issues

Choice and risk	39
Health and safety	39
Close relatives	40
Direct payments recipients as employers	41
Criminal Records Checks and employing someone suitable	42
children and young people	42
adults	43
The Vetting and Barring Scheme	43

6. Where additional support is required

Parents and children / young people	45
Direct payments to disabled people with parental responsibility for a child	45
Direct payments to a person with parental responsibility for a disabled child	45
Intimate care for a disabled child using direct payments	46
Childcare and childminding	46
Transition from children's to adult services	47
Direct payments for adults lacking mental capacity to consent	48
Appointing a suitable person	49
Conditions to be met by the suitable person	51
Principles of best interest	51
Where disputes arise	52
Advocacy	52
Approaches to risk	53
Safeguarding	53
Direct payments to people subject to mental health legislation	54
Direct payments for carers	55
Young carers	55

7. Monitoring and reviews

General	57
Reviews for adults who lack capacity	58
Financial monitoring	58
Monitoring local implementation	59

8. Troubleshooting

When difficulties arise	61
When to seek repayment	62
Discontinuing direct payments	63
Reasons for discontinuing direct payments	63
Discontinuing direct payments in the case of individuals with capacity to consent	64
Discontinuing direct payments in the case of individuals lacking capacity to consent	65
How to discontinue direct payments	65

Annexes

Annex A: Examples of areas to be covered in a care plan for an individual receiving direct payments	67
Annex B: Power to make direct payments	69
Annex C: Exclusions to direct payments	70
Annex D: Further information	71
Annex E: Contacts	75
Annex F: Advice about employing someone using direct payments	78
Annex G: Questions to ask	80

Foreword

Direct payments are monetary payments made by local authorities directly to individuals who have been assessed as having community care needs that are eligible for certain services (including to people who care for others). Direct payments enable individuals to purchase the assistance or services that the local authority would otherwise provide. They therefore give individuals control over their own life by providing an alternative to social care services provided by a local authority. This helps to increase opportunities for independence, social inclusion and enhanced self-esteem.

Since the original legislation was passed in 1996, direct payments have gradually been extended to include older people, carers, parents of disabled children, and disabled 16 and 17 year olds, as well as disabled adults. From 11 April 2011 the scope of direct payments will be further extended to people who lack capacity or who are subject to mental health legislation. The Welsh Assembly Government has taken this opportunity to revise the policy and practice guidance that was issued in 2004. It is hoped that this revised guidance will act as a valuable reference point for local authorities in operating their direct payments schemes, as well as helping them to make the changes that are needed to comply with the new legislation.

Direct payments play an important part in giving citizens greater voice and control over the services they receive, in line with the Assembly Government's commitment to developing citizen-centred services. 'Sustainable Social Services for Wales: A Framework for Action' (February 2011) gave a commitment to working with stakeholders (and particularly service user groups) to develop a model of self-directed support that is consistent with the principles for social care which have been adopted in Wales. The Assembly Government hopes that extending direct payments to formerly excluded groups of people will allow more disabled people and their carers to make their own decisions and control their own lives.

This guidance is written primarily for the use of local authorities. It explains how direct payments schemes should be developed locally, how issues of consent, capacity and ability to manage should be approached, and how direct payments should be used. It sets out specific delivery issues, explains where additional support is required and available, and describes the monitoring and review process. It also includes a section on troubleshooting. Further information and contacts are included in the annexes.

Further, non-statutory, guidance has been developed by the All-Wales Direct Payments Forum around the identification, role and monitoring of 'suitable persons'. The Assembly Government also intends, in response to consultation feedback, to produce an 'easy-to-read' summary version of this policy and practice guidance, for issue later in 2011. The Assembly Government will continue to work with stakeholders to keep the direct payments arrangements under review, to ensure that opportunities to improve and/or enhance the scheme are identified and implemented.

Glossary

Advocate – a person who acts on behalf of, and in the interests of, an individual service user/direct payment recipient who feels unable to represent themselves when dealing with professionals. An **independent advocate** has no vested interest in the service or legal system, solely represents the individual and helps them to clarify their opinions and choices and supports them to voice their wishes and feelings. They are not a relative, friend or care professional, thus avoiding conflicts of interest. **Self-advocates** are trained and supported to represent their own views.

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

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

Best interests – see the 'Principles of best interest' in the text box on page 50 of this guidance.

Capable of managing a direct payment – able (with or without support) to use a direct payment in a way that will meet the outcomes set out in the individual's care plan.

Capacity – for the purposes of the Mental Capacity Act 2005, an individual lacks capacity in relation to a matter if at the material time they are unable to make a decision for themselves in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain. It does not matter whether the impairment or disturbance is permanent or temporary. A lack of capacity cannot be established merely by reference to an individual's age or appearance or to a condition they may have, or an aspect of their behaviour that might lead others to make unjustified assumptions about their capacity.

In the context of this guidance, the decision in question is the decision whether to consent to the making of direct payments.

Certain principles apply under the 2005 Act. These are that:

- a person must be assumed to have capacity unless it is established that they lack capacity;
- a person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success; and
- a person is not to be treated as unable to make a decision merely because they make an unwise decision.

Close relative – someone related in the following ways to the individual benefiting from direct payments: parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, step son or daughter, brother or sister.

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

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

Decision making – the process of making choices that lead to decisions and action. The word ‘decision’ is also used in legal contexts. Some individuals require support (for example, communication support or advocacy) to consider and make decisions.

Deputy – a person appointed by the Court of Protection (in accordance with section 16 of the Mental Incapacity Act 2005) to make decisions for an individual who is unable to do so on their own. Depending on circumstances, a deputy can be appointed as:

a deputy for property and affairs, or
a deputy for personal welfare.

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

Parental responsibility – in the Children Act ‘parental responsibility’ means all the rights, duties, powers, responsibilities and authority of parents in relation to the child and their property. People other than parents, for example grandparents or guardians, can have parental responsibility for a child. Further guidance on parental responsibility can be found in ‘The Children Act 1989: Court Orders: Guidance and Regulations: Volume 1’.

Power of attorney – authority given by one person to another to act on their behalf. The Mental Capacity Act 2005 replaced enduring powers of attorney (EPAs) with lasting powers of attorney (LPAs) from 1 October 2007. As of this date it is no longer possible to create a new EPA. Existing but unregistered EPAs can continue to be registered after 1 October 2007. LPAs were introduced by the Mental Capacity Act 2005 from 1 October 2007. They allow individuals to appoint an attorney to make decisions about their property and financial affairs (or specified property and affairs) and/or to make decisions about their personal welfare (or specified matters concerning their personal welfare). Such attorneys may continue to make these decisions when the person who appointed them lacks the capacity to make these decisions themselves.

Suitable person - means a person appointed to receive and manage direct payments on behalf of an individual who lacks capacity to consent to the making of the direct payments. The suitable person can be:

a **surrogate** who is a donee of a lasting power of attorney created by the individual or a deputy appointed by the Court of Protection who has been given powers relating to decisions about securing community care services to meet that individual’s needs; or

a representative who is either a court-appointed deputy appointed by the Court of Protection or a donee of a lasting power of attorney created by the individual whose powers do not relate to decisions about securing community care services to meet that person's needs; or

another family member or friend who may have been involved in the care of the individual eligible for services (where a surrogate exists then their consent to appoint another family member or friend as a suitable person must be obtained); or

a person appointed by the local authority, in situations where the other alternatives do not apply

In all cases, the local authority will need to be satisfied that (i) a direct payments arrangement is in the best interests of the individual who lacks capacity, and (ii) that the suitable person also acts in the best interests of that individual when managing the direct payments arrangement.

User-controlled trust – a legal arrangement whereby a third party/agent helps the individual receiving direct payments to manage the direct payments - for example, by receiving and handling the money. The individual's choices and preferences direct the decision-making and, where the individual has the capacity to consent to direct payments, they retain control of and is accountable for the arrangements.

1. Introduction

1.1. This guidance has been written primarily for use by local authorities. It aims to assist local authority social services in making direct payments, including how they might manage and administer such payments. It applies to children's and adults' services and to services for carers.

1.2. This guidance is issued under Section 7 (1) of the Local Authority Social Services Act 1970. It replaces the Direct Payments Policy and Practice Guidance 2004 and reflects a number of changes that have occurred since the 2004 guidance was issued.

The legislative basis for direct payments

1.3. Direct payments are a different way of delivering certain existing social services responsibilities where there is an assessed eligible need. Generic policy and practice guidance on those social services that are the subject of direct payments also applies.

1.4. Direct payments were introduced in relation to social care services for adults through the Community Care (Direct Payments) Act 1996, which inserted section 17A into the Children Act 1989. The 1996 Act was repealed by the Health and Social Care Act 2001 ('the 2001 Act') and direct payments are now governed by the 2001 Act and the Children Act 1989 ('the 1989 Act'). The 2001 Act substituted a new section 17A into the 1989 Act.

1.5. The power to make direct payments to people with parental responsibility for disabled children and to disabled 16 and 17-year-olds was created by the Carers and Disabled Children Act 2000 ('the 2000 Act') and is contained in section 17A of the 1989 Act. In making direct payments under section 17A of the 1989 Act, local authorities are subject to the general duty provided by Part 3 of that Act to safeguard and promote the welfare of children in need, and to promote their upbringing by their families when making these payments, in exactly the same way as when providing direct services. Before making any decision about providing direct payments, the local authority must ascertain and give due consideration to the child's wishes and feelings (section 17(4A) of the 1989 Act).

1.6. This guidance reflects the changes introduced mainly by amendments made to section 57 of the 2001 Act by section 146 of the Health and Social Care Act 2008, and also changes introduced by the Mental Capacity Act 2005 ('the 2005 Act') and by the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011 ('the Regulations'). The broad effect of these changes is to extend the current system of direct payments to include people who lack the capacity, within the meaning of the 2005 Act, to consent to the making of direct payments, and to remove the exclusions which currently apply to people who are subject to various provisions of mental health legislation (particularly the Mental Health Act 1983 ('the 1983 Act')) and to provisions of criminal justice legislation relating to mental disorder. The Regulations came into force on 11 April 2011.

Key changes made by the Regulations

1.7. The most significant change introduced by the Regulations is the extension of direct payments to groups which were previously excluded due to a lack of capacity to consent to them. This will include, for example, some adults with head injuries, some people with dementia, and severely disabled children moving into adulthood (who would lose their direct payment under the previous legislation). Under the new arrangements, direct payments may be made to a 'suitable person' who can receive and manage the payment on behalf of the person who lacks capacity. One of the key beneficiaries will be young adults with learning disabilities and their parents, who will now continue to be eligible for direct payments once their child reaches 18 years of age.

1.8. The Regulations have also amended the list of people excluded from a direct payments arrangement. The main change is that people subject to compulsory measures under the 1983 Act (and similar legislation) will be potentially eligible to participate in a direct payments arrangement. Local authorities will have a discretionary power but not a duty to make direct payments to such individuals. The list has also been amended to reflect the provisions of the Criminal Justice and Licensing (Scotland) Act 2010, which came into force on 1 February 2011. This amendment excludes those who are subject to a Community Payback Order (a new type of community disposal imposed by the Scottish courts), where that Order includes mental health, alcohol or drug treatment requirements.

1.9. A further change is the removal of the requirement for local authorities to carry out a financial assessment when determining what amount is reasonably practicable for an individual receiving direct payments to pay towards securing the provision of residential accommodation. This brings the position into line with that for temporary residential accommodation directly provided by the local authority. In addition, as a result of the commencement of the Social Care Charges (Wales) Measure 2010, and the bringing into force from 11 April 2011 of regulations made under this, local authorities have changed powers and duties in relation to charging adults for non-residential social services. While authorities retain under the Measure the discretion to charge or seek a reimbursement or contribution from the recipient of direct payments, and where they do so to set the amount of a reasonable charge / reimbursement or contribution for this, new duties upon authorities in both the Measure and the regulations govern the way local authorities exercise their powers and duties in this respect, and provide additional financial safeguards for service users, including those who pay a reimbursement or contribution for their direct payments.

Scope of the direct payments legislation

1.10. Not all social care services are included in the legislation relating to direct payments (listed in paragraphs 1.3 to 1.6 above), although a great many of the services for which local authorities are responsible are. The Regulations and the 2001 and 1989 Acts provide that the duty to make direct payments applies to:

a community care service within the meaning of section 46 of the National

Health Service and Community Care Act 1990; or
a service under section 2 of the 2000 Act; or
certain services which local authorities may provide under section 17 of
the 1989 Act (provision of services for children in need, their families and
others).

1.11. Where a local authority makes a direct payment, it retains its functions with respect to overall provision of the service under the applicable social services legislation. So long as the authority is satisfied that the individual's assessed needs will be met through the direct payment, the authority is not obliged to provide or arrange those services for that individual.

1.12. In a few cases (see paragraph 1.13 below), local authorities have a power rather than a duty to make direct payments. Otherwise, direct payments **must** be made to all other individuals who are eligible to receive them and who want them. This might include those people in the groups listed below who have been assessed as needing relevant services:

Adults and young people over the age of 16

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

A person with parental responsibility for a disabled child and a disabled person with responsibility for a child

This may include a parent or others, such as a grandparent, with parental responsibility for a disabled child. Not all parents have parental responsibility for their children. Conversely, a carer may acquire parental responsibility for a child, usually as a result of a court order, even if they are not one of the child's parents. This definition may also include a disabled person with parental responsibility for a child.

Carers aged 16 and over

A local authority may decide that an individual requires services because they provide, or intend to provide, a substantial amount of care on a regular basis for someone aged 18 or over. Carers (but not employees, persons working under contract or volunteers for a voluntary organisation) may obtain direct payments in respect of their own needs for services as carers.

An appointed 'suitable person'

This means a person appointed to receive and manage direct payments on behalf of an individual who lacks capacity to consent to the making of the direct payments (provided that person is willing and meets all the conditions set out in the Regulations). The suitable person will often, but not always,

have been given a lasting power of attorney or have been appointed by the Court of Protection as a deputy under the 2005 Act. Usually the suitable person will be a family member or friend who may previously have been involved in the care of the individual eligible for services.

1.13. In the vast majority of cases it is expected that local authorities will have a duty to make direct payments to individuals with eligible needs. However, there are some exceptions in respect of certain people subject to mental health legislation or aspects of criminal justice legislation relating to mental disorder, where local authorities may have a power rather than a duty to make direct payments. More detail about these exceptions can be found in the section on direct payments to people subject to mental health legislation (paragraphs 6.51 to 6.57).

1.14. People who have been placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies are excluded from receiving direct payments. The relevant criminal justice provisions are listed in Annex C. In such cases, the local authority still has a duty to provide services to meet the eligible needs of the individual, although direct payments cannot be made in respect of such needs.

1.15. Each eligible individual must be offered the choice of having their needs for a relevant service met through direct payments. If individuals wish, local authorities can arrange mixed packages with some directly provided services and direct payments for other needs as part of the support planning process. This can, for example, give somebody the opportunity to familiarise themselves with managing direct payments before taking on responsibility for arranging support to meet all their needs.

Overview of direct payments

1.16. The overall aim of direct payments is to increase independence and choice by giving individuals control over the way services are delivered to meet their assessed needs. Under a direct payments arrangement, day-to-day control of the money and support package passes to the person who has the strongest incentive to ensure that it is properly spent on the care and support required, and who is best placed to judge how to use available resources to achieve the desired outcomes identified in the care plan. Depending on the circumstances, this person may be the individual benefiting from the direct payments arrangements, or someone else nominated to receive the direct payments on their behalf. In the case of disabled children, or children with disabled parents, a person with parental responsibility for the child (usually the parent) buys support to meet the needs of their child or the child's family. In the case of an individual who lacks capacity to consent, a 'suitable person', such as a family member or friend, is appointed to use the direct payments to arrange care and support to meet the individual's needs.

1.17. Wherever an individual is assessed as needing social care services, an authority must check whether there is a duty or a power to offer direct payments in respect of that service. In respect of the services to which direct payments apply, a direct payments arrangement must be considered when deciding how best to meet

an individual's assessed care and support needs. If the conditions are met, in most cases the local authority will have a duty to offer direct payments.

1.18. An individual does not have to accept direct payments. If they wish, they can choose instead to receive services that are provided or arranged by the local authority, or a 'mixed care' delivery package (where some services are provided directly by a local authority and other needs are met through direct payments). In these circumstances, the individual is still exercising choice over how their support is delivered.

1.19. Direct payments do not have to be used in the same way as if support was being provided directly by the local authority. Indeed, they are intended to give the individual the maximum degree of choice and control over how their eligible needs are met. As a first principle, local authorities should aim to leave choice in the hands of the individual, allowing individuals to address their own needs as they consider best, while satisfying themselves that the agreed outcomes are being achieved. Where a child is assessed as needing services under section 17 of the 1989 Act, the local authority also has to be satisfied that the direct payments will 'safeguard and promote' the welfare of the child for whom the service is needed.

1.20. Local authorities must ensure that they do not unfairly influence individuals in making their choices about whether or not they participate in a direct payments arrangement. This includes ensuring that people from all client groups have equitable access to the choice that direct payments bring - whether the individual is an older person, a disabled adult of working age, a person with a mental health condition, a carer, or a disabled child or young person; and whether or not the individual has the capacity to consent to receiving direct payments.

1.21. Local authorities should ensure that individuals assessed as having eligible needs are not put off from considering or accepting direct payments by a lack of adequate information about how their care needs can be met, or the level of help and support that is available to them in managing the direct payments arrangement.

1.22. Local authorities should also be proactive in making arrangements to ensure that their direct payments scheme is fully inclusive, regardless of (for example) an individual's age, gender, ethnic group, religion or belief, sexual orientation, particular impairment, personal relationships, living and caring arrangements, or whether they live in an urban or rural area. Local authorities need to be aware of their obligations under the equality and anti-discrimination legislation.

1.23. Direct payments can be made to parents with parental responsibility for a disabled child, or to disabled parents with parental responsibility for a child (either to meet their own assessed needs or those of their child). In addition, if the individual with assessed needs is an adult who lacks the capacity to consent to the receipt of direct payments, then (subject to certain conditions), direct payments may now be made to another person (a 'suitable person') on behalf of the individual needing support.

1.24. In all other circumstances, the individual should remain in control, and is accountable for the way in which the direct payments are used. In the case of

children, this control will be shared with their parents, depending on the child's age and understanding. Individuals may ask carers or other people to help them manage direct payments - for example, by helping them to secure the services to which the payments relate, or by actually receiving and handling the money. However, if the individual is able to consent to the making of the direct payments, then they should retain overall control and responsibility for the direct payments.

2. Developing direct payments services locally

Consultation

2.1. It is important that local authorities consider how they can make their direct payments schemes more responsive to the needs and wishes of individuals, and more relevant to the communities in which they live. Consultation plays an important role in the setting up and review of schemes. The most effective direct payments arrangements have been developed by local authorities working in partnership with other organisations and local people to draw up schemes that meet local needs.

2.2. Care should be taken to involve a wide range of people in any consultation process. Local authorities should avoid focusing on one group of potential recipients to the exclusion of other groups, and should not make the assumption that organised groups are necessarily representative of all the individuals who might benefit from direct payments. In particular, local authorities should consider how best to consult or otherwise involve those individuals who previously may have found it difficult to access direct payments – for example, 16/17 year old carers and people with mental health issues.

2.3. It is also important that the lines of communication and consultation are sustained, so that the local authority remains responsive to the views of people over time.

Commissioning

2.4. Local authorities will need to develop and sustain robust financial planning systems and commissioning strategies. Commissioning strategies, informed by robust needs assessments analysis, should help to shape local markets so that new services develop and existing services adapt to ensure the supply of high-quality services which meet individuals' needs. Some commissioning, especially for specialist services, will be done on a regional basis. Local and/or regional commissioning strategies will also need to be dynamic enough to respond appropriately to any future changes in (for example) the patterns of demand for services and/or increases in demand for direct payments.

2.5. Problems with internal budget management procedures may not be used by local authorities as a reason to refuse or delay the offering or start of direct payments to an individual to whom there is a duty to make direct payments.

Support services

2.6. Good and accessible information and support is essential in helping individuals decide whether they wish to participate in a direct payments arrangement, to know how and where to access services, and to share their experiences of what works and what does not. Developing effective local support services is a key component of successful implementation of direct payments. Insufficient investment in local support services makes it much more difficult for local authorities to promote direct

payments and achieve greater uptake.

2.7. Local authorities should seek to ensure that individuals who express an interest in direct payments receive timely information and advice. When discussing direct payments with individuals, local authorities should consider putting them in touch with a direct payments support scheme or other alternatives such as local peer support groups. Individuals who are funding their own care and support are also likely to benefit from local support services or groups which offer information and advice.

2.8. There are various ways in which local authorities can deliver effective support. They might decide that they can provide a support service directly, in partnership with a local voluntary organisation, or by some other means. Support provided through voluntary organisations and local peer support groups has been shown to be particularly effective and valued by those individuals who receive direct payments, as they often find it easier to seek advice from someone who is independent of the authority. Individuals who have been involved with setting up their local scheme can often be an informed source of assistance to others, offering emotional support, understanding and advice, and acting as positive role models. Parents of disabled children often have informal networks with other parents with disabled children; and strengthening such local schemes and networks can be an effective way of providing information, advice and support to parents. This can also help expand the scheme quickly within the local area, and ensure that an authority's investment in start-up costs provides good value for money.

2.9. A support service helps to produce better outcomes for both individuals and local authorities. It can make direct payments an accessible, more manageable and attractive option for a wide range of people. When establishing and reviewing support services, local authorities should seek to ensure that the range of support provided reflects the needs of local people receiving social care support and their carers.

2.10. In addition to information, advice and peer support, support services might offer training and practical assistance. Examples of what a support services might offer include:

- a list of local provider agencies

- support and advice in setting up and maintaining a direct payments scheme, including financial management

- help for people to draft advertisements, job descriptions and contracts

- help in explaining the safeguards needed in the employment of people to work with children or vulnerable adults

- rooms for interviews and assistance with interviewing

- an address for responses to advertisements

- support and advice about the legal responsibilities of being an employer

- support and advice about being a good manager of staff

support and advice around issues of equality and diversity, including issues of culture and ethnicity (including advice about the equality legislation covering employment and access to goods and services)
information about income tax and national insurance
a payroll service
advice on health and safety issues, including moving and handling
regular training – for example, on assertiveness, budgeting skills
some emergency cover support
signposting to other services such as welfare benefits and advocacy
advice about user-controlled trusts.

Practice example of a local authority facilitating training of personal assistants

One local authority works closely with its contracted direct payments support scheme to facilitate training for personal assistants. The local authority reserves two places on every relevant course as soon as the training course schedule becomes available. In the ensuing weeks, the support scheme then works with direct payments recipients to identify personal assistants who need to take up the reserved training course places. The actual names of the attendees are provided to the local authority training department as they become known. This approach ensures that training courses which are in high demand do not become becoming fully booked up before the support scheme and individuals receiving direct payments become aware of the training course schedule.

2.11. Local authorities will wish to ensure that local support services are sufficiently accessible to everyone eligible to receive direct payments. As the number and variety of people receiving direct payments continues to expand, local authorities will need to review the support services they provide or arrange, to ensure that they continue to meet the needs of people from a variety of cultural and other backgrounds. Support services may need to contract people with specialist skills – for example, to meet the differing communication needs of Welsh speakers, other non-English speakers, British Sign Language Users, and those who are deafblind.

2.12. Individuals may need particular support when they first take on responsibility for managing their own or their child’s care, or become employers for the first time. Particular skills and knowledge are required to work with individuals with particular support needs, especially where there are issues of consent and the ability to manage. This might include people with learning disabilities, sensory or dual sensory loss, communication difficulties or mental health issues, or older people with dementia.

2.13. Those with parental responsibility for a disabled 16 or 17-year-old often have a particular need for support services, especially where the 16 or 17-year-old is receiving help from the parent in managing their direct payments, or if they are

receiving a package of care where some elements are managed by the parent and others are managed by the young person. These parents may also find it useful to meet disabled adults who receive direct payments, to help them prepare for the transition to adult services once the young person reaches 18. Third sector organisations are often able to promote links between families with disabled children, both for parents and for the children and young people themselves.

2.14. Other groups that support services need to cater for include those in receipt of Independent Living Fund (ILF) awards, who often require similar advice to people using direct payments; carers of those who are receiving direct payments, including those who are assisting a friend or relative with managing the payments; and people who are considering becoming direct payments recipients on behalf of an individual lacking mental capacity.

Independent advocacy

2.15. Many individuals who receive direct payments find it helpful to have access to independent advocacy support. This will include, for example, some older people, people with learning disabilities and people with mental health issues. Advocacy may also be useful in providing support for people who lack mental capacity to consent to the making of direct payments. A support service may also be well placed to act as an advocate for local recipients as a group when their local authority is considering changes to the scheme. It may well be preferable to separate any support role from an advocacy role on behalf of individuals, to avoid any conflict of interest. Extra time may be needed to set up the direct payments to ensure that the advocate fully understands the individual's wishes.

Support for young disabled people

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

2.17. Where there is a difference of views between parents and disabled young people aged 16 or 17, the local authority should make its own assessment of whether the young person has the ability to manage the direct payments themselves. If, in the authority's opinion, the young person is able to manage the direct payments with appropriate support, and awarding direct payments would be consistent with the authority's duty to safeguard and promote the welfare of that young person, then it has a duty to make the payments.

2.18. In some cases, a disabled young person aged 16 or 17 may express a wish to manage direct payments but the local authority, after assessment (which will include seeking the parents' views), may conclude that they are not yet capable of managing direct payments by themselves, even with appropriate support. Where a young person does not agree with the authority's assessment, they should be advised of their right to make formal representations under section 26 of the Children Act 1989 and to have assistance to do so, including access to advocacy services.

Complaints procedure

2.19. Local authorities are required to operate a procedure for handling and considering any complaints that are made to them in respect of the discharge of their social services functions, or about any failure to discharge those functions. As the making of direct payments is a social services function within the meaning of section 1A of the Local Authority Social Services Act 1970, individuals who receive (or consider that they should receive) direct payments are entitled to access this procedure in the same way as someone whose services are provided directly or arranged by the authority. There is a similar duty under section 26 of the 1989 Act, which can be used to complain about direct payments made under section 17A of that Act.

2.20. In relation to adult services only, from 11 April 2011 there will be a review process for service users who have a dispute over their assessed financial contribution to the services they receive under the service provision powers referred to in section 13 of the Social Care Charges (Wales) Measure 2010. (This is dealt with in more detail in paragraphs 4.31 to 4.53 - 'Calculating the amount of the direct payment' and 'Financial contributions'.)

3. Consent, capacity and ability to manage

Consent

3.1. Local authorities may make direct payments in the following circumstances:

(i) Where an individual has been assessed as having eligible needs, including disabled young people aged 16 or 17, provided that they are able to consent to the making of the payments either to themselves or to their nominee.

(ii) Where the individual with eligible needs does not have the capacity to consent to the making of direct payments, the payments can be made to an appointed suitable person who will manage the payments on their behalf.

(iii) For disabled children aged under 16, or for children under 16 for whom a disabled person has parental responsibility, direct payments can be made to (and with the consent of) a person with parental responsibility, usually a parent.

(iv) Direct payments can also be made to carers, to allow them to purchase the services they are assessed as needing **as carers** to support them in their caring role and to maintain their own health and well-being.

3.2. As well as giving individuals greater control and independence, direct payments carry with them responsibilities. The individual receiving the direct payments to meet their own assessed needs (directly or through a third party nominee) – and any other person receiving the payments on behalf of someone who does not have capacity to consent – is accountable to the local authority for the way in which the money is spent. Individuals who receive direct payments also take on responsibility for obtaining support through their own arrangements, which may involve legal responsibilities.

3.3. Local authorities should be satisfied that the individual understands what is involved in managing direct payments. This is an area where people may particularly welcome support. Obtaining consent might be a process involving continuous discussion, rather than a single event. When someone has the mental capacity to consent but needs additional help and support in managing a direct payments arrangement, the direct payments can - with the individual's consent - be made to a third party nominee.

3.4. The local authority should also make clear that an individual does not have to accept direct payments, and that it can provide or arrange direct services if that is what the individual would prefer. The discussion should also cover what the individual should do if they no longer wish to receive direct payments.

3.5. Situations may arise where an individual refuses to accept direct payments because they object to a specific aspect of the terms on which the payments are offered - for example, the amount of the payments or the conditions attached. In

such cases, the individual should have access to the usual complaints procedures, like those who have been refused direct payments.

Capacity to consent

3.6. Authorities have a duty and/or a power to offer direct payments to an individual with the capacity to consent, as long as they appear to the local authority to be able to manage them, alone or with support. Someone who has eligible and assessed needs, but who lacks the requisite capacity to consent to direct payments, can still benefit from them via an appropriate and willing 'suitable person' who can receive the payments on their behalf. In these cases local authorities must still establish whether or not an individual has capacity to consent before making direct payments.

3.7. Broadly, 'mental capacity' means the ability to make a decision. Under the 2005 Act, an individual lacks capacity in relation to a matter if, at the material time, they are unable to make a decision in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain (section 2(1) of the 2005 Act).

3.8. It is vital that each person's capacity is assessed on an individual basis in relation to the specific decision to be made. Assumptions should never be made that an individual will lack mental capacity simply because of the existence of a particular condition. Examples of an 'impairment or disturbance in the functioning of the mind or brain' may include, **but are not limited to**:

- conditions associated with some forms of mental illness;
- dementia;
- significant learning disabilities;
- the long-term effects of brain damage;
- physical or medical conditions that cause confusion, drowsiness or loss of consciousness;
- delirium;
- concussion following a head injury; and
- the symptoms of alcohol or drug use.

3.9. Under the 2005 Act, the starting assumption must be that an individual aged 16 or over has capacity to make a decision, unless it can be established that they lack such capacity. Under the 2005 Act, an individual should not be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success. Therefore, before concluding that someone lacks capacity to decide whether to consent to the making of direct payments, local authorities should satisfy themselves that they have taken all practical steps to help that individual to reach a decision for themselves.

Assessing capacity to make a decision

3.10. Local authorities should consider the following questions when assessing capacity to make a decision:

Does the individual have a general understanding of what decision they need to make and why they need to make it?

Does the individual have a general understanding of the likely consequences of making, or not making, this decision?

Is the individual able to understand, retain, use and weigh up the information relevant to this decision?

Can the individual communicate their decision (by talking, sign language or any other means)? Would the services of a professional (such as a speech and language therapist) be helpful? Can anyone else help the individual to make choices or express a view (for example, a family member, carer or advocate)?

Is there a need for a more thorough assessment (perhaps by involving a doctor or other professional expert)?

3.11. An assessment of an individual's capacity must be based on their ability to make a specific decision at the time it needs to be made, and not their ability to make decisions in general. Neither can an individual's capacity be judged simply on the basis of their age, appearance or condition, or an aspect of their behaviour. Rather, anyone assessing someone's capacity to make a decision for themselves should use the two-stage test of capacity:

Does the individual have an impairment of the mind or brain, or is there some sort of disturbance in the functioning of their mind or brain? (It does not matter whether the impairment or disturbance is temporary or permanent.)

If so, does that impairment or disturbance mean that the individual is unable to make the decision in question at the time it needs to be made?

3.12. Anybody who claims that an individual lacks capacity to consent to the making of direct payments should be able to show that they reasonably believe that the individual lacks capacity to make such a decision at the time it needs to be made. The local authority should keep a record of the decision they make in respect of an individual's lack of capacity, including the reasons for the decision. This should include the steps that have been taken to establish a lack of capacity.

3.13. Professional involvement might be needed if:

an assessor concludes that an individual lacks capacity, and the individual challenges the finding;

family members, carers and/or professionals disagree about an individual's capacity; and/or

the individual being assessed is expressing different views to different people – they may be trying to please everyone or telling people what they think they want to hear.

Fluctuating capacity

3.14. Local authorities will need to bear in mind that capacity is not always constant. Some people will have fluctuating capacity. They may have a problem or condition that gets worse occasionally and affects their ability to make decisions, but at other

times they may be perfectly capable of making such decisions. Local authorities should therefore review, at appropriate intervals, the making of direct payments to an individual lacking capacity to consent, to ensure that individuals with care and support needs always have as much control as possible over decisions that affect them, and that any risk to their health and well-being is identified and addressed.

3.15. Factors indicating that someone may regain or develop capacity in the future may include the following:

the cause of the lack of capacity may be treated, either by medication or some other form of treatment or therapy

the lack of capacity might decrease in time (for example, where it is caused by the effects of medication)

an individual with learning disabilities may learn new skills or be subject to new experiences which increase their understanding and ability to make certain decisions

the individual may have a condition that causes capacity to come and go at various times (such as the early stages of dementia, bipolar disorder or some forms of psychotic illness), so it may be possible to arrange for the decision to be made during a time when they do have capacity.

3.16. If a local authority is satisfied that an individual who previously lacked capacity has regained capacity on a long-term or permanent basis, then it has a duty to discontinue the direct payments to the suitable person and instead to make payments to the individual requiring care and support. However, before it does so, the local authority must consult with the individual about whether they wish to receive direct payments. Most importantly, local authorities should not terminate direct payments to the suitable person before beginning to make direct payments to the individual themselves (except where authorities have decided to refuse direct payments) or arrange services for them, according to their wishes and subject to their entitlement. This will ensure that there is no period when they are not receiving care and support and therefore that there is no gap in the provision of their care.

3.17. If the local authority is satisfied that the regaining of capacity is only temporary (i.e. that capacity will fluctuate), then it can continue to make direct payments to the suitable person. In this situation however, the suitable person must allow the individual to manage their own direct payments during any time when they have gained or regained the capacity to consent and are able to manage payments themselves. In this way, arrangements for the making of an individual's direct payments do not have to be continually revisited as they lose or regain capacity. This makes things easier in practical terms for the suitable person and for the local authority, and provides continuity of arrangements for the individual requiring care and support.

3.18. Local authorities may wish to raise with an individual the option of giving a family member or friend a lasting power of attorney to manage their affairs relating to personal welfare, should they lose the capacity to consent to direct payments at a later date (see the section on enduring and lasting powers of attorney, paragraphs 3.32 to 3.35).

Ability to manage

3.19. Local authorities should not confuse whether an individual has the capability to manage direct payments, with whether they have mental capacity (within the meaning of the 2005 Act) to consent to such payments. It does not necessarily follow that because an individual has capacity to consent they are also capable of managing direct payments.

3.20. If the individual consents to the making of direct payments, the local authority has a duty, or in some cases a power, to make those direct payments. This is provided that the authority is not prevented from doing so for other reasons specified in the Regulations - for example, if the authority is not satisfied that the individual's needs can be met using direct payments. In particular, the local authority must be satisfied that the individual is capable of managing the direct payments (either alone or with available help).

3.21. If an individual lacks capacity to consent and a suitable person is willing to receive direct payments on behalf of that individual, it is the suitable person who must be capable of managing direct payments (either on their own or with available help). Provided that the suitable person meets all conditions specified in the Regulations and appears to the local authority to be able to manage direct payments, the local authority has a duty or a power, as appropriate, to make direct payments to that suitable person.

3.22. A local authority cannot make direct payments if it cannot be satisfied that the individual is capable of managing the payments, by themselves or with available assistance. Where a local authority makes a judgement that someone is unable to manage direct payments, this should be made on an individual basis, taking into account the views of the individual and the help that may be available to them. Local authorities should not make blanket assumptions that whole groups of people will or will not be capable of managing direct payments. Very many people will be able to do so, particularly if they have access to help and support. If the local authority concludes that an individual is not, even with assistance, able to manage direct payments, it is important to discuss with them (and with any family or friends, as appropriate) the reasons for coming to such a conclusion. Where an individual does not agree with the authority's judgement, they should have access to independent advocacy and, if available, arbitration, to ensure that their arguments are properly considered. An individual also retains their right to access the local authority's complaints procedures.

3.23. In order to make an informed decision, an individual needs to understand what is involved in managing direct payments. Local authorities should therefore give individuals support and information about what receiving direct payments will involve, as early in the process as possible. Managing direct payments is not simply about handling money. It involves individuals making their own arrangements, with assistance if necessary, to obtain care and support which the local authority would otherwise have arranged or provided. Where appropriate, individuals should be made aware that they can receive direct payments without managing the payments themselves.

Advice on making decisions about the ability to manage

3.24. If a local authority is concerned that an individual who wishes to receive direct payments may not be able to manage the payments, the local authority should ensure that it takes into account and subsequently records all relevant factors before making a decision not to make direct payments. These decisions may need to involve professional staff who are trained in assessing capability, capacity, and helping people make decisions. In doing so, they should consider:

- the individual's understanding of direct payments, including the actions required on their part
- whether the individual understands the implications of taking or not taking on direct payments
- what help is available to the individual
- what kind of support the individual might need to achieve their identified outcomes
- what arrangements the individual would make to obtain this support.

3.25. If the individual who is deciding whether to accept direct payments does not already have care arrangements in place (for example, if they have been newly assessed), the local authority may need to provide services in the interim. Where the individual is expressing doubt about their ability to manage, this might mean that they are experiencing some difficulties, but this does not necessarily mean that they are incapable of managing the payments altogether. It may be appropriate to offer a mixed package of direct payments and authority-arranged services to give the person experience of operating direct payments. This may be particularly useful for those individuals, such as older people, who are used to receiving direct services and who may need to increase their confidence.

3.26. Some people may have capacity to consent but need help with managing the money or simply want someone else to receive direct payments on their behalf. In such cases, the payments may be made to a third party nominated by the individual eligible to receive the direct payment, and day-to-day management of finances may be delegated in this way. The nominee could, for example, also hold a lasting or enduring power of attorney for the individual. However, the individual must have control over how support is delivered.

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

3.28. In certain circumstances, a trust may take on the employment of staff and the financial management of the direct payments. In such cases, local authorities should seek to establish that there is an understanding, by those appointed to manage the administration of the payments, of what is involved, before making direct payments. Where the individual receiving direct payments has the capacity to consent, they

must retain overall control over decisions and be accountable for the way in which the direct payments are used.

Long-term considerations

3.29. Many people with an episodic condition can manage direct payments very adequately. Nevertheless, some individuals may be better able to cope with direct payments if a friend, relative or some other third party is willing to provide greater assistance when their condition worsens. Statements of wishes and preferences should be used as part of the process of managing a fluctuating condition.

3.30. Even if it is known that the individual is likely to lose the ability to manage in the future, there may still be a duty or power to make direct payments, provided it appears to the local authority that the individual is currently capable of managing direct payments, or managing the payments with help. Individuals whose condition is likely to fluctuate or deteriorate permanently should be given an opportunity to explore with the local authority any worries they may have about their ongoing ability to manage the payments. The authority should make suitable arrangements to ensure that direct payments do not continue if appropriate support cannot be arranged to enable the individual to continue to manage, or if their condition deteriorates so they become incapable of managing payments even with help.

3.31. Where individuals are worried about dementia or other cognitive impairment, local authorities may wish to direct them to an appropriate voluntary sector organisation, secondary care team or their GP (see Annex E). It is important that the needs of people with dementia, and their carers, are properly considered. Direct payments should not be discontinued if the individual requiring support is able to manage with appropriate assistance. If the individual loses capacity to consent, but there is someone appropriate, able and willing to act as a suitable person to receive direct payments on their behalf, then the local authority should consider making direct payments to that suitable person under section 57(1A) of the 2001 Act.

Enduring and lasting powers of attorney

3.32. The 2005 Act replaced the enduring power of attorney (EPA) with the lasting power of attorney (LPA). It also introduced new types of decisions that an individual ('the donor') can authorise others to make on their behalf. Whereas EPAs only covered decisions relating to property and affairs (including financial matters), LPAs can also cover personal welfare decisions for people who lack capacity to make such decisions for themselves. The donor can choose one person or several to make different kinds of decisions. Since the 2005 Act came into force, only LPAs can be made. Existing EPAs made before that date will, however, continue to be valid and can still be registered and used.

3.33. EPAs can be used while the donor still has capacity to manage their own property and affairs, as can LPAs, so long as the donor does not say otherwise in the LPA and so long as they are registered with the Office of the Public Guardian. However, personal welfare LPAs can only be used once the donor lacks capacity to make the welfare decision in question (and once the LPA is registered).

3.34. In determining whether an individual is a suitable person to receive direct payments on behalf of an individual who lacks capacity to consent, it would usually be expected that, where there is a willing **representative** – that is to say either a court-appointed deputy or a donee of LPA – that person would act as the suitable person. However, other people could also act as a suitable person (see the section on appointing a suitable person, paragraphs 6.31 to 6.44, and the ‘Direct Payments “Suitable Person” Guidance’ (2011)).

3.35. An individual who made an EPA before the 2005 Act came into force would have done so in the expectation that, if they lost capacity, the person appointed as attorney would lawfully be able to continue to deal with their property and affairs once the power was registered. Now that direct payments can be made to persons lacking capacity to consent, an attorney under an EPA could potentially act as a suitable person for the donor of the attorney, should that individual lose capacity to consent to the making of the direct payments. Like any suitable person within the meaning of section 57 of the 2001 Act, the attorney under EPA would have to consent to receiving the direct payments on behalf of the individual lacking capacity.

Representatives

3.26. It should not be assumed that an existing representative is willing to take on the responsibility of managing direct payments on behalf of an individual lacking consent, or to take on any additional responsibilities in connection with the administration of direct payments. The representative should be consulted and made aware of their rights by social services, so that they can make an informed decision as to whether or not they wish to manage direct payments on behalf of the individual lacking capacity. This should include, where appropriate, informing them of their right to a carer’s assessment.

4. Using direct payments

Support for people with communication difficulties

4.1. Some individuals who receive social services may have little real knowledge about how their support is currently provided, who pays for this support or who controls the spending. Information about direct payments may be meaningless if the individual does not understand the system they are replacing. In addition, some individuals may have little control over their current support arrangements and may not even be aware that they can exercise choice. Local authorities need to ensure that there is appropriate support and a range of opportunities available from which individuals can commission their own support to enable them to achieve their ambitions and aspirations.

4.2. Local authorities need to think carefully about how best to present information about care and support options (including direct payments) to individuals with learning disabilities, sensory loss (including dual sensory loss) and other cognitive impairments, so as to maximise the potential for people to make informed decisions. Information should be made available in a variety of accessible formats appropriate to the individual. Supporting individuals in making choices about how they want their needs to be met should be an integral part of the assessment and review process.

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

Setting up direct payments

4.4. If an individual has eligible needs, then the local authority should work with that individual to develop a plan for their care and support. Such a plan should be outcome-focused and person-centred, exploring what is important to the individual concerned and how they can spend their direct payments to organise and create support in order to achieve their aims.

4.5. Some individuals may already have ideas about how they would use direct payments, and may have discussed these with the care manager or social worker at the assessment stage. Other individuals may need advice or advocacy, including specialist support (such as communication support), to help them think through the implications of their choices or possible alternatives they may not have considered. A local support group can be invaluable in assisting with this.

4.6. In discussions with individuals about how their needs might be met through direct payments, local authorities should be prepared to be open to new ideas and be as flexible as possible. By exploring innovative and creative options, individuals should be encouraged to identify how they might most effectively achieve outcomes in a way that aligns with their personal wishes and preferences.

4.7. In developing care and support plans, local authorities will want to be satisfied that the individual's assessed needs can and will be met. In the case of services for children in need, a local authority is required to satisfy itself that the child's welfare will be safeguarded and promoted using direct payments. Where the individual's needs fluctuate over time, it will be important to discuss in advance how direct payments will be used to secure support that varies according to need.

4.8. Local authorities may set reasonable conditions on the direct payments arrangement, but need to bear in mind when doing so that the aim of direct payments is to give individuals more choice and control over their support and how it is delivered. For example, individual choice and control would be undermined by a condition that the individual receiving direct payments might only use particular providers. Conditions should be proportionate and no more extensive than is reasonably necessary. Local authorities should also avoid setting up disproportionately intensive monitoring procedures. Financial payments should not begin until the individual has agreed to any conditions that the local authority considers necessary. In order to avoid delays, local authorities should take all reasonable steps to resolve issues about conditions in a timely manner.

4.9. Many individuals will prefer to use direct payments to take on their own personal assistants as employees. This option gives them the most direct control over the assistance they receive, but it also carries the most responsibility (for example to pay tax, National Insurance contributions, and statutory sick and maternity pay). Others may choose to contract with independent agencies rather than employing or contracting with personal assistants themselves. Local authorities should consider the support, information and training that is available to help individuals understand their role as an employer. (For further information on being an employer, see paragraphs 5.13 to 5.28 and Annex F.)

Assessment and care plans

4.10. Welsh Assembly Government guidance on assessment should be followed whether or not the individual being assessed is likely to choose to receive care and support directly from the local authority, or to obtain their own support through direct payments. Whichever form of support an individual chooses, there should be no difference in the assessment of their needs, although under the Regulations a local authority must also be satisfied that the individual's eligible needs can be met by means of direct payments. Local authorities should plan with regards to outcomes, rather than specific services.

4.11. If encouraged, many individuals will already have clear views about where they might need assistance to achieve identified outcomes. Support might be provided in their own homes, including equipment and modifications to the home, or help with personal and domestic activities. Individuals might require support to return to work, perhaps through employing a personal assistant or undertaking an educational course to improve their skills. Some individuals might use their direct payments to facilitate better social inclusion, others to aid their general well-being - for example, through fitness classes or arts and cultural activities.

4.12. Local authorities should also consider how direct payments might promote preventive and rehabilitative strategies. Good assessment can result in the timely provision of direct payments which may forestall the need for more extensive support in the future. Individuals at all levels of need may be able, with the right type of tailored intervention, to reduce or even eliminate their dependency on social care support. Care and support plans should be constructed with such outcomes in mind, focusing on what an individual will be able to achieve with the right help, rather than simply putting arrangements in place to stop things from getting any worse.

4.13. Support planning involves allowing individuals to make their own informed decisions, including decisions about risk. Local authorities have a responsibility to ensure that, wherever possible, the choices made by the individual are respected and supported. The benefits of increased autonomy and social inclusion may have to be weighed against the risks associated with particular choices. It is very important that discussions about such choices are accurately recorded in writing, to ensure that both the local authority and the individual are clear about any potential consequences and how the risk can be managed.

4.14. Local authorities should support individuals in making these decisions by ensuring that they understand the implications of the choices they are making - for example, their rights and responsibilities as an employer. They should also be made aware that if at any point they are unhappy with the service they are receiving, they have the right to end their direct payments arrangements and revert to arrangements made on their behalf by the local authority.

4.15. Local authorities are reminded that there should always be a care plan, a written copy of which should be given to the individual. This advice also applies where the local authority directly provides or arranges services. It also applies whether or not direct payments are received by the person receiving support or by someone else on their behalf. Annex A contains a checklist of points which should be resolved before direct payments start and which should be covered in the care plan. The care plan should be sufficiently clear about what will be done to enable the individual to meet the agreed outcomes, but should not be so detailed as to undermine their exercise of choice and control over their support arrangements.

Short-term needs

4.16. For individuals whose needs are short term, direct payments can support their return to independence. In such instances it will be important to discuss at the outset how the ending of the direct payments will be managed. Consideration should also be given to looking at how an individual could use direct payments to regain or retain their independence for as long as possible. Local authorities should consider in particular how to make the administration of direct payments sufficiently fast and flexible so that they can be used for hospital discharge or intermediate care.

4.17. Many parents with parental responsibility for a disabled child may wish to use direct payments to arrange support at home or to improve access for their child to services in the community. In addition, they may want to use direct payments to arrange short-term breaks for their child. Such breaks usually serve two purposes:

allowing the parents more time for other activities, for example with their non-disabled children, and affording the disabled child an opportunity to make new friends and participate in new activities.

4.18. Parents may look to an established voluntary organisation to provide such breaks either in foster families or residential homes, or they may wish to make their own arrangements.

Short-term care in a care home

4.19. Direct payments may not pay for adults to live for the long term in a care home. They may be made to enable individuals to purchase for themselves short stays in care homes, but this cannot be for more than a four-week period in any twelve months. In calculating the period of four weeks in any twelve month period an initial period in residential accommodation of less than four weeks (period A) shall only be added to a succeeding period (period B) where period B begins within four weeks of the end of period A; and any period in residential accommodation subsequent to period B shall be included in the calculation. For example, Ms J spends three weeks in a care home in January 2010 funded through direct payments. In March 2010 she wants to spend another three weeks in a care home. She is entitled to direct payments to fund this second spell because it begins more than four weeks after the first. For the rest of the year she can only insist on direct payments funding for one more week in a care home. Individuals can receive additional weeks in a care home once they have reached the four-week maximum. They cannot purchase the stay using their direct payments, but if the local authority considers that a longer stay is needed, it can still arrange and fund stays for the person in the normal way. There is no restriction on the length of time for which the authority may arrange such accommodation.

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

4.21. Under the Regulations, local authorities are no longer required to carry out a financial assessment when determining the rate for an individual to pay towards securing the provision of such residential accommodation.

People in residential care

4.22. Individuals who are living in care homes may receive direct payments in relation to non-residential care services. For example, they may have temporary access to direct payments to try out independent living arrangements before making a commitment to moving out of their care home. Direct payments can also be used by individuals living in care homes to take part in day-time activities. This can be particularly empowering for young people in transition.

Equipment

4.23. Local authorities and the NHS in Wales provide community equipment through joint equipment services which are governed by formal partnership agreements. These services accept referrals or prescriptions for equipment from the appropriate nurse or therapist, and deliver and fit the equipment as required to meet an individual's assessed needs. These services provide a professional approach to the management, and the ongoing servicing, maintenance, refurbishment and recycling of equipment.

4.24. Individuals who require equipment or adaptations may wish to use direct payments to purchase them. Direct payments must be spent on meeting the individual's assessed needs. One of the advantages of direct payments is that individuals may choose to buy the equipment from a different supplier to the one the statutory organisation uses, or put money towards a more costly, highly specified model.

4.25. Individuals do not have to receive the direct payments if they would prefer the statutory organisation to provide the equipment and /or minor adaptation.

4.26. Direct payments cannot be used to purchase services or equipment for which the local authority is not responsible - for example, services that the NHS is required to provide. Direct payments are not a substitute for Disabled Facilities Grants for major property adaptations.

4.27. When making direct payments, local authorities will need to satisfy themselves that the individual's eligible needs will be met by their arrangements. In the case of direct payments for the purchase of items of equipment, local authorities will wish to ensure that the individual is adequately supported by specialist expertise. This is particularly true in the case of major items, when advice may be needed to ensure that the equipment purchased is safe and appropriate. This will also include demonstrations in the correct use of the equipment by an appropriately qualified professional.

4.28. Generally speaking equipment acquired using direct payments can belong to the user, and they will then be responsible for its care and maintenance – although discretionary rules can apply relating to ownership and maintenance to reflect the best interest of the individual. In some instances additional sums of money may be added to the initial payment to cover such things as warranty.

4.29. Where a local authority makes direct payments for equipment, it needs to clarify with the individual at the outset where ownership lies, and who has responsibility for ongoing care and maintenance – just as it should where it arranges for the provision of equipment itself. A local authority will need to consider what conditions should be attached to the direct payments when they are used to purchase equipment – for example, what will happen if the equipment is no longer required. This should be set out in a user agreement which clearly sets out how the direct payments should be used as required by the National Minimum Standards for

the Provision of Community Equipment¹. Information within the agreement should include (but is not excluded to):

- names and addresses of the user
- conditions of agreement
- payment arrangements and user's contribution
- proof of sale
- warranty
- review details
- maintenance ownership and disposal.

4.30. Equipment can also be purchased as part of making a package cost effective – for example, to supply pagers or mobile phones to personal assistants.

Calculating the amount of direct payments

4.31. It is up to each local authority to decide on the amount of direct payments. However, the legislation relating to direct payments (listed in paragraphs 1.3 to 1.6) provides that it must be equivalent to the local authority's estimate of the reasonable cost of securing the provision of the service concerned, subject to any contribution from the individual recipient. This means that the direct payments should be sufficient to enable the individual lawfully to secure a service of a standard that the local authority considers is reasonable to fulfil the needs for the service to which the payments relate. There is no limit on the maximum or minimum amount of direct payments, either in the amount of care they are intended to purchase, or on the value of the direct payments.

4.32. In estimating the reasonable cost of securing the support required, local authorities should include associated costs without which the service could not lawfully be provided. The particular costs involved will vary depending on the way in which the service is secured, but such costs might include:

- recruitment costs
- National Insurance
- statutory holiday pay
- sick pay
- maternity pay
- employers' liability insurance
- public liability insurance
- VAT.

4.33. Some local authorities have found it helpful to include a one-off start-up fund within the direct payments to meet these costs, as well as other forms of support that might be required, such as brokerage, payroll services and Criminal Records Bureau checks on employees.

¹ The Provision of Community Equipment: National Minimum Standards Good Practice Guidance Wales (2011).

4.34. A local authority is not obliged to fund associated costs if, taking into account the individual's assessed contribution, the total costs exceed the authority's estimate of the reasonable cost of securing the service, and if a service of the requisite standard could in fact be secured more cost-effectively in another way. The local authority is also not obliged to fund particular costs that are incurred by the individual on a discretionary basis – for example, non-statutory liabilities such as an *ex gratia* bonus payment. The local authority might decide that it is able to increase the amount of the direct payments to enable the individual to arrange support in a particular way if it is satisfied that the benefits of doing so outweigh the costs and that it still represents best value. Individuals who receive direct payments can use their own resources to purchase additional support if they wish to do so.

4.35. 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 their contribution or the amount they are asked to pay by way of reimbursement should be less than the local authority proposes. Where these cases cannot be resolved through discussion, a local authority should advise the individual that they can pursue the matter through the local authority's complaints procedure. If the dispute is about an individual's financial contribution which relates to a service provided under the service provision powers referred to in section 13 of the Social Care Charges (Wales) Measure 2010 (services provided to adults), the authority should advise the individual that they can have the decision over this reviewed under the charging decisions review process under the Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011.

4.36. The local authority should give individuals as much notice as possible of the value of direct payments and the contribution or repayment they will be expected to make to the cost of their care package. This should be done before the payments begin or their level is changed, to provide the opportunity for any dispute to be resolved before the payments begin or the change takes effect. If that is not possible, while any complaint is being considered, individuals may choose either to manage on the amount of direct payments being offered, or to refuse to accept the direct payments. If an individual does not agree to direct payments, the local authority remains responsible for arranging the care and support they are assessed as needing.

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

Financial contributions

4.38. In considering whether to ask recipients of direct payments to make a financial contribution to the cost of their care package, the Regulations provide that the local authority shall determine (having regard to the individual's means) what amount or amounts (if any) it is reasonably practicable for the individual to contribute towards their social care support.

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

4.50. Local authorities are reminded that the Regulations do not give them the power to seek contributions for services provided under section 117 of the 1983 Act (after-care). Accordingly, where local authorities make direct payments instead of providing services under section 117 of the 1983 Act, they may not seek payment, whether by way of reimbursement or a contribution. Where the need for services arises under section 17 of the 1989 Act and payments are made to a person with parental responsibility for a young person aged 16 or 17, or to an individual in receipt of certain benefits, the same restrictions on charging apply.

4.51. Under the Social Care Charges (Wales) Measure 2010, and the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011, local authorities are required to undertake certain actions where they propose to set a reimbursement or a contribution for a direct payment which relates to a service provided under the service provision powers referred to in section 13 of the Measure (services provided to adults). Hence they place a duty on authorities to issue the individual who is to receive the direct payments with an invitation for a means assessment. They then set out that the authority will undertake an assessment where requested to do so by that individual, and based on the outcome of that assessment, or in the absence of a request for a means assessment, determine the ability of the individual to meet a reasonable contribution or reimbursement for the direct payments required on the basis of available information or documentation. They then set out that the authority will set any resultant amount by way of contribution or reimbursement, and inform the individual of the details of this before levying the contribution or reimbursement in the amount set. The regulations also set out certain services for which a contribution or reimbursement cannot be made, certain forms of income or capital that must be disregarded in any means assessment, as well as setting financial safeguards for direct payments recipients and a maximum reimbursement or contribution that can be requested. Where authorities propose to set a contribution or a reimbursement for direct payments to be offered, or to alter a contribution or reimbursement for existing direct payments, they must action this in accordance with the requirements of the Measure and the regulations referred to above.

Making payments

4.52. It is up to local authorities to decide how frequently payments should be made. In considering what local procedures to put in place, local authorities should bear in mind the possible effect of different options on the circumstances of those individuals who are likely to receive direct payments. Individuals need to be in a position to pay for services when payment is due. The arrangements should be reliable, as late or

incorrect payments may put at risk individuals' ability to buy the support they need. A 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 individuals, before direct payments begin, how and when the payments will be made, and the procedures for receiving additional payments in an emergency.

4.53. The flexibility inherent in direct payments means that individuals can, subject to any conditions placed upon the direct payments, adjust the amount they use from week to week and 'bank' any spare money to use as and when extra needs arise (this might be particularly helpful for individuals with long-term and fluctuating conditions). As long as overall the payments are being used to achieve the outcomes agreed in the care plan, the actual pattern of support does not need to be predetermined.

Transfer to direct payments from direct provision

4.54. Individuals who are already receiving support provided or arranged by their local authority directly may wish to switch to direct payments. Alternatively they may wish to receive a mixed package of direct services and direct payments. If they do not raise these possibilities themselves, the local authority should raise them at, or following, the next review. This guidance applies equally to individuals with whom the local authority is undertaking an assessment for the first time, and existing service users with whom the local authority is discussing a switch to direct payments. Direct payments cannot be used to purchase local authority services.

Monitoring payments

4.55. Local authorities should monitor direct payments arrangements, as appropriate, to assure themselves that they are being correctly administered. See section 7 for further guidance on monitoring and review.

5. Specific delivery issues

Choice and risk

5.1. Safeguarding should be an integral part of social care, firmly embedded in commissioning strategies, assessments, support planning and reviews. Safeguarding issues must be considered in developing a joint choice, empowerment and risk policy, promoting more open and transparent practices to enable individuals to make informed decisions.

5.2. Local authorities will need to be proactive in developing strategies to identify, assess and manage risks, in partnership with direct payments recipients and other service users. Crucially, approaches to risk should be focused on user empowerment. In making choices about their care and support, individuals should also be able to make choices about the risks that they are comfortable with. Enshrined in the 2005 Act is the principle that individuals must be assumed to have the capacity to make decisions unless it is established that they do not.

5.3. While it will never be possible to eliminate all risks, effective interventions can be made to prevent escalation and significant harm. Individuals who receive direct payments should have access to timely information, know how to get help when things go wrong, and be confident that they will be listened to when they raise concerns.

5.4. Local authorities have a duty of care towards those to whom they are providing direct payments. Promoting the use of Criminal Records Bureau (CRB) checks is important to help ensure that appropriate staff are employed within social care. Local authorities should take steps to inform individuals about the option (and in some cases a duty) to make such checks on those they employ, as well as about the associated benefits and limitations of such checks. Local authorities should ensure that their policies on CRB checks comply with the latest legislation and guidance.

5.5. Local authorities should consider the importance of regular reviews tailored to the specific needs of the individual, including consideration of the level of risk they may be exposed to. Reviews should be undertaken in partnership, allowing for the fact that individuals may not get everything right first time, and that it is normal for individuals to want to change their minds and make adjustments to improve things. Where problems arise, local authorities should be prepared to consider the reasons for such problems. Rather than assuming that the risks to the individual of receiving direct payments are too high, local authorities should be prepared to work with the individual to identify changes that can enable them to manage, perhaps with a greater level of assistance in the short or longer term.

5.6. Some individuals who receive direct payments may need only light-touch reviews. Others (particularly those whose circle of support is limited to a very few people, or those who lack capacity to consent to direct payments) may be more isolated and vulnerable, and will therefore require more frequent, face-to-face reviews to prevent problems arising, or early interventions to avoid escalation.

(Further information about monitoring and reviews, including arrangements for individuals lacking capacity, may be found in section 7 of this guidance.)

Health and safety

5.7. Local authorities will wish to consider the health and safety implications of direct payments, both for themselves and for the individuals benefiting from them. As a general principle, local authorities should avoid laying down health and safety policies for individuals who receive direct payments. Individuals should accept that they have a responsibility for their own health and safety, including the assessment and management of risk. They should be encouraged to develop strategies on lifting and handling and other tasks, both in the home and outside it (where, for example, lifting or other equipment may not be available).

5.8. As part of the process of supporting informed choice, local authorities will wish to take appropriate steps to satisfy themselves that individuals who receive direct payments (and those who are considering them) are aware of the health and safety issues that affect them, the people they employ, or anyone else affected by the manner in which their support is delivered.

5.9. For further information, local authorities should refer to Health and Safety Executive (HSE) guidance on lifting and handling ('Handling home care: Achieving safe, efficient and positive outcomes for care workers and clients' (2002)). Local authorities should note in particular the HSE's advice that 'implementation of policy and practice on lifting and handling should not place any unreasonable restrictions on the client's rights to autonomy, privacy or dignity'.

5.10. As part of this process, local authorities should give individuals the results of any risk assessments that were carried out as part of their care assessment. This allows the individual to share the assessment with the care agency or the employee who provides the service. An individual who receives direct payments has a common law duty of care towards the person they employ. By acting on the risk assessment, they can then take reasonable steps to minimise the risks to the health and safety of any staff they employ. The HSE has also published guidance on health and safety for employers and employees.

Close relatives

5.11. Except where a local authority is satisfied that it is necessary to meet an individual's needs, or, in the case of a child, that it is necessary to promote the child's welfare, a local authority may not allow people to use direct payments to secure services from:

- a spouse (husband or wife)
- a civil partner
- the other member of the unmarried or same-sex couple of which they are a part
- a close relative with whom they live, or the spouse or partner of that close relative.

5.12. This restriction is not intended to prevent individuals using their direct payments to employ a live-in personal assistant, provided that that person is not someone who would usually be excluded by the Regulations. The restriction applies where the relationship between the two people is primarily personal rather than contractual – for example, if the people concerned would be living together in any event.

Direct payments recipients as employers

5.13. For many individuals this may be their first experience of being an employer, and they may welcome support during the recruitment process, whether they intend to employ a personal assistant or hire a self-employed assistant or an agency to provide services.

5.14. Individuals should be made aware of their legal responsibilities in terms of providing written details of the main terms of the employment contract within two months of commencement of the employment (see section 1(3) of the Employment Rights Act 1996). The essential terms that must be provided include:

- the date on which employment commenced
- hours of work
- particulars of remuneration (which must meet the national minimum wage)
- place of work
- job title
- whether the job is fixed-term or permanent
- statutory entitlement to sick pay and annual leave
- pension scheme provision (where appropriate)
- notice requirements.

Any changes to the terms must also be notified in the same way.

5.15. If support services are provided, local authorities may wish to include a payroll service, which will take responsibility for administering wages, tax and National Insurance for individuals receiving direct payments. A written contract between the employer and the employee will help ensure that the parties have the same understanding about the terms of employment and statutory disciplinary and grievance procedures. Helpful guidance on employment law issues is also available from websites such as www.direct.gov.uk and www.businesslink.gov.uk.

5.16. Concern about becoming an employer should not be allowed to discourage individuals who would otherwise be willing and able to manage direct payments. Local authorities should aim to inform the potential recipient about employment issues as accurately, responsibly, constructively and supportively as possible. This should not be done in such a way as to put the individual off – for example, by overstressing the extent and complexity of these responsibilities. But neither should the local authority fail to make individuals aware of what is involved. Individuals should be able to make informed choices. In all cases the local authority remains responsible for continuing assessment and review to ensure that the individual's assessed needs for services can be met by direct payments. Local authorities may

wish to consider making carers and personal assistants aware of relevant training in their area, and allowing them to access appropriate courses run by the local authority (where available).

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

Criminal Record Checks and employing someone suitable

Children and young people

5.18. Local authorities should work in partnership with parents in making arrangements to safeguard and promote the welfare of their child. The majority of parents will be both willing and able to do this, but local authorities should only arrange direct payments for a parent of a disabled child when they are satisfied that this is the case.

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

5.20. Local authorities should make those with parental responsibilities aware that the fact that a CRB check reveals no criminal convictions does not necessarily mean that someone is a suitable person to work with children. They should still offer advice about employing someone as outlined in Annex F. A relevant individual is one who is or has been employed to provide care to a child, and that employment is funded by direct payments under section 17A of the 1989 Act.

5.21. If a parent wishes to employ an individual after a CRB check has indicated the individual's unsuitability to work with children, the local authority would have to make it clear that it could not agree to the direct payments under these circumstances. The local authority's actions must be determined in the light of its duty to safeguard and promote the welfare of children in need.

5.22. An individual wishing to work with a child will make an application for a CRB check to be carried out. The application will be countersigned by the local authority. A fee is required for each CRB check. The individual making the application for employment will normally be asked to pay the fee. The local authority may wish to consider the cost of the check in its estimate of the reasonable cost of securing the provision of the service, so that the individual receiving direct payments may reimburse successful candidates.

Adults

5.23. Adults with capacity to consent to direct payments are not obliged to obtain CRB checks for someone they employ with the direct payments. Similarly, a 'suitable person' who is a close relative, the spouse or partner of a close relative, or a friend of the individual lacking capacity is not required to obtain CRB checks for people they employ by means of the direct payments. In both cases, however, the local authority should still inform the individual receiving the direct payments that, while a CRB check is not mandatory, they may still wish to consider obtaining one as part of their overall risk management plan. Choice should be left in the hands of the individual or 'suitable person' (as appropriate), but the local authority should ensure that the recipient has all the information they require to make such a choice.

5.24. If, on the other hand, the suitable person managing direct payments on behalf of someone lacking capacity is not a close relative, the spouse or partner of a close relative, or a friend of that person, or is a corporation or an unincorporated body, then they are required by the Regulations to obtain a CRB check for anyone they engage to provide services with the direct payments.

5.25. Further advice about employing someone using direct payments is provided in Annex F. Anyone considering the use of CRB checks should ensure that they comply with the current legislation and guidance.

The Vetting and Barring Scheme

5.26. The Vetting and Barring Scheme (VBS) was established in response to the Richard Inquiry, following the Soham murders. New regulations introduced in October 2009 made it a criminal offence for barred individuals to apply to work with children or vulnerable adults in a wider range of posts than previously, and introduced criminal sanctions for employers who knowingly employed a barred individual. VBS was scheduled to 'go live' in July 2010, but a remodelling exercise was undertaken by the new UK Government on coming to power. The proposed changes to VBS should become law in early 2012. The current arrangements will remain in place pending the commencement of the remodelled scheme.

5.27. Local authorities will need to ensure that their practices, including the information provided to individuals who receive (or who are considering whether to receive) direct payments, complies with current legislation and guidance relating to vetting and barring, and are kept up to date.

5.28. In particular, local authorities should be aware (and should ensure that individuals employing people under a direct payments arrangements are also aware) that current obligations require that a person who is barred from working with children or vulnerable adults because his or her name appears on either of the lists maintained by Independent Safeguarding Authority (ISA) commits a criminal offence if he or she undertakes a regulated activity whilst so barred. In this context, the provision of care to a child or vulnerable adult constitutes regulated activity. An employer who knowingly employs a person to undertake regulated activity when that person is barred from such activity because his or her name appears on either of the lists maintained by ISA also commits a criminal offence. 'Domestic employment' is

not covered by this provision - in other words, if an individual receiving direct payments or a suitable person / parent employes someone directly to provide care or assistance then they are not included in the definition of 'employer' for this purpose. However, if an agency were to provide a person to provide care or personal assistance to a child or vulnerable adult, then those persons responsible for that agency would certainly be caught by the definition. Where someone seeks an enhanced CRB check and requests such information, details of whether a person is on either of the ISA barred lists will be included within the enhanced CRB check certificate.

6. Where additional support is required

Parents and children / young people

6.1. Existing guidance emphasises the importance of:

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

6.2. Local authorities are required to provide information about services available in their area (Children Act 1989, section 17 and Schedule 2, Part 1). It will be essential that families have information about the full range of services, including the option of direct payments.

Direct payments to disabled people with parental responsibility for a child

6.3. Assessments for disabled adults should include parenting responsibilities, and local authorities should ensure a co-ordinated approach between adult and children's services and with other agencies. The availability of advocacy schemes can support families to benefit from the flexibility and choice offered by direct payments.

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

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

Direct payments to a person with parental responsibility for a disabled child

6.6. In this section, the terms 'parent' and 'parents' refer to any person who has parental responsibility for a disabled child, whether or not they are also the child's parent.

6.7. Where a parent opts for direct payments, local authorities remain responsible under the 1989 Act for assessing and reviewing the needs of the child and their family in the normal way.

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

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

6.10. Parents should ensure that any childcare they pay for is registered with the Care and Social Services Inspectorate Wales (CSSIW). The CSSIW have a responsibility to register and inspect childcare for children under 8. This ensures that the requirements of the regulations and national minimum quality standards in childcare are achieved and maintained.

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

6.12. Parents should be encouraged and supported to use direct payments with a view to enabling their disabled children to access the same kinds of opportunities and activities as their non-disabled peers. Direct payments to people with parental responsibility for a disabled child are provided within the framework of Part 3 of the 1989 Act, which requires local authorities to provide a range of services to safeguard and promote the welfare of children in need.

Intimate care for a disabled child using direct payments

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

Childcare and childminding

6.14. Local authorities should make available the list of registered childminders and other registered providers of childcare in their area.

6.15. Persons who provide care for a child under 8 for over two hours a day and for payment in their own home have to be registered as a childminder in accordance

with Part 2 of the Children and Families (Wales) Measure 2010². Parents of disabled children should be aware of this requirement, designed to safeguard the welfare of young children, when purchasing support via direct payments.

6.16. Parents may be entitled to help with the costs of childcare through the childcare element of Working Tax Credit. An online calculator is available at <http://taxcredits.hmrc.gov.uk/HomeNew.aspx>.

Transition from children's to adult services

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

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

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

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

6.21. One way to develop a young person's ability to manage the direct payments can be to put in place transitional arrangements, initially set up with the young person managing only a proportion of their support with direct payments. This proportion could increase as the young person matures, with the objective of full management of the support package at age 18.

6.22. Young disabled people may receive assistance with managing the direct payments. Where that assistance takes the form of a user-controlled trust or similar arrangement, it should be set up in the knowledge of the views of those people with parental responsibility. Their ability to express their views should not be undermined by the arrangement.

² Exceptions to the requirement for registration under Part 2 of the Children and Families (Wales) Measure 2010 are contained within the Child Minding and Day Care Exceptions (Wales) Order 2010 (S.I. 2010/2839) (W.233)

6.23. Direct payments can be used imaginatively by seeking to overcome disabling barriers that prevent a child from accessing social and leisure opportunities available to non-disabled peers. To achieve this will require linking the different agencies that support disabled children.

6.24. When putting in place any new arrangement once the young person reaches the age of 18, it is important that local authorities recognise and respect the views of any parents who have been managing the delivery of support for their child. If people with parental responsibility are going to continue in their caring role, such carers may be entitled to receive direct payments as an alternative to carers' services directly provided by the local authority under section 2 of the 2000 Act. Carers services would be provided to support the parent carer in their caring role, and to help them maintain their own health and well-being.

6.25. There may be situations where a parent has been receiving direct payments to meet the assessed needs of their child who, on reaching the age of 18, does not have the requisite mental capacity to consent to the making of those direct payments. In such cases, it will often be appropriate for the person with parental responsibility to continue to receive the direct payments for the young adult lacking capacity, in the role of a 'suitable person'. This will ensure continuity of care for the young person, and ensure that the payments are managed by the person who is likely to be best placed to understand the individual's needs and preferences. However, direct payments to the person who had parental responsibility can only continue in this way with that person's consent.

6.26. Local authorities should ensure that they make appropriate arrangements to prepare for transition so that, whether or not support is provided through direct payments, there is no disruption to the provision of support.

Direct payments for adults lacking mental capacity to consent

6.27. The paragraphs below should also be read in conjunction with section 3 of this guidance, on 'Consent, capacity and ability to manage'.

6.28. The Health and Social Care Act 2001 was amended by the Health and Social Care Act 2008 to extend the possibility of direct payments to adults who lack the capacity to consent to receive them, where it is in their best interests. The new provisions are set out in the Regulations. Direct payments can now be made to a suitable person who receives and manages the payments on behalf of the individual who lacks capacity. With certain exceptions, local authorities now have a duty to make direct payments in respect of an individual lacking capacity, provided that there is a willing suitable person who meets all the conditions set out in the Regulations.

6.29. Groups benefiting from this extension of the direct payments scheme may include some adults with head injuries and some people with dementia. In addition, severely impaired 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.

6.30. Before making direct payments for an individual lacking capacity, a local authority must first obtain the consent of the suitable person who will receive direct payments on behalf of the individual lacking capacity. In addition, where there is a surrogate of the individual lacking capacity, the local authority must obtain the consent of that surrogate to make direct payments. Under the 2001 Act and the Regulations, a surrogate is a donee of a lasting power of attorney created by the individual or a deputy appointed by the Court of Protection who has been given powers relating to decisions about securing community care services to meet that individual's needs.

Appointing a suitable person

6.31. Someone cannot just decide to be a suitable person in order to receive direct payments on behalf of an individual who is eligible for direct payments. In most cases, the suitable person will be a family member or a close friend already involved in the provision of care for the individual concerned. However, whatever the relationship of the proposed suitable person to the individual requiring care, a local authority must still follow the process set out in the Regulations, to ensure that the best interests of the individual lacking capacity are prioritised above all other considerations.

6.32. In the first instance, a local authority should establish whether someone who has offered to act as a suitable person qualifies as a representative. Someone can be made a representative in one of two ways:

if the person has been given lasting power of attorney by the individual needing services at some point before they lost mental capacity; or

if the person has been appointed a deputy for the individual needing services by the Court of Protection under section 16 of the 2005 Act.

6.33. A representative would usually be the first choice of suitable person, unless a local authority establishes that the representative is:

unwilling, or

incapable of managing direct payments, or

for some other reason is not appropriate to act as a suitable person.

6.34. If the representative does not wish to act as a suitable person, a local authority should then look to see if there is an alternative person who would be willing to act as a suitable person. If the representative is also a surrogate, then they will need to consent to the appointment of someone else as a suitable person. A surrogate is also a representative (i.e. a donee of lasting power of attorney or a court-appointed deputy). However, to be a surrogate rather than just a representative, the person's powers must cover decisions about securing services to meet an individual's care needs. Lasting powers of attorney, for example, can cover a range of matters, including both personal welfare and property and affairs decisions, and may contain

exclusions or restrictions. (For further information on these distinctions, see paragraphs 3.32 to 3.35.)

6.35. Similarly, there may be specific circumstances in which a person other than the representative (in particular, a close family member or a friend involved in the provision of care) is considered to be the most appropriate choice of suitable person by those consulted about making direct payments in respect of the individual lacking capacity. If a local authority is satisfied that this arrangement would work in the best interests of the individual lacking capacity, then it may, with the agreement of any existing surrogate, accept that individual as the suitable person, instead of the representative.

6.36. If there is neither a surrogate nor any other representative, then a local authority itself must make the decision about whether or not someone should act as a suitable person to manage the payments on behalf of the individual who cannot consent.

6.37. In all cases, whether or not there is a surrogate to assist a local authority in its decision, and whether or not the proposed suitable person is a representative, a local authority should, so far as is reasonably practicable and appropriate, consult and take into account the views of the following people before making the decision to make direct payments to a suitable person:

Anyone who has been named by the individual before they lost capacity as someone to be consulted, either on the subject of direct payments to the suitable person, or related matters such as matters regarding their personal welfare.

Anyone currently engaged in caring for the individual lacking capacity to consent, or anyone with an interest in their personal welfare.

As far as is practicably possible, the individual who lacks capacity themselves. Local authorities should ensure that they have taken all reasonable steps to ascertain the wishes of the individual regarding who should act on their behalf. This includes consideration of any written statement of wishes and preferences made by the individual before they lost capacity. To facilitate this, an advocate may be useful in providing support for the individual who lacks capacity.

Any representative or surrogate of the individual lacking capacity. Generally speaking, an attorney or a deputy should always be consulted, even if they are not going to take on the role of suitable person. For instance, a professional person with a lasting power relating to an individual's property and affairs might still have information about the individual's wishes and feelings which should be taken into consideration when deciding whether someone is a suitable person to act on their behalf.

6.38. There may be occasions where it is in the individual's best interests for their personal information to be revealed to the people consulted. Local authorities should ensure that social care staff who are trying to determine an individual's best interests

act lawfully at all times, following their own professional guidance, as well as other relevant guidance concerning confidentiality. Legal advice should be sought where necessary.

Conditions to be met by the suitable person

6.39. As with all direct payments, a local authority must be satisfied that the individual's needs can be met by means of the direct payments, and that the recipient (in this case the suitable person) is capable of managing the direct payments.

6.40. To help ensure that the suitable person does not mismanage or misuse the direct payments, the Regulations set out a number of conditions that a local authority should require of the suitable person before it makes direct payments to that person on someone else's behalf. The following paragraphs summarise these conditions.

6.41. Unless a local authority is satisfied that it is necessary to meet the individual's needs, direct payments may not be used to secure services from the spouse, civil partner or partner of an individual lacking capacity. Neither can they be used to secure services from a close relative, spouse or partner of a close relative of the individual and who is currently living in the same household as that individual. There may be occasions when a local authority decides that it is necessary for the suitable person to use the direct payments to secure services from a member of the family of the individual lacking capacity. However, such situations are likely to be exceptional and a local authority should be satisfied at all times that arrangements are made in the best interests of the individual lacking capacity.

6.42. The suitable person manages the direct payments on the understanding that they must act in the best interests of the individual who lacks capacity, within the meaning of the 2005 Act. This includes, as far as is reasonably practicable, encouraging and permitting the individual to have the fullest input possible into decisions affecting them. The suitable person should be required to take all practical steps to ensure that decisions are taken in the best interests of the individual who lacks capacity. This may involve consulting other people close to the individual lacking capacity, or health and social care professionals, where appropriate. To ensure that the individual can maintain as much control and independence as possible, the suitable person should be required to notify a local authority as soon as they believe the individual has regained capacity.

Principles of best interest

A person trying to act in the best interests of an individual lacking capacity should:

- do whatever is possible to permit and encourage the individual to participate, or to improve their ability to participate, as fully as possible, in acts and decisions

- try to identify and take into account all the things that the individual who lacks capacity would take into account if they were acting for themselves, including their past and present wishes and feelings, and any beliefs and values which would be likely to influence their decisions
- not make assumptions about what might be in the interests of the individual lacking capacity simply on the basis of the individual's age, appearance, condition or behaviour
- assess the likelihood of the individual regaining capacity
- consult others when making decisions, including anyone previously named by the individual as someone to be consulted; anyone engaged in caring for the individual; family members, close relatives, friends or others who take an interest in their welfare; any attorney appointed under a lasting power of attorney made by the individual; and any deputy appointed by the Court of Protection to make decisions for the individual
- for any major decisions, make sure a record is kept of the process of working out the best interests of the individual.

Where disputes arise

6.43. The suitable person may face disagreements with others involved in, or concerned for, the welfare of the individual lacking capacity to consent. Family members, partners and carers may disagree between themselves about how the direct payments should be spent, or they might have different memories about what views the individual expressed in the past. Carers and family might also disagree with a professional's view about the individual's care or treatment needs.

6.44. A local authority should support the suitable person to balance these concerns and decide between them. The local authority should take care to include the individual who lacks capacity (as much as they are able to take part) and anyone who has been involved in earlier discussions. It may or may not be possible to reach an agreement at a meeting to air everyone's concerns, but any decision must always be in the individual's best interests, following the best interests principles in the 2005 Act.

Advocacy

6.45. An independent advocate may be useful in providing support for the individual who lacks capacity, either in terms of deciding who should act as a suitable person on their behalf, or how the direct payments should be used to meet their assessed needs. Advocates may be especially appropriate if:

the individual who lacks capacity has no close family or friends to take an interest in their welfare

family members disagree about the individual's best interests

family members and professionals disagree about the individual's best interests

the individual who lacks capacity has already been in contact with an advocate

there is a concern about the protection of a vulnerable adult.

Approaches to risk

6.46. The changes to the direct payment scheme brought about by the Health and Social Care Act 2008 were designed to enable adults lacking mental capacity to benefit from the choice and flexibility that direct payments can bring. Although individuals lacking mental capacity may not be able to exercise the same level of choice and control as other individuals who benefit from direct payments, direct payments can still provide a vital means of ensuring that choices about the individual's care and support can be made by those who are best placed to understand their needs and preferences, and who know how to involve them as much as possible in decisions to support their best interests.

6.47. However, local authorities should be very clear about the unique position of adults lacking capacity, who may not only be more vulnerable to abuse, but also less able to tell people when it is happening. Local authorities should therefore take steps to develop a comprehensive risk management strategy, which should inform the care plan and subsequent arrangements for monitoring and review. It is likely that reviews may need to be conducted more frequently and in person, particularly in the early stages of the direct payments being made. Local authorities should consider involving other people known to the individual who lacks capacity, particularly those consulted when the suitable person was first appointed, as well as independent advocates where appropriate.

Safeguarding

6.48. Various legislative provisions have been put in place to support safeguarding measures for adults lacking mental capacity. The Regulations specify that if the suitable person is not the spouse, civil partner, partner, close relative (or spouse or partner of a close relative) or friend involved in the provision of care of the individual lacking capacity, then the local authority must obtain a CRB check for that suitable person, as a further protective measure. For example, the suitable person may be an independent care broker or a solicitor acting as a professional deputy, who may not previously have been personally known to the individual concerned.

6.49. Anyone caring for an individual who lacks capacity for the purpose of the 2005 Act, and who wilfully neglects or ill-treats that person, can be found guilty of a criminal offence under the Act. This is punishable by up to five years in prison or a fine, or both (see section 44 of the 2005 Act). In addition, the Fraud Act 2006 created a new offence of 'fraud by abuse of position' (section 4 of the Fraud Act 2006). This

may apply to a range of people including attorneys under a lasting power of attorney (LPA) or enduring power of attorney (EPA), or deputies appointed by the Court of Protection to make financial decisions on behalf of an individual who lacks capacity. Someone acting as a suitable person may be guilty of fraud if they dishonestly abuse their position, intend to benefit themselves or others, and cause loss or expose that individual to the risk of loss. Without discouraging people from taking up the role of suitable person, local authorities should also make clear to anyone considering the role the consequences of financial misconduct or other forms of neglect or ill-treatment.

6.50. The Regulations also provide local authorities with the power to impose other conditions on the suitable person if they think fit. If local authorities believe that it is necessary to impose other conditions to ensure the best interests of the individual requiring services, then this should be done.

Direct payments to people subject to mental health legislation

6.51. Previously, many individuals with mental disorders who were subject to compulsory measures under the Mental Health Act 1983 (and similar legislation) were excluded from receiving direct payments. The Regulations remove most of those exclusions, with the result that local authorities will now also be able to make direct payments to individuals who are subject to such mental health legislation. It is expected that, in most cases, individuals subject to mental health legislation will now enjoy exactly the same rights to direct payments as anyone else.

6.52. However, there are a few cases in which local authorities have a power, rather than a duty, to make direct payments to individuals subject to mental health legislation, and these are explained below.

Under the Regulations, local authorities now have a power (although not a duty) to make direct payments to individuals ('restricted patients') who are conditionally discharged under the 1983 Act (or the equivalent Scottish legislation). These restricted patients are offenders who have been detained in hospital under the 1983 Act (or the equivalent Scottish legislation) and who remain liable to recall to hospital if necessary for their own health and safety or the protection of others.

Local authorities also have a power, rather than a duty, to make direct payments in respect of services which the individual in question is under an obligation to accept as a result of any of the provisions of the 1983 Act, the Criminal Procedure (Insanity) Act 1964, the 1991 and 2003 Criminal Justice Acts, the Powers of Criminal Courts (Sentencing) Act 2000 and similar Scottish legislation. These provisions are set out in Annex B.

6.53. For example, if it is a condition of an individual's community treatment order under the 1983 Act that they accept a particular type of community care service, then a local authority would have a power, but not a duty, to make direct payments in respect of that service (provided, of course, all the other criteria for making direct payments are met). The provision of a discretionary power is intended to give local authorities greater flexibility in cases where they are concerned that there may be

risks in making direct payments in respect of services which the individual concerned may prefer not to receive. The individual might not, for example, be as committed to making a success of the service as would normally be the case where individuals use direct payments to arrange their own care.

6.54. Even where these provisions apply, local authorities still have a duty to make direct payments in respect of any service not covered by a specific condition, in the same way as they do for any other eligible individual. Therefore the situation may arise where a local authority has a duty with regard to some services and a power with regard to others, when making direct payments to an individual subject to legislation set out in Annex B.

6.55. Although the Regulations allow local authorities to exercise discretion in making direct payments to individuals subject to conditions relating to mental disorder, local authorities should be flexible in their approach and prepared to support individuals to take up direct payments wherever possible. Local authorities will wish to consider what support is available to the individual, and where this support can be strengthened by access to support services, information and advice (and, where appropriate, independent advocacy). It is important to have in place a comprehensive risk management strategy within the support plan, agreed between the individual who is receiving the direct payments and the local authority, including what arrangements will be put in place for proportionate monitoring and review.

6.56. Where local authorities decide that it is not appropriate to make direct payments, they should put the reasons for the decision in writing, and make a written record available to the individual. They should also inform the individual about how to access complaints procedures if they are not satisfied with the decision of the local authority.

6.57. Individuals who are subject to conditions relating to drugs and alcohol under provisions listed in Annex C remain excluded from direct payments. In such cases, a local authority still has a duty to provide services to meet the eligible needs of the individual, although direct payments cannot be made to meet such needs.

Direct payments for carers

6.58. Local authorities are under a duty to offer carers a direct payments arrangement where they are assessed as needing services under section 2 of the Carers and Disabled Children Act 2000. Direct payments allow carers to purchase the services they are assessed as needing, as carers, to support them in their caring role and to maintain their own health and well-being. Making direct payments in this way should not affect the carer's entitlement to Carer's Allowance and other benefits.

Young carers

6.59. Local authorities are also under a duty to offer 16 or 17 year old carers a direct payments arrangement where they are assessed as needing services under section 2 of the 2000 Act. Direct payments are available to allow for flexibility in the small number of circumstances where a 16 or 17-year-old is choosing to undertake a

substantial caring role for a disabled adult for a period, and where a local authority has decided to provide the carer with a service to meet their needs as a carer. It could in some circumstances be more helpful to the young carer to receive direct payments – for example, to allow them to arrange for carer services to be delivered in such a way as to minimise any disruption to their education that would result from their decision to care.

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

6.61. When assessing whether the young carer is willing and able to manage the direct payments, a local authority should consider the impact of that additional responsibility on the young person. A local authority might also consider the variety of ways in which the young person could be supported to manage any direct payments. For instance, the young carer may be able to have the payroll aspects of managing direct payments dealt with by a local payroll service. Local authorities should inform the young person of the support that is available. Local authorities will also need to take into account the legal position on contracts for minors (see paragraph 5.17), and may wish to seek legal advice in appropriate circumstances.

7. Monitoring and review

General

7.1. When an individual chooses to receive direct payments, they take on responsibility for securing the necessary support to meet their assessed needs and to achieve the outcomes identified in their care plan. Monitoring arrangements should be consistent both with the requirement for the local authority to be satisfied that the individual's needs can and will be met, and with the aim of promoting and increasing choice and independence.

7.2. Local authorities should focus on achieving agreed outcomes, rather than on the service being delivered in a certain way. A local authority should discuss with individuals what steps it intends to take to fulfil its responsibilities, and may also wish to discuss how it might support them in securing quality care that meets their needs in the way best suited to them. A local authority should be prepared to consider variations to what it proposes.

7.3. Local authorities should aim to ensure that the information that the individual is asked to provide is straightforward and the least onerous possible, consistent with monitoring requirements.

7.4. Each local authority will need to establish how it will determine if an individual is experiencing difficulty with managing their direct payments. Where an individual has been managing their own care for some time, it may be appropriate to rely on them asking for extra help if they need it. However, local authorities should not assume that this is an adequate safeguard, particularly when the individual has a fluctuating or deteriorating condition such as HIV/AIDS or Alzheimer's, or when an individual begins to receive direct payments for the first time.

7.5. Where a local authority wishes to ask the individual whether they are satisfied with their support arrangements, it should ensure that it communicates directly with the individual on an appropriate basis. For example, a different interpreter may be required if the individual wishes to comment on the services of their usual interpreter. Local authorities should not make the assumption that an individual who is not satisfied with the way their support is being delivered cannot manage direct payments. They should seek to ensure that individuals feel able to express reservations about the support they are purchasing, or any other problems they are having in managing their direct payments, without concern that their direct payments will be stopped automatically or arbitrarily. Appropriate access to independent advocacy should be offered.

7.6. Local authorities should follow existing guidance on carrying out reviews. The fact that a local authority is making direct payments rather than arranging services itself does not affect its responsibility to review an individual's care package at regular intervals. The purpose of the review is to establish whether the objectives set in the original care plan are being met. It should, therefore, cover whether the individual's needs have changed, whether the use of direct payments is meeting

their assessed needs and supporting the individual to achieve their outcomes, and how they are managing direct payments.

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

Reviews for adults who lack capacity

7.8. The Regulations provide for regular reviews, as well as specifying circumstances in which a local authority must review the arrangements for direct payments for an individual lacking capacity. Local authorities should review arrangements within the first year of direct payments being made to the suitable person, and at regular intervals thereafter, and at least annually. Suitable persons should be made aware that they can be required by a local authority to provide information relating to the spending of the direct payments at any time.

7.9. Adults lacking capacity are likely to need more frequent monitoring arrangements than other direct payments recipients. They may be less able to communicate their needs and wishes, and there may be issues around fluctuating capacity. If the suitable person has not been involved in the provision of care prior to taking up the direct payments, reviews may be required more often to establish that they are sufficiently capable and supported to carry out their role. Local authorities should be satisfied at all times that the suitable person is using the direct payments in a way that protects the best interests of the individual whose care needs are being met by them.

7.10. In addition, local authorities should be prepared to review arrangements if either the suitable person or someone else comes forward with relevant information. It might be that they believe the individual has gained or regained capacity, in which case that individual should be enabled to take control of the direct payments themselves. Local authorities should also carry out a review if notified by anyone that the suitable person may be having difficulties managing the direct payments, or if they are not spending it in a way that supports the outcomes identified in the care plan.

Financial monitoring

7.11. Each local authority should set up financial monitoring arrangements for audit purposes. This will fulfil a local authority's responsibility to ensure that public funds are spent to produce the intended outcomes. The local authority's financial monitoring arrangements should seek to ensure that no decision to cancel or

suspend a direct payments arrangement is taken without the prior involvement of the local authority's direct payments team and the individual's care management team.

7.12. Local authorities should also seek to ensure that all people with an interest in agreeing, managing and monitoring a direct payments arrangement (for example, the care management, direct payments, finance teams, and the support scheme) have a clear understanding of their own roles and responsibilities, and of the roles and responsibilities of the other people/parties involved. Before individuals decide to accept direct payments, a local authority should discuss with them the information they will be expected to provide and the way in which monitoring will be carried out.

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

7.14. In order to audit direct payments, it is important for individuals receiving direct payments, either on their own behalf or on behalf of someone else, to be able to identify the direct payments money separately from any other money used for similar purposes. For example, individuals may use their direct payments to employ a personal assistant, and then pay the assistant to work additional hours from their own resources or using funding from another source, such as the Independent Living Fund (ILF). A single bank account for direct payments and ILF money (and other money related to personal assistance) can meet this requirement. It is not appropriate to ask the individual to have a second bank account for non-recurrent expenditure such as a short-term need.

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

Monitoring local implementation

7.16. 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, they should actively seek the comments and suggestions of those individuals who are receiving direct payments or who have considered receiving them. Local authorities should learn from the views of those who have been discouraged from using them, and consider where improvements can be made. Local authorities may also wish to monitor the effectiveness of direct payments support services, to identify where improvements can be made – again, involving the views of those who use them.

7.17. As part of this process, local authorities should also monitor take-up of direct payments across different groups, to ensure that local policy and practice is promoting direct payments as a positive choice, and ensuring equal access to different groups - for example, black and minority ethnic groups, older people, people

with mental health issues (including those subject to mental health legislation provisions), people with learning difficulties, carers, young carers, people who lack capacity, parents with disabled children and young disabled people.

8. Troubleshooting

When difficulties arise

8.1. If a local authority becomes aware that an individual is or will be unable to meet their needs through their own arrangements, either temporarily or in the longer term, then the local authority will need to take steps to meet its responsibility to provide or arrange for the provision of services for that individual. If the individual temporarily loses capacity to consent, the local authority may look to another person to receive and manage the direct payments on that individual's behalf (on a temporary basis), if they are willing to do so, and provided the service provider agrees to accept payment from the other person instead.

8.2. Local authorities should make individuals aware that they should plan for the unexpected, and discuss with them what arrangements they will make for emergencies, to ensure that the individual continues to receive the care they need when the usual arrangements break down (for example, through the sickness of a personal assistant). The local authority will need to be prepared to respond in these circumstances, just as it would with any other individual using a service. When circumstances permit, the local authority should discuss alternative arrangements with the individual. A local authority may decide to step in and arrange services where this is necessary to meet its responsibilities, but the local authority could also explore other ways of providing assistance to enable the individual to continue to manage their own care using direct payments, particularly if the difficulty is temporary or unforeseen.

8.3. Local authorities may also wish to make individuals aware that, in planning for the unexpected, they might consider giving someone a lasting power of attorney to manage their affairs relating to personal welfare, in the event that they lose capacity and are unable to do so themselves. This person (for example, a close relative or friend already involved in the provision of their care) could then continue to manage the direct payments to purchase services on their behalf.

8.4. Difficulties can be minimised by good assessment and care planning, clarity about agreed outcomes and what the direct payments monies can be used for, as well as by effective monitoring and support arrangements. Discussing potential areas of difficulty and how they will be handled with the individual before direct payments begin is important. Reviews should be carried out regularly and not just when difficulties arise.

8.5. Examples of contingency plans that individuals might make include 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 that have not been anticipated and that cannot be covered by the arrangements the individual has made. In these circumstances, the individual should know that they can contact a named person in the local authority or support service for help.

8.6. If the local authority's monitoring or review process reveals that the individual's needs are not being met, or they contact the local 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 an individual to make other arrangements, or it may mean arranging services directly until they are able to make their own arrangements once more.

8.7. Annex G provides a list of questions that it may be useful for a local authority to ask if difficulties arise.

8.8. Some local authorities have concerns that they might be liable for the actions of individuals receiving direct payments (for example, the way in which an individual treats their employees). Local authorities should arrange their direct payment schemes in the light of legal advice about their liabilities. This should not be used as a reason to refuse direct payments.

When to seek repayment

8.9. Local authorities are able to require some or all of the money they have paid out to be repaid, if they are satisfied that it has not been used to secure the provision of the service to which it relates. They may also require repayment if the individual has not met any condition that the local authority has imposed. Local authorities that decide to require repayment by an individual whom they know is also receiving payments from the Independent Living Fund (ILF) should inform the ILF as soon as possible and should seek to agree, if possible, a common approach if the ILF is also seeking recovery. Local authorities will need to comply with their responsibilities under the Data Protection Act 1998, and should advise these individuals of the circumstances in which the ILF will be contacted.

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

8.11. Local authorities are also able to seek repayment where a suitable person has been responsible for managing direct payments on behalf of an individual lacking capacity if they are satisfied that:

the suitable person has not used the direct payments to secure the services for which they were intended; or
the suitable person has not met a condition properly imposed by the local authority.

8.12. In such situations, local authorities should seek repayment from the suitable person, not the individual lacking capacity for whose care and support the direct payments were made. Local authorities should inform the suitable person from the

outset of their responsibilities for ensuring appropriate use of the money.

8.13. A local authority should be satisfied, before it begins to make payments, that the individual understands all of the conditions that they will be required to meet. The local authority should also discuss the circumstances in which it might wish to consider seeking repayment. Local authorities may wish to take hardship considerations into account in deciding whether to seek repayments. Local authorities should also bear in mind that there might be legitimate reasons for unspent funds. There may be outstanding legal liabilities necessitating an individual to build up an apparent surplus (for example, to pay their employees' quarterly PAYE, or to pay outstanding bills from a care agency).

Discontinuing direct payments

Reasons for discontinuing direct payments

8.14. An individual to whom direct payments are made, whether to purchase support for themselves or on behalf of someone else, may decide at any time that they no longer wish to continue receiving them. The Regulations provide that a local authority shall cease making direct payments if the individual no longer appears to the local authority to be capable of managing the direct payments even with help.

8.15. The Regulations also state that a local authority must stop making direct payments if it is not satisfied that the individual's needs can be met by using direct payments, or if the direct payments are not safeguarding or promoting a child's welfare (where the payments relate to services under section 17 of the 1989 Act).

8.16. Direct payments should be discontinued when an individual no longer needs the support for which the direct payments are made. This might happen in situations where the direct payments are for short-term packages when leaving residential care or hospital. Direct payments might be varied if the individual's needs call for the provision of different levels of support at different times.

8.17. There may be circumstances in which the local authority discontinues direct payments temporarily. An example might be when an individual's condition improves for a short period, and they do not require the services that the direct payments are intended to secure. The local authority will need to discuss with the individual how best to manage this. The individual should be allowed to resume responsibility for their own care after the interruption, if that remains their wish, unless there has been a change of circumstances which means that there is no duty on the local authority to make direct payments (or, in certain exceptional circumstances, the local authority decides not to exercise the power to make direct payments).

8.18. The local authority might also discontinue payments if the individual fails to comply with a condition to which the direct payments are subject, or if for some reason the local authority no longer believes it is appropriate to make the payments. For example, the local authority might discontinue the direct payments if it is apparent that they have not been used to achieve the outcomes of the care plan.

8.19. Direct payments must be discontinued where the individual is placed by the courts under a condition or requirement relating to a drug and/or alcohol dependency (see Annex C). Local authorities will also have discretion to discontinue direct payments in respect of particular services if the individual in question becomes obliged to receive that service as a result of certain provisions of mental health legislation (see the section on direct payments to people subject to mental health legislation, paragraphs 6.51 to 6.57, and Annex B). This decision should be taken in consultation with the individual and any other appropriate parties, including the relevant mental health practitioner, and the reasons for any decision should be communicated to the individual concerned. Where direct payments are discontinued as a result of mental health or criminal justice legislative provisions, the local authority should make timely arrangements for services to be provided in lieu of the direct payments, to ensure continuity of support.

8.20. Local authorities should also consider how to recover unspent direct payments if the recipient dies. For example, if the individual 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 that were not in fact delivered. Local authorities should also consider, if the direct payment recipient does leave unspent funds to be recovered, that before their death the recipient may have incurred liabilities that should legitimately be paid for using the direct payments (for example, they received services for which payment had not been made at the time of death). Local authorities may need to consider any redundancy costs payable to personal assistants, and be prepared to provide advice on how these might be met.

Discontinuing direct payments in the case of individuals with capacity to consent

8.21 Where an individual with capacity was receiving direct payments but then loses capacity to consent, the local authority should discontinue direct payments to that individual and consider making payments to a suitable person instead. In the interim, the local authority should make alternative arrangements to ensure continuity of support for the individual concerned. This should, as far as it is practicable and appropriate, include the retention of the arrangements that existed prior to the loss of capacity – for example, the retention of existing staff or personal assistants.

8.22. If the local authority believes the loss of capacity to be temporary, it may continue to make payments if there is someone else who is willing to manage payments on the individual's behalf, and the service provider agrees to accept payment from this person instead. This situation should be treated as strictly temporary and closely monitored to ensure that, once the individual has regained capacity, they are able to exercise overall control over the direct payments as before. If the individual's loss of capacity to consent becomes prolonged, then the local authority should consider making more formal arrangements for a suitable person to take over receipt of the direct payments on the individual's behalf.

Discontinuing direct payments in the case of individuals lacking capacity to consent

8.23. Direct payments must be discontinued if the local authority is no longer satisfied, for whatever reason, that the suitable person is acting in the best interests of the individual for whom the payments are made, within the meaning of the 2005 Act. The local authority might also wish to discontinue the direct payments if it has sufficient reason to believe that the conditions imposed on the suitable person are not being met. The local authority may wish to consider if someone else can act as a suitable person for the individual lacking capacity, or whether it will have to arrange services for them in place of the direct payments.

8.24. Direct payments must be discontinued where the local authority has reason to believe that an individual who had lacked capacity has now regained that capacity on a long-term or permanent basis. Local authorities should not terminate direct payments to the suitable person before beginning to make direct payments to the individual themselves (or to arrange services for them, according to their wishes). If the local authority is satisfied that the regaining of capacity will only be temporary, then it can continue to make direct payments to the suitable person on the basis that, as far as possible, the individual for whom the payments are made should control how those payments are used (see the section on fluctuating capacity, paragraphs 3.14 to 3.18).

How to discontinue direct payments

8.25. In all cases where local authorities are considering discontinuing direct payments, they should discuss this as soon as possible with the individual, their carers and any suitable person managing the direct payments, in order to explore all available options before making the final decision to terminate the direct payments. For example, if ability to manage is an issue, the individual should be given an opportunity to demonstrate that they can continue to manage direct payments, albeit with greater support if appropriate. The local authority should not automatically assume when problems arise that the only solution is to discontinue or end direct payments.

8.26. If the local authority does decide to withdraw direct payments, it will need to arrange the relevant services instead, unless the withdrawal was following a reassessment after which the local authority concluded that the services were no longer needed. A minimum period of notice should be established that will normally be given before direct payments are discontinued. This should be included in the information provided to individuals who are considering receiving direct payments. It will be extremely unlikely that a local authority will discontinue direct payments without giving notice. Local authorities should explain to individuals, before they begin to receive direct payments, the exceptional circumstances in which this might occur, and discuss with them the implications this has for the arrangements that individuals might make.

8.27. Where the individual is also receiving ILF funding, the local authority may also need to keep in touch with the ILF and share information where appropriate (and preferably with the service user's permission).

8.28. If direct payments are discontinued, some individuals may find themselves with ongoing contractual responsibilities or having to terminate contracts for services (including possibly making employees redundant). Local authorities should take reasonable steps to make individuals aware of the potential consequences if direct payments end.

Annex A

Examples of areas to be covered in a care plan for an individual receiving direct payments

- What are the individual's needs, as identified in the assessment?
- What is important to the individual? What outcomes would the person like to achieve through meeting their identified needs?
- Can these outcomes be met by means of direct payments?
- How will the individual use the direct payments to arrange for their support?
- 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 individual need to manage their direct payments?
- How will this support be made available to the individual?
- What arrangements has the individual made to cover emergencies?
- How much money does the local authority consider is reasonable to secure the necessary support to meet the individual's needs?
- How much of this total will the local authority contribute in direct payments, and how much is the individual expected to contribute?
- Will payments be made gross or net of the individual's contribution?
- How often and in what form will payments be made?
- What arrangements does the local authority propose for monitoring? What information should the individual provide? What access will be required to the individual's home?
- How will the local authority be satisfied that the direct payments are purchasing services which safeguard and promote the welfare of the disabled child/young person?
- How will the local authority be satisfied that the direct payments are purchasing services which promote the best interests of the individual lacking capacity?
- What information does the local authority require for audit purposes, and when?
- What, if any, other conditions are attached to the direct payments?

- When will the next review take place?
- What should the individual do if they want 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 the individual receiving the direct payments handle any temporary gap in payments being made?
- How much notice will normally be given if the local authority decides to discontinue direct payments?
- 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?

Annex B

Power to make direct payments

Local authorities are under a **duty** to offer and make a direct payments arrangement with individuals who meet the criteria (see paragraphs 1.10 to 1.15).

The Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011 also give local authorities a **power** (but not a duty) to make direct payments where an individual has been conditionally discharged from hospital under the Mental Health Act 1983 or section 193(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003.³

Where an individual is compelled to receive a service as a result of any of the following legislative provisions relating to mental disorder, local authorities have a **power** (but not a duty) to make direct payments to them in respect of that service. The provisions in question are:

supervised community treatment, guardianship or on leave of absence from a hospital in which they are detained under the 1983 Act

the supervision of a social worker or the Probation Service as a result of a supervision order made under the Criminal Procedure (Insanity) Act 1964

an offender released on licence under the Criminal Justice Act 1991, which includes a requirement to accept treatment for a mental health condition

an offender on a community rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for a mental health condition

an offender on a community order or serving a suspended prison sentence under the Criminal Justice Act 2003, which includes a requirement to accept treatment for a mental health condition

the equivalent of any of the above under Scottish legislation.

Where a relevant service is one that has not been imposed by a condition under any of the above provisions, local authorities have a duty to make direct payments to the person concerned to meet their needs for that service.

Reference should be made to the Regulations for full details of the circumstances in which a power, rather than a duty, to make direct payments applies.

³ The Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011, Schedule 2, Regulations 8 and 9.

Annex C

Exclusions to direct payments

The list of those excluded from participating in a direct payments arrangement was amended by the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011.⁴

Direct payments may not be made in respect of certain individuals who have been placed under certain conditions or requirements by the courts in relation to drug and/or alcohol dependencies, as listed below:

offenders on a community order, or serving a suspended prison sentence, under the Criminal Justice Act 2003, which includes a requirement to accept treatment for drug or alcohol dependency

an offender on a community rehabilitation order or a community punishment and rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for drug or alcohol dependency

offenders released from prison on licence under the Criminal Justice Act 1991, the Criminal Justice Act 2003 or the Crime (Sentences) Act 1997 subject to an additional requirement to undergo treatment for drug or alcohol dependency

individuals subject to equivalent provisions under Scottish criminal justice legislation. This includes individuals who are subject to Community Payback Orders (CPO) under the Criminal Justice and Licensing (Scotland) Act 2010, where the CPO includes mental health, alcohol or drug treatment requirements.

Reference should be made to the Regulations for full details of individuals excluded from direct payments.

⁴ Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011, Schedule 1, Regulations 3, 4 and 5

Annex D

Further information

Relevant Legislation

The Mental Health Act 1983

Local Authority Social Services Act 1970

The Health and Social Care Act 2001

The Children Act 1989

The Carers and Disabled Children Act 2000

The Health and Social Care Act 2008

The Mental Capacity Act 2005

Social Care Charges (Wales) Measure 2010

The Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011

The Social Care Charges (Means Assessment and Determination of Charge (Wales) Regulations 2011

The Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement of Contribution) (Wales) Regulations 2011

The Social Care (Review of Charging Decisions) (Wales) Regulations 2011

National Centre for Independent Living publications

The National Centre for Independent Living (NCIL) is a source of information and expertise.

Unit 3.40, Canterbury Court, 1–3 Brixton Road, London SW9 6DE **Tel:** 020 7587 1663 **Fax:** 020 7582 2469 **Textphone:** 020 7587 1177 **Website:** www.ncil.org.uk
Email: info@ncil.org.uk

NCIL, *Everything you need to know about direct payments* (2008)
Independent Living Institute, *The Rough Guide to Managing Personal Assistants*, Sian Vasey (2000)

NCIL DVD, *Direct Payments: a beginner's guide* – a 30-minute DVD which covers the essential aspects of managing a PA set-up, including recruitment, supervision and contracts
NCIL, *Direct Payments for Mental Health Service Users/Survivors: a guide to some key issues*, Pauline Heslop (2007)
National Youth Agency and West of England Centre for Inclusive Living, *Creating Independence and Inclusion – Youth Personal Assistance Support Scheme*, Rowen Jade (2003)

Values into Action (VIA) publications

VIA, Oxford House, Derbyshire Street, London E2 6HG **Tel:** 020 7729 5436 **Fax:** 020 7729 7797 **Website:** www.viauk.org **Email:** general@viauk.org

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

Department of Health publications

Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS **Tel:** 020 7210 4850 **Website:** www.dh.gov.uk **Email:** dhmail@dh.gsi.gov.uk

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

Scope publications

Scope, 6 Market Road, London N7 9PW **Tel:** 020 7619 7100 for switchboard, or 0808 800 3333 for Scope Response, which offers confidential advice and information
Website: www.scope.org.uk **Email:** response@scope.org.uk
Text: SCOPE, plus your message to 80039

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

Joseph Rowntree Foundation publications

Joseph Rowntree Foundation, The Homestead, 40 Water End, York YO30 6WP **Tel:** 01904 629241 **Minicom:** 01904 615910 **Website:** www.jrf.org.uk **Email:** info@jrf.org.uk

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

Other resources

Direct Payments 'Suitable Person' Guidance, developed by the All-Wales Direct Payments Forum in conjunction with the Welsh Assembly Government (2011)

Sustainable Social Services for Wales: A Framework for Action, Welsh Assembly Government (2011)

The Provision of Community Equipment: National Minimum Standards Good Practice Guidance Wales, Welsh Assembly Government (2011).

A survey on the Implementation of the current Direct Payments Scheme in Wales by Social Interface, published by the Welsh Assembly Government (2008).

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

Mental Capacity Act 2005 Code of Practice (2007)

Commission for Social Care Inspection, *Direct Payments: what are the barriers?* (2004)

Policy Press, *Developments in Direct Payments*, Janet Leece and Joanna Bornat (eds) (2006)

King's Fund, *Direct Payments and Older People*, Teresa Poole (2006)

CIPFA Guidance on Direct Payments,
http://www.cipfa.org.uk/panels/social_care/publications.cfm

Annex E

Contacts

Age Cymru - Age Cymru, T John Pathy, 13/14 Neptune Court, Vanguard Way, Cardiff CF24 5PJ. Website : www.ageuk.org.uk/cymru/ Tel: 029 20431555

All Wales People First - All Wales People First, Stebonheath Centre, Stebonheath Terrace, Llanelli, Carmarthenshire, SA15 1NE. Website www.allwalespeople1st.co.uk Tel: 01554 784905

Alzheimer's Society Wales – 16 Columbus Walk, Atlantic Wharf, Cardiff CF10 4BY. Website: www.alzheimers.org.uk Tel: 029 20480593

ASBAH Cymru - PO Box 325, Bridgend, CF31 9LD Website: www.ASBAH.org Tel: 01656 864102

Autism Cymru – 6 Great Darkgate Street, Aberystwyth. Website: www.awares.org Tel : 01970 625256

AWETU -3rd Floor, 307 - 315 Cowbridge Road East, Canton, Cardiff, CF5 1JD. Website : www.awetu.org.uk Tel: 029 2036 8899

Carers Wales - River House, Ynsbridge Court, Gwaelod-y-Garth, Cardiff CF15 9SS. Website : www.carerswales.org Tel : 029 20811370

Chartered Institute of Public Finance and Accountancy (CIPFA)

Website: www.cipfa.org.uk Tel: 020 7543 5602

3 Robert Street, London WC2N 6RL Tel: 020 7543 5600 Fax: 020 7543 5700
Website: www.cipfa.org.uk

Children in Wales - Children in Wales, 25 Windsor Place, Cardiff, CF10 3BZ
Website: www.childreninwales.org.uk Tel: 02920 342434

Children's Society - Edward Rudolf House, Margery Street, London WC1X 0JL
Website: www.childrenssociety.org.uk Tel: 0845 300 1128

Contact a Family- Contact a Family, 33-35 Cathedral Road, Cardiff, CF11 9HB.
Website: www.cafamily.org.uk Tel: 029 2039 6624

Crossroads – 3rd Floor, 33-35 Cathedral Road, Cardiff, CF11 9HB. Website: www.crossroads.org.uk Tel : 029 20090087

Deaf Association Wales - British Sign Language Cultural Centre, 47 Newport Road, Cardiff, CF24 0AD Website: www.wales@bda.org.uk Textphone: 0845 1302853

Disability Wales - Disability Wales, Bridge House, Caerphilly Business Park, Van Road, Caerphilly CF83 3GW. Website : www.disabilitywales.org Tel :029 20887325

Down's Syndrome Association Wales - Suite 1, 206 Whitchurch Road, Heath, Cardiff, CF14 3NB. Website : www.downs-syndrome.org.uk Tel : 029 2052 2511

Hafal - Suite C2, William Knox House, Britannic Way, Llandarcy, Neath SA10 6EL Website : www.hafal.org Tel: 01792 816 600

Headway – Bradbury House,190 Bagnall Road, Old Basford, Nottingham, NG6 8SF. Website : www.headway.org.uk Tel : 0115 924 0800

Journeys - Alexandra Gate Business Centre, Ffordd Pengam, Cardiff, CF24 Website: www.journeysonline.co.uk Tel: 029 20692891

Learning Disability Wales - 41 Lambourne Crescent, Cardiff Business Park, Llanishen, Cardiff, CF14 5GG. Website : www.learningdisabilitywales.org.uk Tel: 029 2068 1160

MDF the BiPolar Organisation Cymru - 22-29 Mill Street, City of Newport, South Wales, NP20 5HA. Website : www.mdfwales.org.uk Tel: 01633 244244

Mencap Cymru - Mencap Cymru, 31 Lambourne Crescent, Cardiff Business Park, Llanishen, Cardiff, CF14 5GF. Website : www.mencap.org.uk Tel: 029 20 747588

Mind Cymru - 3rd Floor, Quebec House, Castlebridge, 5-19 Cowbridge Road East, Cardiff CF11 9AB. Website : www.mind.org.uk Tel : 029 2039 5123

National Autistic Society Wales - NAS Cymru, 6-7 Village Way, Greenmeadow Springs Business Park, Tongwynlais, Cardiff CF15 7NE, Website: www.autism.org.uk Tel: 02920 629312,

National Children's Bureau - 8 Wakley Street, London EC1V 7QE Website: www.ncb.org.uk Tel: 020 7843 6000

Office of the Public Guardian - Customer Services – The Office of the Public Guardian and the Court of Protection, PO Box 15118, Birmingham B16 6GX Tel: 0845 330 2900 Textphone: 020 7664 7755 Fax: 020 7664 7551 Website: www.publicguardian.gov.uk Email: customerservices@publicguardian.gsi.gov.uk

Princess Royal Trust for Carers - Victoria House, 250 Cowbridge Road East, Cardiff,CF5 1GZ, Website: www.carers.org Tel: 02920 221439

RNIB Cymru - Trident Court, East Moors Road, Cardiff, CF24 5TD Website: www.rnib.org.uk Tel : 029 20450440

RNID Cymru - 16 Cathedral Road, Cardiff CF11 9LJ Website : www.rnid.org.uk Tel : 029 20333034

Scope - Scope Cymru, The Wharf, Schooner Way, Cardiff, CF10 4EU. Website: www.scope.org.uk Tel: 02920 461 703

Sense Cymru -, T Penderyn, 26 High St, Merthyr Tydfil, CF47 8DP. Website : www.sense.org.uk Tel : 0845 127 0090

United Kingdom Disabled People's Council (UKDPC) -DIAL House, Hamilton Place, Chester CH1 2BH Tel: 01773 746698 **Website:** www.ukdpc.net **Email:** general@UKSDPC.org

Wales Council for the Blind - 3rd Floor, Shand House, 20, Newport Road, Cardiff CF24 0DB. Website : www.wcb-ccd.org.uk Tel : 029 20 473954.

Wales Council for Deaf People – Glenview House, Courthouse Street, Pontypridd CF37 1JY Website www.wcdeaf.org.uk Tel : 01443 485687

Annex F

Advice about employing someone using direct payments

The information given to individuals who are receiving direct payments should cover the following general advice:

- Be suitably cautious. If you have any doubts about the applicant, do not take them on.
- Always ask for two written references and check them carefully – following up with a telephone call is often advisable.
- Ask all the questions that are important to you – for example, about smoking and eating habits or what their hobbies are. If you are employing someone to look after your child, you need to find out where they might be taken, and any other people the child might have contact with when being cared for.

Remember that it is better to discover that the person is unsuitable before you employ them.

- Get a friend, parent or someone you trust to spend some time with you and your new personal assistant initially.
- Make sure that the personal assistant has your support and welfare, or that of your child, as their priority.
- If you are unhappy with the person caring for you, seek advice and try to find someone else.

In addition, when employing someone to look after a child or where the employer is a 16 or 17-year-old:

- If you choose to ask for a criminal records check, ensure that such a check has been completed within the last month.
- Take note and listen to everything that your child is communicating about the care they receive. Especially with non-verbal children, take note of unusual or regressive behaviour.
- Try to spend time ensuring that your child is able to settle with the new person.
- Do not employ someone under the age of 16 to undertake a paid caring role as people under 16 are unlikely to be sufficiently mature to take on such a responsibility.
- Information about the risk of child maltreatment should be clear and straightforward without unnecessarily raising anxieties.

In addition, in the case of a suitable person employing someone on behalf of an adult who lacks capacity:

- If you choose to ask for a criminal records check or if one is required, ensure that such a check has been completed within the last month.
- As far as is reasonably practicable, take note and listen to everything that the person lacking capacity is communicating about the care they receive. Consult family members, friends and carers who might have particular experience of communicating with the person.
- Anyone who thinks that someone might be abusing a vulnerable adult who lacks capacity should contact their local authority or the Office of the Public Guardian or seek advice through the Community Legal Service.

Annex G

Questions to ask

If difficulties arise, a local authority might find it useful to ask the following questions:

- **Have the individual's needs changed?** If so, the individual's needs should be reassessed and the level of direct payments should be reviewed.
- **Has the individual regained or lost capacity to consent to the direct payments?** If this appears to be the case, arrangements should be reviewed. If the local authority is satisfied that an individual lacking capacity has now regained it, they should discuss with the individual how they might best be supported from now on, whether by means of direct payments to that individual rather than to a suitable person, or through direct provision of local authority services. If it is clear that an individual who was managing direct payments by themselves has now lost capacity, the local authority should make other arrangements for their support. The local authority should consider whether there is someone who could act as a suitable person on their behalf, so that their direct payments can continue.
- **Is the amount of money reasonable to enable the individual to secure the services required?** It may be that experience shows that there are other costs, which were not taken into account in the initial calculations. Alternatively, the anticipated costs may have risen. It may be necessary to review the level of the direct payments.
- **Is the individual still able to manage direct payments, or can they do so with assistance?** Difficulties will not necessarily mean that the individual cannot manage. There is inevitably a learning process when individuals begin to receive direct payments. They may make mistakes but still be capable of managing direct payments in the longer term. Even individuals experienced in using direct payments can have problems at times, but, with some support, be capable of overcoming them.
- **Does the individual wish to continue receiving direct payments?** As long as there is a duty on the local authority to make direct payments, it should seek to explore ways of helping individuals to overcome difficulties and prevent them becoming unduly discouraged when they experience problems. However, if an individual has decided that they no longer wish to receive direct payments, then the local authority should consider alternative ways of securing support.
- **Has all the money been spent on achieving the outcomes identified in the care plan?** If the money has been diverted to other purposes, there may be a case for considering seeking repayment. Before an individual begins to receive direct payments, the local authority should explain the circumstances in which it would seek repayment.

- **Have services for which the individual has paid been received?** If not, then it is the responsibility of the individual to seek a refund from the service provider. They may need support to do this. The local authority may decide that it would be appropriate to require repayment of the direct payments from the individual if it has provided services to meet the same needs that the direct payments were intended to meet and the direct payments have consequently not been used to secure the provision of the services to which they relate, or if the services were not received because they were no longer required.
- **Has the money been spent wisely?** If the money has not been spent in a cost-effective way to meet assessed needs as set out in the care plan, the individual may need more support to enable them to manage.
- **Is the suitable person acting in the best interests of the individual lacking capacity?** If the local authority has any reason to believe that someone acting as a suitable person is not acting in the best interests of the individual lacking capacity, spending the money in the way agreed in the care plan or capable of managing the direct payments, then arrangements should be reviewed immediately. It may be that the suitable person needs more support to enable them to manage, but there may also be circumstances where it is in the best interests of the individual lacking capacity for the local authority to cease the direct payments.