

**CARERS AND DIRECT PAYMENTS ACT  
(NORTHERN IRELAND) 2002**

**DIRECT PAYMENTS**

**LEGISLATION & GUIDANCE**

**For Boards & Trusts**

**Department of Health and Social Services and Public Safety**  
**April 2004**

# CONTENTS

## PART 1 THE LEGISLATION

## PART 2 THE GUIDANCE

### Introduction

Who is eligible for direct payments?	Section 1
Direct Payments in Respect of an Adult	Section 2
Direct Payments in Respect of Parents of a Disabled Child	Section 3
Direct Payments in Respect of Disabled Young People age 16 plus	Section 4
Direct Payments in Respect of Disabled Parents	Section 5
Direct Payments in Respect of Carers	Section 6
Direct payments in Respect of Carers age 16 and 17	Section 7
Residential care	Section 8
Assessment for direct payments	Section 9
Deciding how direct payments are to be used	Section 10
Calculating the amount of a direct payment	Section 11
Charging for direct payments	Section 12
Making payments	Section 13
Support Services	Section 14
Employing a suitable person	Section 15
Health and Safety	Section 16
Monitoring and review	Section 17
When difficulties arise	Section 18
Discontinuing direct payments	Section 19
When to seek repayment	Section 20
Complaints Procedure	Section 21

# **PART 1**

**The Carers and Direct Payments Act  
(Northern Ireland) 2002**

## **THE LEGISLATION**

**Department of Health Social Services and Public Safety  
April 2004**

**The Carers and Direct Payments Act (Northern Ireland) 2002 should be read in conjunction with the following legislation: -**

The Health and Personal Social Services (Northern Ireland) Order 1972 (as amended by the HPSS (NI) Order 1991);

The Children (Northern Ireland) Order 1995;

The Chronically Sick and Disabled Persons (N.I.) Act 1978;

Health and Personal Social Services (Assessment of Resources) Regulations (NI) 1993;

The Health and Social Services Trusts (Exercise of Functions) (Amendment) Regulations (Northern Ireland) 2003;

The Carers (Services) and Direct Payments Regulations (Northern Ireland) 2003;

The Carers and Direct Payments (2002 Act) (Commencement No.1) Order (Northern Ireland) 2003;

The Personal Social Services and Children's (Direct Payments) Regulations (Northern Ireland) 2004

The Carers and Direct Payments (2002 Act)(Commencement No. 2) Order (Northern Ireland) 2004;

Account should also be taken of the requirements under Section 75 of the Northern Ireland Act 1998.

**OTHER USEFUL REFERENCES: -**

Good Practice in Consent – Consent for Examination, Treatment or Care: DHSS&PS March 2003

Carer's Assessment & Information Guidance; DHSS&PS April 2004

## **INTRODUCTION**

This Guidance has been prepared by the Department of Health, Social Services and Public Safety in order to assist in understanding the Carer's and Direct payments Act 2002 and the policy behind it.

The Act places new responsibilities on "an authority". This term is defined in the Act as meaning either an HSS Board or an HSS Trust, though in practice it will mean an HSS Trust in virtually all cases. This guidance, therefore, refers throughout to assessments and services being provided by HSS Trusts.

The Act was introduced into the N.I. Assembly as the Personal Social Services (Amendment) Bill. Following Consideration Stage the Assembly agreed that it should be henceforth referred to as the Carers and Direct Payments Act.

## **BACKGROUND AND POLICY OBJECTIVES**

The Carers and Direct Payments Act (N.I.) 2002 repeals the Personal Social Services (Direct Payments)(N.I.) Order 1996 which previously provided the power to make Direct Payments.

As well as making new provisions for carers the Act will give Trusts the power to make direct payments:

- to carers (including 16 and 17 year old carers) for the services that meet their own assessed needs;
- to people with parental responsibility for disabled children;
- to disabled people with parental responsibility for a child; and
- to 16 and 17 year old disabled children for services that meet their own assessed needs.

## **CONSULTATION**

A consultation document, entitled "Proposals for a Carer's and Disabled Children Bill" (the original title given to this Act) was issued to a wide range of interested parties in March 2001, with a closing date for comments of 18 May 2001. Responses to the consultation indicated a broad welcome for the proposals, particularly from organisations representing carers.

## OVERVIEW OF LEGISLATION

The Act has 12 Sections, and is to be read as one with the Health and Personal Social Services (NI) Order 1972 for the purposes of interpretation. The Sections below are those specific to Direct Payments.

### **Section 8 – Direct payments**

Direct payments are cash payments given to persons in lieu of services that would otherwise have been arranged for them by HSS Trusts, so that they may arrange the provision of their own services. Direct payments allow greater flexibility for service users, allowing them to make arrangements with providers of their choice and at times convenient to them.

**Section 8(1) and (2)** makes provision for the Department, by regulations, to introduce a scheme of direct payments for persons receiving personal social services under the Health and Personal Social Services (Northern Ireland) Order 1972, or for services to carers under section 2(1) of this Act. The existing provisions for direct payments are repealed by the Schedule to the Act.

**Section 8(3)** permits regulations to provide for the detail of how the scheme will operate, circumstances in which direct payments are not authorised or required, conditions to be complied with by payees, and for ‘recovery of charges’ according to means. Since the cost of some services provided directly by Trusts are currently partly recoverable following a means assessment, this provision puts those receiving direct payments onto the same footing.

**Section 8(4) and (5)** provides for what is meant by “gross” and “net” payments, which allows flexibility in the method of payment where someone is assessed as having to contribute to the cost of the services provided to them. Persons could be paid the cost of obtaining a service with the recovery of a contribution being made later, or paid the cost of the service less the assessed contribution – “gross” and “net” payment respectively, depending on individual circumstances.

**Section 8(6)** allows that the regulations may also provide that direct payments may only be paid for residential accommodation for a limited time.

### **Section 9 – Direct payments in respect of children**

**Section 9** inserts a new Article 18C into the 1995 Children Order, which permits a similar scheme of direct payments to that introduced by Section 8 of the Act for adults which is described above. The persons covered by the new Article are (a) someone with parental responsibility for a disabled child, (b) a disabled person with parental responsibility for a child and (c) a disabled child aged 16 or 17.

Like the scheme for adults, contributions towards the costs of services may be recovered, according to the means of the payee. Again, flexibility as to whether payments are made gross or net of assessed contributions can be included by regulations covering the detail of the scheme.

**Paragraphs (6) and (7) of new Article 18C** specify the persons (subject to regulations) from whom a contribution will not be required. They are (a) a person with parental responsibility for a disabled child, or a disabled person with parental responsibility for a child, where the child is aged 16 or 17 or (b) a person who is in receipt of income support, working families' tax credit or a disabled person's tax credit under Part VII of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or of an income-based jobseeker's allowance.

**Section 8(1) and (2); Section 8(3) and Section 8(6)** makes provision for the Department, by regulations:

to introduce a scheme of direct payments for persons receiving personal social services under the Health and Personal Social Services (Northern Ireland) Order 1972, or for services to carers under section 2(1) of this Act;

to provide for the detail of how the scheme will operate, circumstances in which direct payments are not authorised or required, conditions to be complied with by payees, and for 'recovery of charges' according to means; and

to limit the period of residential care for which direct payments can be used

The Regulations are set out overleaf for your information.

---

## STATUTORY RULES OF NORTHERN IRELAND

---

**2004 No. 120**

### HEALTH AND PERSONAL SOCIAL SERVICES

#### **The Personal Social Services and Children's Services (Direct Payments) Regulations (Northern Ireland) 2004**

*Made* 16<sup>th</sup> March 2004

*Coming into operation* 19<sup>th</sup> April 2004

The Department of Health, Social Services and Public Safety **(a)**, in exercise of the powers conferred on it by Article 18C of the Children (Northern Ireland) Order**(b)** and Sections 8 and 10(5) of the Carers and Direct Payments Act (Northern Ireland) 2002**(c)** and of all other powers enabling it in that behalf, hereby makes the following Regulations:

#### *Citation, commencement and interpretation*

**1.** - (1) These Regulations may be cited as the Personal Social Services and Children's Services (Direct Payments) Regulations (Northern Ireland) 2004, and shall come into operation on 19<sup>th</sup> April 2004.

(2) In these Regulations-

“the Act” means the Carers and Direct Payments Act (Northern Ireland) 2002;

“the 1986 Order” means the Mental Health (Northern Ireland) Order 1986**(d)**;

“direct payment” has the meaning given in regulation 2;

“relevant service” has the meaning given in regulation 2(2)

“prescribed person” means a person who is a person of a prescribed description under regulation 3 or, as the case may be, regulation 4.

#### *Duty to make direct payments*

**2.** – (1) If the conditions in paragraph (3) are satisfied, an authority must make in the case of a prescribed person who falls within Section 8(2) of the Act, or Article 18C of the Children Order, with that persons consent, such payments to him (direct payments) as the authority may determine in accordance with regulation 5 in respect of his securing the provision of a relevant service.

---

**(a)** See S. I. 1999/283 (NI 1) – Article 3(6)

**(b)** S.I. 1995/755 (N.I.2) - Article 18 C is inserted by section 9 of the Carers and Direct Payments Act (N.I.) 2002

**(c)** 2002 c.6 (N.I.)

**(d)** S.I. 1986/595 (N.I.4); Relevant amending instruments are S.I. 1994/429 (N.I. 2) and S.I. 1996/3160 (N.I. 24)

(2) In this regulation a relevant service means:-

- (a) a particular personal social service under the 1972 Order; or
- (b) a particular service under Section 2 of the Act; or
- (c) a service under Article 18 of the Children Order.

(3) The conditions referred to in paragraph (1) are that:-

- (a) the authority is satisfied that the person's needs for the relevant service can be met by securing the provision of it by means of a direct payment; and
- (b) in the case of a relevant service mentioned in paragraph (2)(c), the authority is satisfied that the welfare of the child in respect of whom the service is needed will be safeguarded and promoted by securing the provision of it by means of a direct payment.

3. - (1) For the purposes of section 8(1) of the Act a person is of a prescribed description if-

- (a) he is a person who appears to the authority to be capable of managing a direct payment by himself or with such assistance as may be available to him; and
- (b) he is not a person to whom paragraph (2) applies.

(2) This paragraph applies to a person if -

- (a) he is required to submit to treatment for his mental condition or for his drug or alcohol dependency by virtue of a requirement of-
  - (i) a probation order within the meaning of section 1 of the Probation Act (Northern Ireland) 1950**(a)**; or
  - (ii) a combination order within the meaning of Article 15 of the Criminal Justice (Northern Ireland) Order 1996**(b)**;
- (b) he is received into guardianship in pursuance of a guardianship application made in accordance with Article 18 of the 1986 Order or placed under guardianship in pursuance of an order made under Article 44 of that Order;
- (c) he is absent from hospital with leave given in accordance with Article 15 of the 1986 Order;
- (d) in respect of whom there is in operation a condition imposed in accordance with Article 48(2) or 78(4) (including such a condition which has been varied in accordance with Article 78(5) or 80(3)) of the 1986 Order;
- (e) in respect of whom there is in operation a supervision and treatment order within the meaning given by Part I of Schedule 2A to the 1986 Order **(c)**.

4. - For the purposes of Article 18C(1) of the Children Order a person is of a prescribed description if:

- (a) he is a person who appears to the authority to be capable of managing a direct payment by himself or with such assistance as may be available to him; and

---

**(a)** 1950 c.7; Section 1 is prospectively repealed by S.I. 1996/3160 (N.I.24) Schedule 7 and replaced by Article 10 thereof

**(b)** S.I. 1996/3160 (N.I.24)

**(c)** Schedule 2A was inserted by SI 1996/3160 (NI24)

(b) he is not a person to whom paragraph (2) of regulation 3 applies.

*Amount of direct payments*

5. (1) Subject to paragraph (2) a direct payment shall be made as a gross payment **(a)** unless the authority decides it shall be made as a net payment **(b)**

(2) For the purpose of making the payment referred to in paragraph (1), the authority shall determine, having regard to the prescribed person's means, what amount (if any) it is reasonably practical for him to pay towards securing the provision of the relevant service (whether by way of reimbursement as mentioned in Section 8 (4) of the Act or by way of contribution as mentioned in Section 8 (5) of the Act).

6. Where a direct payment is made to a person falling within Article 18C(7) of the Children Order –

(a) the payment shall be at the rate mentioned in paragraph (4)(a) of that Article; and

(b) paragraph (4)(b) of that Article shall not apply.

*Conditions in respect of direct payments*

7. (1) A direct payment shall be subject to the condition that the service in respect of which it is made shall not be secured from a person specified in paragraph (2) unless –

(a) in the case of the service mentioned in regulation 2(2)(a) or (b), the authority is satisfied that securing the service from such a person is necessary to meet satisfactorily the prescribed person's need for that service;

(b) in the case of the service mentioned in regulation 2(2)(c), the authority is satisfied that securing the service from such a person is necessary for promoting the welfare of the child in need.

(2) The persons specified for the purposes of paragraph (1) are –

(a) the spouse of the prescribed person;

(b) a person who lives with the prescribed person as if his spouse;

(c) a person living in the same household as the prescribed person who is the prescribed person's -

(i) parent or parent-in-law;

(ii) son or daughter;

(iii) son-in-law or daughter-in-law;

(iv) stepson or stepdaughter;

---

**(a)** See section 8(4) of the Act for the definition of “gross payments”

**(b)** See Section 8(5) of the Act for the definition of “net payments”

(v) brother or sister;

(vi) aunt or uncle; or

(vii) grandparent;

(d) the spouse of any person specified in sub-paragraph (c) who lives in the same household as the prescribed person;

(e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse.

(3) Paragraph 2 (c) (ii) and (iii) do not apply in the case of a person mentioned in Article 19C (2) (c) of the Children Order.

(4) An authority may make a direct payment subject to the following conditions: -

(a) that the payee shall not secure the relevant service from a particular person; and

(b) that the payee shall provide such information to the authority as it considers necessary in connection with the direct payment.

### **Maximum period of residential accommodation which may be secured by means of a direct payment**

8. (1) Subject to paragraph (2), a direct payment may not be used by a person who falls within regulation 3 or 4 for the purchase of residential accommodation for a period in excess of 4 weeks in any period of 12 months.

(2) The period of 12 months mentioned in paragraph (1) commences on the first day of residential accommodation purchased by use of all or part of any direct payment received.

### *Displaced functions and obligations of the authority*

9. (1) Except as provided by paragraph (2), the fact that an authority makes a direct payment shall not affect its functions with respect to the provision under the relevant statutory provision of the service to which the payment relates.

(2) Where an authority makes a direct payment, it shall not be under any obligation with respect to the provision under the relevant statutory provision of the service to which the payment relates as long as it is satisfied that the need which calls for the provision of the service will be secured by the payee's own arrangements.

(3) In paragraphs (1) and (2), references to the relevant statutory provision, in relation to the provision of a service, are to the statutory provision under which the service would fall to be provided apart from these Regulations.

*Repayment of direct payments*

**10.** (1) Where an authority which has made a direct payment is satisfied, in relation to the whole or any part of the payment -

- (a) that it has not been used to secure the provision of the service to which it relates; or
- (b) that a condition mentioned in regulation 7 ceases to be met;

it may require the payment or, as the case may be, the part of the payment to be repaid.

(2) Any sum falling to be repaid by virtue of paragraph (1) shall be recoverable as a debt due to the authority.

*Termination of direct payments*

**11.** (1) Subject to paragraph (3), an authority shall terminate the making of direct payments to a person if -

- (a) he ceases to be a prescribed person; or
- (b) a condition mentioned in regulation 2(3) ceases to be met.

(2) An authority may terminate the making of direct payments to a prescribed person if any condition mentioned in regulation 6 ceases to be met.

(3) Notwithstanding that the person in respect of whom direct payments are made ceases to be capable of managing such payments an authority may continue to make such payments if -

- (a) the authority is reasonably satisfied that the person's incapability will be temporary;
- (b) another person is prepared to accept and manage such payments on the incapable person's behalf; and
- (c) the person with whom the arrangement for the provision of the relevant service has been made agrees to accept payment for the services from the person mentioned in sub-paragraph (b).

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 16 March 2004.

(L.S.)

*Leslie Frew*

Senior Officer of the Department of  
Health, Social Services and Public Safety

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These regulations make provision for the making of direct payments in respect of a person securing the provision of certain personal social services provided under the Health and Personal Social Services (Northern Ireland) Order 1972; Article 18 of the Children (Northern Ireland) Order 1995 and to carers under Section 2 of the Carers and Direct Payments Act (Northern Ireland) 2002.

Regulation 2 sets out the circumstances where an authority must make a direct payment.

Regulations 3 and 4 prescribe the categories of person who may receive direct payments. A person is of a prescribed category if he appears to the authority to be capable of managing a direct payment by himself or with assistance. Excepted from this description are persons whose liberty to arrange their own care is restricted by mental health or criminal justice legislation.

Regulation 5 provides that a direct payment shall be made either gross or net of such amount determined by the authority as being due by the person in respect of the service.

Regulation 6 provides that in certain cases a payment shall only be made as a gross payment.

Regulation 7 specifies conditions which shall or which may be made in respect of direct payments. In particular it prohibits a direct payment from being used to secure a service from certain persons, except in specified circumstances.

Regulation 8 sets out the maximum periods of residential accommodation which may be secured by means of a direct payment.

Regulation 9 provides that where an authority makes a direct payment it retains its functions with respect to the provision of the service. It also provides that an authority shall not be under any obligation with respect to the provision of the service provided they are satisfied that the needs of the person will be secured by his own arrangements.

Regulation 10 sets out the circumstances where an authority may require a direct payment to be repaid.

Regulation 11 provides for the circumstances where an authority shall, or may, terminate direct payments.

# **PART 2**

**The Carers and Direct Payments Act**

**(Northern Ireland) 2002**

## **DIRECT PAYMENTS**

### ***Guidance for Boards and Trusts***

**Department of Health, Social Services and Public Safety**

**April 2004**

## INTRODUCTION

**Trust guidance on needs assessment should be the same whether the person being assessed is likely to receive services or direct payments. Direct payments can only be offered to someone who has been assessed as needing personal social services and for whom a Trust has decided to provide those services.**

The purpose of this guidance is to assist Boards and Trusts in implementing the direct payment provisions carried in the Carers and Direct Payments Act (Northern Ireland) 2002. This guidance replaces the original guidance issued in 2000. The aim is to set up simple but effective systems containing safeguards that are not unnecessarily bureaucratic or time-consuming for direct payment recipients.

The Act gives the Department power to make direct cash payments to some individuals in lieu of personal social services they have been assessed as needing and where the Trust has agreed to such provision. Such services are not defined within the Act or Regulations and Trusts should be open to new ideas as to how support could be provided. The functions in relation to direct payments have been delegated to Boards and Trusts.

It is important that local people should be consulted fully as local arrangements for making direct payments are set up. Boards and Trusts will wish to take care to avoid focusing on one group of potential direct payment recipients to the exclusion of other groups and should not make the assumption that organised groups necessarily represent all service users or carers in the locality.

In particular, care should be taken to include people with different types of impairment, people from different ethnic backgrounds and people of different ages. Trusts should consult parents of disabled children, disabled parents, carers aged between 16 and 17 years and other carers who have previously been unable to access schemes to seek views on the types of scheme such people would like. Whatever form consultation takes, it is important that people who have been consulted receive feedback about what has been decided, and how their views were taken into account. It is also important that the lines of communication remain open, so that Trusts remain responsive to peoples' views over time.

The aim of direct payments is to promote independence. This is done most effectively when Direct Payments are introduced in a spirit of partnership between Trusts and direct payment recipients. Boards and Trusts should seek to leave as much choice as possible in the hands of the individual, and allow people to address their own needs in innovative ways, whilst satisfying themselves that the person's assessed needs are being met, and that public funds are being spent appropriately and with best value. Boards and Trusts need to satisfy themselves that the scheme they develop serves all potential direct payment recipients equitably.

As with all personal social services, Boards and Trusts should make information about direct payments readily available, including, where appropriate, providing information in a range of appropriate formats. The Department would expect to see information about direct payments in Board and Trust community care plans

## Section 1. Who is eligible for direct payments?

**Trust guidance on needs assessment should be the same whether the person being assessed is likely to receive services or direct payments. Direct payments can only be offered to someone who has been assessed as needing personal social services and for whom a Trust has decided to provide those services.**

- 1.1 The Carers and Direct Payments Act (Northern Ireland) 2002 makes direct payments available to:
- disabled people to whom section 1(1) of the Chronically Sick and Disabled Persons(Northern Ireland)Act 1978 applies aged 16 or over.
  - those assessed as needing services under the Health and Personal Social Services (Northern Ireland) Order 1972;
  - parents of disabled children;
  - disabled parents;
  - carers.
  - 16 and 17 year olds carers assessed for services under the Children Order (Northern Ireland) 1995;
- 1.2 Everyone to whom direct payments are made must be willing to receive them. The assumption should be that the majority of individuals can manage a direct payment; *as stated in the regulations*, “with such assistance as may be available”.
- 1.3 The regulations place a duty on Trusts to make direct payments if requested. However, Trusts have the discretion to refuse direct payments to anyone who they judge would not (with the appropriate support) be able to manage them.
- 1.4 In particular, the regulations specify that direct payments may not be offered to certain people whose liberty to arrange their care is restricted by certain mental health or criminal justice legislation as follows:
- patients detained under the Mental Health (Northern Ireland) Order 1986 who are on leave of absence from hospital;

- conditionally discharged restricted patients;
- patients subject to guardianship under the Mental Health(Northern Ireland) Order 1986;
- people who are receiving any form of aftercare or community care which constitutes part of a care programme initiated under a compulsory court order;
- offenders serving a probation or combination order subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency;
- offenders released on licence subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency.

1.5 People in these groups are required to receive specific community care services. Offering them direct payments instead of those services would not give a sufficient guarantee that the person would receive the services required.

## **Section 2. Direct Payments in Respect of an Adult**

2.1 A Direct Payment can only be offered to an adult who has been assessed as needing personal social services and for whom a Trust has decided to provide those services. This person must also satisfy the eligibility criteria.

## **Section 3. Direct Payments to Parents of a Disabled Child**

3.1 People with parental responsibility for disabled children can sometimes experience difficulty accessing mainstream services such as childcare, after school clubs and leisure activities. Families with disabled children may not consider existing services provided or commissioned by a Trust are suitable for their child and believe that they can make arrangements for themselves that will be more beneficial. Services for

disabled children should be designed to maximise the child's abilities and independence and give disabled children the opportunity to lead lives that are as normal as possible. Trusts may offer direct payments to enable people with parental responsibility for a disabled child to arrange for the provision of services for the child rather than rely on services funded by a Trust. They may also offer a direct payment to the parent to meet an assessed need in relation to their caring role. (Article 18A Children Order (N.I.) 1995)

- 3.2 Direct payments to people with parental responsibility for a disabled child will be provided within the framework of **Part III of the Children Order (N.I.) 1995**, which requires Trusts to provide a range of services to promote and safeguard the welfare of children in need. All people with parental responsibility for a disabled child who have been assessed for Children Order support for the disabled child and family, may request a direct payment.

#### **Section 4. Direct Payment in Respect of a Disabled Young Person age 16 plus**

- 4.1 Parents often face challenges or problems in supporting and preparing their children for an independent adult life. The transition to financial independence and independent living is not usually a single event, nor does it happen quickly. Families with disabled children often face additional challenges that may delay or limit the children's move towards independence. For any young person (with or without a disability) the process of growing up involves a gradual undertaking of more responsibility for himself or herself.
- 4.2 In some cases the young disabled person at age 16 or 17 may wish, as part of the transition to adulthood, to take control of parts or all of the direct payment that has to date been managed by the person with parental responsibility. This can allow them to gain experience of managing direct payments in a gradual way prior to reaching adulthood.
- 4.3 Whatever decisions are made when the disabled child reaches age 16 or 17, people with parental responsibility for a disabled child may not continue to receive direct payments to purchase services that meet the needs of that child once the child reaches

his or her majority. However, if such parents continue in their caring role, such carers may be entitled to receive direct payments as an alternative to Trust directly provided carers' services. Carers' services would be to support the parent carer in their caring role and to help them maintain their own health and wellbeing.

- 4.4 It will be important for Trusts to recognise and respect the views of parents who have been managing the delivery of support for their child in setting in place any new arrangements once the young person reaches his or her majority. The parents would, for example, normally be involved in setting up and running a user-controlled trust.
- 4.5 Disabled 16- and 17-year-olds are entitled to take advantage of the flexibility of direct payments where this will safeguard and promote their welfare. Direct payments enable them to make more decisions for themselves and to provide opportunities for them to have more control over their lives.
- 4.6 Some disabled 16-and 17-year-olds may have previous experience of direct payments because their parents are receiving them to meet the family's needs. However, many disabled 16- and 17-year-olds' parents will have been receiving services direct from their local Trust.
- 4.7 One way to develop a young person's ability to manage the direct payment can be to put in place transitional arrangements, initially set up with the young person managing only a proportion of their support with a direct payment. This proportion could increase as the young person matures, with the objective of full management of the support package at age 18.
- 4.8 Young disabled people may receive assistance with managing the direct payment, just as any other direct payment recipient may do. Where that assistance takes the form of a user-controlled trust or similar arrangement, it should be set up in the knowledge of the views of those people with parental responsibility. Their ability to exercise their views should not be undermined by the arrangement.

## **Section 5. Direct Payments in Respect of Disabled Parents**

- 5.1 Direct payments may be used to assist disabled people to discharge their parental responsibilities. Parental responsibility is recognised as an onerous and valuable task and disabled people with parental responsibility require additional help and support in meeting those responsibilities.
- 5.2 **Part XI of the Children (N.I.) Order 1995** provides that anyone offering a service providing care for children aged under twelve, for over two hours a day and for payment, in their own home has to be registered as a childminder. Parents of disabled children should be aware of this requirement, designed to safeguard the welfare of young children, when purchasing support via a direct payment.
- 5.3 Trusts may make available the list of registered child minders and other registered providers of childcare in the area. The Trust may consider that a direct payments support service is also well placed to provide such information and support.
- 5.4 Parents can contact the Early Years Teams within their local Trust for advice on selecting childcare.
- 5.5 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, Trusts may wish to encourage parents to give greater weight to the child's views about how their intimate care needs are to be met. **The Carers (Services) and Direct Payments Regulations (Northern Ireland) 2003 detail when and in what circumstances services of an intimate nature can be provided.**

## **Section 6. Direct Payments in Respect of Carers**

- 6.1 A carer is any person aged 16 or over who provides, or intends to provide, a substantial amount of unpaid and informal care to another person on a regular basis (this includes those with parental responsibility for a disabled child). Direct payments can be used to support the carer in their caring role or help maintain the carers' own health and wellbeing.

- 6.2 Further information with regard to carers can be found in the **DHSS&PS Carers Assessment and Information Guidance. (Carers and Direct Payments Act Northern Ireland 2002)**

## **Section 7. Direct payments for carers age 16 and 17**

- 7.1 It is unlikely that there will be many situations where a direct payment would be the best option for a young carer aged 16 or 17 receiving services under the provisions of the Act. The facility is available to allow for flexibility in the small number of circumstances where a 16 or 17 year old is choosing to undertake a substantial caring role for a period and that decision is supported by a Trust. The Carer's and Direct Payments Act makes it clear that 16/17 year olds must be seen first and foremost as children. Any decision to provide services whether directly or by direct payment should be on the basis that the young person is recognised as a child in need under the Children Order. In some circumstances it would be more helpful to a young carer to receive a direct payment so that carer services can be delivered to minimise any disruption to their education that would result from their decision to care.
- 7.2 An example where it might be appropriate for a 16- or 17-year-old to provide assistance is where they are involved in looking after a terminally ill relative. In such a temporary situation, direct payments may provide flexibility, which enables them to have a break from caring.
- 7.3 When assessing whether the young carer is willing and able to manage the direct payment a Trust should consider the impact of the additional responsibility direct payments will bring. The Trust might also consider the variety of ways in which the young person could be supported to manage any direct payment.
- 7.4 The only contracts that are binding on minors are contracts for "necessaries" i.e. necessary goods and services. It is ultimately for the court to decide, but services purchased by 16 or 17 year old carers to meet their assessed needs are likely to be deemed as "necessaries". Contracts of employment entered into by 16 or 17-year-old carers using a direct payment to meet their assessed needs would therefore be

enforceable in the same way as any others. The responsibilities of employers set out in employment legislation (e.g. the National Minimum Wage Act 1998) apply regardless of the employer's age. Such matters should be made clear in the information provided and reflected in the costing of care packages.

## **Section 8. Residential care**

- 8.1 The only personal social service for which direct payments may not substitute is long-term residential care. Direct payments may be made to enable people to purchase for themselves short stays in residential accommodation, but regulations specify the maximum period. The Personal Social Services and Children's Services (Direct Payments) Regulations (Northern Ireland) 2004 set out the maximum periods of residential accommodation which may be secured by means of a direct payment as **"4 weeks in any period of 12 months"**.
- 8.2 People can receive additional residential care once they have reached the four-week maximum. They cannot purchase the residential care using their direct payments, but if a Trust considers that further residential care is needed, it can still arrange and fund residential care for the person in the normal way. There is no restriction on the length of time for which a Trust may arrange residential accommodation for someone.
- 8.3 Where a Trust decides to offer direct payments in lieu of a service for which it would have assessed the individual's ability to contribute, then a corresponding assessment should be carried out and any contribution should be deducted from the direct payment before issue. The principle which Trusts should follow is that there should be fair and equitable treatment between direct service recipients and those who purchase services through a direct payment.

## **Section 9. Assessment for direct payments**

- 9.1 Assessment is a crucial process. Direct payments can only be offered to someone who has been assessed as needing personal social services and for whom a Trust has decided to provide those services. Trust guidance on needs assessment should be the same whether the person being assessed is likely to receive services or direct

payments. There is no difference in the assessment of needs between services and direct payments, and Trusts should ensure that their information makes this clear. In particular, it is important that the needs-led focus of the assessment is retained and that the person being assessed should be involved throughout the assessment process. The assessment of needs and decisions about how these needs should be met should be seen as part of one process.

- 9.2 A needs-led focus of assessment also considers how direct payments might aid preventive and rehabilitative strategies. A timely provision of direct payments can forestall the need for a more extensive provision of services in the future. Likewise, upon returning from a period of hospital in-patient or residential care, direct payments can ease the person's rehabilitation. Consideration should be given to looking at how people could use a direct payment to regain or retain their independence, and live in their own home for as long as possible. Some people may already have clear views about the activities with which they need assistance. Others may need help and encouragement to play a more active part in the process.
- 9.3 People who are already receiving services may wish to switch to direct payments. They may also wish to combine a package of services and direct payments where Trust services adequately meets their needs. They may raise these possibilities themselves, or Trusts may raise it at or between reviews. This guidance applies equally to people with whom a Trust is undertaking an assessment for the first time and existing service users with whom a Trust is discussing a switch to direct payments.
- 9.4 The assessment process will need to include an assessment of whether direct payments are appropriate and of whether the person is able to manage them with or without support. The person also needs time to think through the implications of taking on direct payments and to consider whether this is what he or she wants. Trusts should ensure that they build time into the assessment process for both their own assessment as to whether direct payments are appropriate, and the person's consideration of direct payments as an option. Trusts should also give the person sufficient information early in the process about what receiving direct payments will involve before asking the person to make their decision. If a person who is deciding

whether to accept direct payments does not already have a service in place, for example, if they have been newly assessed, a Trust may need to provide the service the person has been assessed as needing in the interim. In order to make an informed decision, people will need to understand what is involved in managing direct payments.

- 9.5 People may receive assistance with managing the money. The payment may be made to a third party as agent for the direct payment recipient and detailed management of finances may be delegated to an agent. However the person for whom the direct payment is made must have control over how support is delivered to meet their assessed need. Direct payments may also be provided through someone with power of attorney for the person or a trust acting on the person's behalf, for example, in certain cases where the person has a cognitive impairment or mental health problem. Trusts should satisfy themselves that the relationship between the person and the agent will honour the spirit of independent living before direct payments begin.
- 9.6 If a Trust concludes that someone could only manage direct payments with help, it should satisfy itself that adequate help is available over a sustained period before deciding to offer direct payments. There is no restriction on who may help a person in this way as long as the person's best interests are being served. People may, for example, choose to ask family or friends, advocacy or support groups to help them in this way. They might also choose to buy in assistance, such as a payroll service. Where significant help is being provided, a Trust will need to ensure that any monitoring and review procedures involve direct contact with the individual for whom the payments are made. This may be done in the absence of the person who is managing the Direct Payment, to ensure that the person in receipt of service is content with the way in which the direct payment is being used. Both Trusts and the person with the assessed need should also be aware of the potential conflict of interest in securing services from the same person who is helping him to her to manage the direct payment.
- 9.7 Some direct payment recipients who initially need help to manage their direct payments will in time be able to manage on their own. However, it is possible that not everyone will be able to do so. There is no restriction on the length of time over

which the direct payment recipients may receive help to manage the direct payment; people who will be receiving help to manage their direct payments on a permanent or indefinite basis still come within the eligible group of people to whom Trusts are permitted to offer direct payments.

- 9.8 Trusts should ensure that they handle sensitively discussions about the ability to manage direct payments. This is particularly important where the Trust decide not to offer someone direct payments because they do not consider that, even with assistance, the individual will be able to manage them. A range of support options should be considered before this decision is made.
- 9.9 Trusts should avoid making blanket assumptions that particular groups of people will be unable to manage Direct Payments. The judgement as to whether someone is able to manage direct payments will need to be made on an individual basis and deciding how much help is appropriate, can sometimes be difficult. . Trusts should consider what assistance would enable a prospective direct payments recipient to manage rather than assuming that the person is unable to manage. For example, the Department envisages that people might receive assistance with keeping records, management of day-to-day relationships with staff or operation of PAYE. If someone needs help to manage but does not have access to the help he or she needs on an ongoing basis, Trusts may wish to consider facilitating the provision with that assistance. It may also wish to consider offering training to assist direct payments recipients to manage.
- 9.10 Trusts will need to consider how to treat someone with a fluctuating condition which affects his or her ability to manage direct payments. In many cases, people with such conditions may nevertheless be 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. If the person's condition is likely to deteriorate to the point where he or she is unable to manage even with assistance, Trusts might consider ways of enabling him or her to receive direct payments to ensure that support continues to be delivered in the manner preferred by the person assessed as needing services.

- 9.11 A competent person may nominate someone to assume enduring power of attorney (EPA) on their behalf. He or she makes the EPA in the expectation that if he or she loses capacity, the person appointed as attorney will lawfully be able to deal with his or her property or affairs. Considering the general legal position, if a person can receive direct payments, then the attorney under the EPA could receive direct payments on his or her behalf. The attorney could enter into any contract, including for the provision of care services.
- 9.12 In the absence of such arrangements, it is unlikely to be appropriate to offer direct payments to people who are only able to manage periodically. Equally, Trusts might decide to offer direct payments to people whose condition means that they are likely, at some point in the future, to lose the ability to manage permanently. Trusts will still need to satisfy themselves that safeguards are in place to ensure that direct payments do not continue when such people are no longer able to manage. People whose condition is likely to fluctuate or deteriorate permanently should be given an opportunity to explore any worries they may have about their ongoing ability to manage direct payments.
- 9.13 If a Trust concludes that someone would not be able to manage direct payments, it is good practice to discuss with him or her or any family or friends the reasons for the decision, particularly if he or she disagrees. Although the person may continue to be unhappy with the decision, the offer of an explanation is an important indication that the matter has been considered seriously. Trusts should also make the individual aware that they can use the complaints procedure to challenge their decision not to offer direct payments.
- 9.14 The legislation enables Trusts to make direct payments only with the consent of the person concerned. Direct payments give people greater control and independence, but this increased freedom is inevitably accompanied by increased responsibilities. When people consent to direct payments, they take on the responsibility for purchasing the services to which the payments relate. This involves ensuring that they receive the appropriate services to an acceptable quality. It may also involve taking on legal responsibilities (e.g. as an employer, or by contracting with an agency). The direct payment recipient is also accountable to the Trust for the way in which the money is

spent. These responsibilities involve a commitment in terms of time and energy, and should not be underestimated. Trusts should establish that there is an understanding by each person of what is involved before making direct payments to him or her. This should also apply in the case of a Trust making a direct payment available to a third party on the person's behalf.

- 9.15 Trusts should explain what is involved as fully as they can to people who wish to consider receiving direct payments. They should draw attention to the fact that any contract made for the provision of services will involve legal responsibilities, and that if the person contracts directly with an individual, they may be regarded as an employer. Concern over becoming an employer should not be allowed to discourage people who would otherwise be willing and able to manage direct payments. The aim should be to inform the potential recipient accurately, responsibly, constructively and supportively. It should not be done in such a way as to put off the recipient, for example, by over-stressing the extent and complexity of these responsibilities, but neither should the Trust fail to make recipients aware of what is involved. Recipients should be able to make informed choices.
- 9.16 The Trust should also make clear that they will arrange services in the normal way if someone decides not to accept direct payments. Having offered someone a direct payment, it should not pressurise him or her to accept direct payments. It should be made clear at every stage that people have the option of withdrawing their consent to receive direct payments at any time, and Trusts should discuss with people who are to receive direct payments what they should do if they no longer wish to receive direct payments.
- 9.17 Situations may arise where people will refuse to accept direct payments because they object to a specific aspect of the terms on which the payments are offered, for example, the amount or the conditions attached. If it is not possible to resolve these matters through discussion, Trusts should advise people of their right to use the complaints procedures.

## **Section 10. Deciding how direct payments are to be used**

- 10.1 In order to satisfy itself that the person's assessed needs will be met, a Trust should discuss with anyone to whom it proposes to offer direct payments how he or she intends to secure the services he or she has been assessed as needing. Trusts will want to be satisfied that the person's assessed needs are being met, and that the money is being spent appropriately. Trusts may set conditions on the direct payment to ensure this and will wish to bear in mind that when doing so, the aim of the policy is to give people more choice and control over the services they are assessed as needing. For example, individual choice and control would not be delivered where a condition is set that someone who receives direct payments may only use certain providers. Beyond the prohibitions set out in the regulations, Trusts should take account of the purpose of the legislation when deciding what conditions to set.
- 10.2 Some people may already have ideas about how they would use direct payments, and may have discussed these with Trust staff at the assessment stage. Other people may need advice or advocacy to help them think through the alternatives. Trusts should help people to obtain accurate information about local services, which they might purchase. If it has not already done so, Trusts should also consider at this stage whether there is a local support group with which it could put the person in touch. If there is a local register of approved providers, and those providers are willing for their details to be passed on, Trusts should bring the register to the attention of the individual. However it would not be appropriate to require the individual only to contract with providers from the register.
- 10.3 In considering whether a person's proposed arrangements will be adequate, Trusts should not be constrained by existing patterns of service provision. By exploring innovative and creative options, it may be possible for direct payment recipients to identify alternatives, which both cost less and meet the person's needs more effectively. Where the person's needs fluctuate over time, it will be important to discuss in advance how the direct payments will be used to secure a package of assistance which varies according to need.

- 10.4 Many people will prefer to use direct payments to take on their own personal assistants as direct 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), so it will not be everyone's choice. Others may choose to contract with self-employed individuals or with independent agencies. Direct payments cannot be used to purchase Trust services, as Trusts are not permitted to sell their services in this way. However an individual could receive both direct payments and services provided by a Trust in the normal way within his or her care package.
- 10.5 Boards and Trusts are not prohibited from making direct payments to enable people to purchase equipment, which would otherwise be provided by a Trust. Direct payments may also be made to enable people to pay for adaptations, which would otherwise have been arranged through Trusts. Direct payments cannot be used to purchase services or equipment that would otherwise be provided by other bodies (e.g. the NIHE – direct payments are not a substitute for Disabled Facilities Grants). When Trusts are considering making a direct payment for the purchase of items of equipment, particularly in the case of major items, they will need to ensure that the direct payment recipient is adequately supported with the specialist expertise that may be needed to ensure that the equipment purchased is safe, appropriate and cost-effective. The Department considers that direct payments will only rarely be appropriate for purchasing complex and expensive pieces of equipment, although they may well make sense for smaller, less specialised items. Where a Trust makes a direct payment for equipment, it needs to clarify with the individual (just as it should where it arranges for the provision of equipment itself), that ownership and responsibility for ongoing care and maintenance rests with the individual. Where a person wishes to use a direct payment to purchase equipment which does not meet the assessed need, a Trust should not provide direct payment for that purpose.
- 10.6 A Trust may conclude following an assessment that someone has a variety of needs which it should arrange to meet. That person may want to receive services arranged by a Trust for some of his or her needs, although for other needs, he or she would prefer to receive direct payments. If a Trust considers it appropriate and the person agrees, the Trust may provide a combination of direct payments and services.

## **Section 11. Calculating the amount of a direct payment**

- 11.1 A Trust should not make direct payments unless they are at least as cost-effective as the services that it would otherwise arrange. Any consideration of cost-effectiveness should consider long-term best value. A preventative strategy may necessitate a slightly higher investment to achieve long-term benefits and savings. Provision of direct payments that allow a person to remain in their own home may represent long-term savings if that person does not require hospital or residential care. In any comparison between the cost of a direct payment and the cost of a service, Trusts should use the true cost of each, taking account of any administrative costs and other overheads. If they choose, Trusts may make direct payments at a greater cost than the cost of arranging the equivalent service, provided they are satisfied that this is still at least as cost-effective as arranging the services, i.e. that the increased cost is justified by the greater effectiveness arising from enabling the person to manage his or her own services and live independently.
- 11.2 It is up to a Trust to decide the amount of a direct payment and what it is intended to cover. The Department is not setting any limit on the maximum or minimum amount of a direct payment, either in the amount of care it is intended to purchase, or on the value of the direct payment. However, it must be enough to enable the recipient legally to secure the relevant service to a standard, which the Trust considers is acceptable. In deciding on the level of a direct payment, Trusts will need to discuss with the direct payment recipient the arrangements that he or she is planning to make and the costs that may be associated with this (e.g. National Insurance, sick pay, maternity pay, employers' liability insurance, public liability insurance, VAT).
- 11.3 However, the particular costs involved will depend on the way in which the direct payment recipient secures the service, and a Trust is not obliged to fund the particular costs associated with the direct payment recipient's preferred method of securing the service if the service can in fact be secured more cheaply in another way (but still to a quality which the Trust considers is acceptable). Nor is the Trust obliged to fund particular costs that are incurred by the direct payment recipient on a discretionary basis, which are not therefore essential in order to secure the service. Trusts have

discretion to decide whether to include an amount in the direct payment to cover costs that it is not obliged to cover.

- 11.4 There may be cases where an individual thinks that the total value of the direct payment should be greater than a Trust proposes, and/or that his or her contribution should be less than a Trust proposes. Where these cases cannot be resolved through discussion, Trusts should advise the individual that he or she might pursue the matter through the Trust's complaint procedure.
- 11.5 Trusts should give individuals as much notice as possible of the value of a direct payment, and the contribution they will be expected to make to the cost of their care package, before the payment begins or its level is changed. This gives an opportunity for any dispute over the level to be resolved before the payment begins or the change takes effect. If that is not possible, then while any complaint is being considered, direct payment recipients may choose either to manage on the amount of direct payments being offered, without prejudice to their complaint that it is inadequate, or to refuse to accept the direct payments, in which case Trusts must arrange the relevant services instead. If a Trust is satisfied that it would be a proper and cost-effective use of its resources, it may decide to pay direct payment at a higher rate than it had originally intended, until the dispute is resolved.
- 11.6 Direct payments recipients can use their own resources to purchase additional, or better quality, services to those in their care plan if they wish to do so.

## **Section 12. "Charging" for direct payments**

- 12.1 The Act enables a Trust to assume a financial contribution to the cost of the care needs being met by direct payments, just as charges can be made for personal social services. Trusts should, therefore, treat people who receive direct payments, as they would have treated them under their charging policy if they were receiving the equivalent services, i.e. they should assume a contribution equal to the assessed charge.
- 12.2 However, at present only services, for example, the home help service, are subject to an assessment of ability to pay. Where a Trust decides to offer direct payments in

lieu of a service for which it would have assessed the individual's ability to contribute, then a corresponding assessment should be carried out and any contribution should be deducted from the direct payment before issue. The principle which Trusts should follow is that there should be fair and equitable treatment between service direct recipients and direct payment recipients.

### **Section 13. Making payments**

13.1 It is a matter for Trusts to decide how frequently payments should be made. Trusts will need to set up mechanisms which enable them to monitor payments and minimise the risk of money being misspent. Such mechanisms will be required to meet minimum agreed audit standards. In considering what procedures to put in place, Trusts should bear in mind the possible impact of different monitoring mechanisms on the lives of people who are likely to receive direct payments. Making payments in advance will ensure that people are in a position to pay for services as they are received. Arrangements for payment will need to be reliable, as late or incorrect payments may put at risk direct payment recipients' ability to secure the services they need. Trusts may also need to set up procedures for making additional payments in emergencies, for example, if needs change or regular payments go astray. Before direct payments begin, Trusts should tell direct payment recipients how and when the payments will be made.

13.2 The flexibility inherent in direct payments means that individuals can adjust the amount they use week to week and "bank" any spare money to use as and when extra needs arise. So long as overall payments are being used to secure the services for which they have been approved and the care plan objectives are met, the pattern of "service" delivery does not need to be rigidly predetermined.

### **Section 14. Support Services**

14.1 Developing a support service is essential for a successful scheme. Trusts might provide a support service directly, in partnership with local voluntary organisations, or by some other means. A support service helps to produce better outcomes for both

users and Trusts alike. The level of investment a support scheme needs will partly depend on the type of support provided. It also needs to be proportionate to the expected number of users.

- 14.2 People in receipt of direct payments who have been involved with setting up their local scheme often act as advocates, and mentors for, those who follow. This aids the rapid expansion of the scheme and ensures that investment in start-up costs provides good value for money.
- 14.3 People who receive direct payments may need particular support when they first take on responsibility for managing their own care. People who are becoming employers for the first time may benefit from having access to someone with expertise in employment issues, or to a payroll service which will assist them with tax matters. A support service may also be able to provide practical assistance, for example, by holding a list of local agencies; helping people to draft advertisements; job descriptions and contracts; providing rooms for interviews and assistance with interviewing; or by acting as an address for responses to advertisements. A support service may also arrange training, for example, in budgeting or assertiveness skills.
- 14.4 One of the most valuable resources a support service can offer is providing someone to act as a single point of contact who is able to help users with any problems which may arise. The experience of existing users is that they find it easier to seek advice from someone who is independent of a Trust. Trusts will need to consider carefully how to ensure that all people receiving direct payments feel comfortable with any support service being offered, and are able to access its' services. This may mean contracting-in the services of people with particular skills, such as language skills, to assist clients with particular needs. People who have experience of managing direct payments themselves are well placed to advise and help others as they begin to receive direct payments. Bringing together people who are managing their own care to support one another and to discuss any difficulties can be an effective way of sharing experiences. Users may also find it helpful to refer to guidance material which Trusts may wish to supplement with local information.

- 14.5 People who receive direct payments may also find it helpful to have access to advocacy support. A support service may be well placed also to act as an advocate for local users as a group when a Trust is considering changes to the scheme, but it may well be preferable to separate any support role from an advocacy role on behalf of individuals in order to avoid any conflict of interest.
- 14.6 Trusts should also consider whether it would be helpful for other people to have access to any support service. For example, informal carers of people who are receiving direct payments may need advice about how direct payments work, particularly if they are assisting their friend or relative with managing the payments. People who are self-funding their services or in receipt of Independent Living Fund, may also welcome the advice of a support service.
- 14.7 People with learning disabilities may have little real knowledge about their current services, how they operate, who pays for the services or who controls the spending. Information about direct payments may be meaningless if people do not understand the system which they are replacing. In addition, people with learning disabilities may have little control over their current services and may not even be aware that they have choices. To be effective therefore, information about direct payments needs to include enough information about services provision for people to realise the choices on offer.

## **Section 15. Employing a suitable person**

- 15.1 The Personal Social Services and Children's Services (Direct Payments) Regulations (Northern Ireland) 2004 do not prevent people using direct payments to secure services from a spouse or someone living with them as a spouse or any close relative living in the same household. It will be in exceptional circumstances that a direct payment can be used to secure services from such a person and where the Trust considers that it is in the best interest of the person cared for.
- 15.2 Services to be provided or arranged and the objectives of any intervention should be agreed in the form of a care plan, a written copy of which should be given to the

person with the assessed need. This applies equally where direct payments are provided in place of services.

- 15.3 Before making a direct payment in respect of services to a child, Trusts must satisfy themselves about the suitability of a potential employee. Trusts should apply directly to the DHSSPS on behalf of the direct payment recipient for a check to be carried out through the Pre-Employment Consultancy Service (PECS).

<p><b>Contact: Child Care Policy Directorate, Castle Buildings, Belfast. BT4 3SQ Telephone number 028 9052 0000</b></p>
---

A check carried out through PECS will comprise 3 elements:

**Criminal records check ('Police check')**  
**DHSSPS PECS Register check**  
**Department of Education List 99 check**

- 15.4 Trusts should note that planned legislation may mean that checks may also need to be made with organisations other than those listed above.
- 15.5 The person with parental responsibility for a child will have to obtain written permission to have a PECS check carried out from the individual whom they intend to employ and this should be forwarded to the Trust responsible for the management of the direct payment contract. The Trust will then complete the appropriate PECS request form and forward it to the Department. A second form will be sent directly to the police, requesting a criminal records check, in accordance with PECS procedures. The result of the PECS check will be passed to the Trust. If a person is on the list of those considered unsuitable to work with children (the PECS Register), the Trust will inform the potential employer who made the referral to the Register in the first instance. If dissatisfied about the individual's suitability to work with children, the Trust will **strongly advise** against entering into a contract of employment with said individual. In such circumstances Trusts should use their discretion in deciding not to make a direct payment. Where a person with parental responsibility for a child intends to employ an individual not currently resident in Northern Ireland, the Trust

responsible for the direct payment contract will need to arrange to have a check carried out with the appropriate checking body. For an individual who resides in England or Wales, this will be through the Criminal Records Bureau. For an individual who is resident in Scotland, the check will be made through Disclosure Scotland.

- 15.6 Trusts should make people with parental responsibility aware that the fact that a check reveals no criminal convictions does not necessarily mean that someone is a suitable person to work with children. They should still offer the advice below:

**Advice to persons with parental responsibility for a child wishing to employ someone to look after a child**

*Information should be clear and straightforward about the risk of maltreatment of children or without unnecessarily raising anxieties. The information could cover the following advice:*

*Always ask for two references and check these carefully - following up with a phone call is often advisable.*

*Ask to speak to other parents/carers who have employed the individual concerned.*

*When asking for a criminal records (PECS) check, to ensure that such check has been completed recently.*

*Do not employ person until you feel assured that he or she has the best interests of your child at heart.*

*Do not employ someone under the age of 16 to undertake a paid caring role, as people under 16 may not be mature enough for such a responsibility.*

*Ask all the questions that are important to you, for example, about where the child might be taken, other members of the household, and eating and smoking habits.*

*Take note and listen to everything that your child is communicating about the care they receive. Especially with non-verbal children note should be taken of unusual or regressive behaviour.*

*Be suitably cautious. If you have any doubts about the person you should not take them on.*

*Try and spend time ensuring that your child is able to settle with the new person.*

**NOTE: When the appropriate provisions carried in the Protection of Vulnerable Adults (Northern Ireland) Order 2003 are commenced, the requirements for carrying out checks may change.**

## **Section 16. Health and Safety**

- 16.1 Trusts will wish to consider the health and safety implications of direct payments, both for themselves and for recipients. As a general principle, Trusts should avoid laying down health and safety policies for individual direct payment recipients. Individuals should accept that they have a responsibility for their own health and safety, including the assessment and management of risk. They should be encouraged to develop strategies on lifting and handling and other tasks both in the home and outside it where lifting equipment, for example, may not be available.
- 16.2 As part of the process of informed choice, Trusts will wish to take appropriate steps to satisfy themselves that recipients and potential recipients are aware of health and safety issues that affect them as individuals, anyone they employ, and anyone else affected by the manner in which their support is delivered.
- 16.3 As part of this process, Trusts should give the recipients and potential recipients the results of any risk assessments which were carried out as part of the care assessment. Such risk assessments are necessary so that health and safety issues can be taken into account. This allows the individual to share the assessment with the care agency or the employee who provides the service. They can therefore take reasonable steps to minimise the risks to the health and safety of any staff they employ.

## **Section 17. Monitoring and reviews**

- 17.1 When a person consents to receive direct payments, he or she takes on the responsibility for securing services to a standard which both he or she and the Trust consider adequate. The Trust is relieved of its responsibility to arrange services for that person, so long as it is satisfied that the needs to which the payments relate will

be met through the arrangements he or she makes with the payments. If not satisfied that those arrangements will be adequate, a Trust's responsibilities towards the person are the same as if no payment has been made. Trusts will need to set up monitoring arrangements to satisfy themselves that people's arrangements are meeting their needs. The frequency of monitoring will be dictated by the length of time the direct payment recipient has managed a direct payment (either alone or with help) and the nature of their condition. For example, people with fluctuating conditions might need monitoring every few months rather than once or twice a year.

- 17.2 The fact that a Trust is making direct payments rather than arranging services does not affect its responsibility to review people's care packages at regular intervals. However, once a Trust is satisfied that a person is managing the direct payments satisfactorily, reviews should be no more frequent than for other service users. As with all personal social services, the projected timing of the first review should be set at the outset. People should be made aware that they may request a review sooner if their circumstances change. The purpose of the review remains to establish whether the objectives set in the original care plan are being met. It should cover both the question of whether the person's needs have changed and how he or she is managing direct payments.
- 17.3 Each Trust will need to ask itself how it would know if someone was experiencing difficulty with managing their direct payments. It may be appropriate to rely on someone who has been managing his or her own care for some time to ask for extra help if he or she needs it. However Trusts should not assume this will be an adequate safeguard, particularly when someone has a fluctuating or deteriorating condition such as HIV/AIDS or Alzheimer's, or when the person begins to receive direct payments for the first time. Where a Trust wishes to ask the person whether he or she is satisfied with the services he or she is securing, it should ensure that it communicates directly with the person wherever possible. In particular, the Trust may need to use a different interpreter if the person may wish to comment on the services of his or her usual interpreter. Trusts should not make assumptions that someone who is not receiving services to their satisfaction cannot manage direct payments. Trusts should also seek to ensure that direct payment recipients do not feel inhibited from expressing reservations about the services they are purchasing, or

about any other problems they are having in managing their direct payments, by a concern that their direct payments will be stopped automatically or arbitrarily.

- 17.4 Each Trust should set up financial monitoring arrangements that will be required to meet **minimum agreed audit standards**, to fulfil its responsibility to ensure that public funds are spent on the intended services. CIPFA have produced guidance for Trusts on this point. Before people decide to accept direct payments, Trusts should discuss with them the information they will be expected to provide and the way in which monitoring will be carried out. **Trusts should aim to keep audit arrangements as simple and easy to understand as possible.** It is worth taking time to discuss with direct payment recipients what is required to avoid being needlessly intrusive. Direct payments should not begin until the recipient has agreed to any conditions, which are necessary for monitoring purposes.
- 17.5 Monitoring arrangements to ensure that a person's needs are being met and that finances are properly managed need to be co-ordinated. If they are not to be carried out by the same person, Trusts should ensure that information is exchanged and that all those involved understand the purpose of direct payments, and the role that monitoring plays in the successful operation of the policy. In particular, information from both forms of monitoring should be considered in any decision to change the level of or stop a direct payment.
- 17.6 In order to audit direct payments, it is important to be able to identify the direct payments receipts separately from any other money used for similar purposes. This does not necessarily mean that a direct payment recipient must have a separate bank account to manage their direct payment funds. For example, people may use their direct payments to employ a personal assistant to work additional hours from their own resources or using funding from the Independent Living Funds (ILFs). Trusts will wish to bear in mind this possibility when discussing audit arrangements with people to whom they offer direct payments.
- 17.7 Trusts should follow existing guidance on carrying out reviews. It may be helpful to consider first whether the person's needs have changed before moving on to review

how he or she is managing direct payments and how well direct payments are working.

- 17.8 Monitoring arrangements should be consistent both with the requirement of Trusts to be satisfied that the person's needs are being met and with the aim of the policy to increase people's choice and independence. Trusts should seek to focus on whether the person's needs are being met, rather than on the service being delivered in a certain way. The Trust should discuss with recipients what steps it intends to take to fulfil its responsibilities in this area, and may also wish to discuss how it might support them in securing adequate quality care. The Trust should be prepared to consider variations to what it proposes.
- 17.9 As well as monitoring how well direct payments are meeting the needs of individuals, the Department, Boards and Trusts will wish to monitor how direct payments are working overall. In doing so, Trusts should actively seek the comments and suggestions of people who receive direct payments or who have considered receiving them. The Department will also be seeking statistical data about direct payment recipients and Form CC8 was introduced for this purpose.

## **Section 18. When difficulties arise**

18.1 Difficulties can be minimised by comprehensive assessments; clarity (e.g. about what the money can be used for); monitoring, effective support arrangements (where these are necessary); and, by discussing with the direct payment recipient, potential areas of difficulty and how they will be handled.

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

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

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

18.5 When difficulties arise, a Trust will wish to ask itself the following questions:

*Have the person's needs changed?* If so, their needs should be reassessed and the level of direct payment should be reviewed.

*Is the amount of money sufficient to enable the person to secure the relevant services?* It may be that experience shows that there are other costs which were not taken into account when the costs were calculated initially, or that anticipated costs have not, in fact, arisen. It may be necessary to review the level of direct payment.

*Is the person still able to manage direct payments?* Trusts need to continue to be satisfied that people can manage direct payments. However, difficulties will not necessarily mean the person cannot manage. There is inevitably a learning process when people begin to receive direct payments and people may make mistakes, but still be capable of managing direct payments in the longer term. Even experienced direct

payments recipients may have problems at times but, with some support, be capable of overcoming them.

*Does the person wish to continue to receive direct payments?* As long as a Trust considers direct payments are appropriate, it should attempt to enable people to overcome difficulties and prevent them becoming discouraged when they experience difficulties, however, if someone has decided that he or she no longer wishes to receive direct payments, then the Trust should enable him or her to switch to services.

*Has all the money been spent on the services for which it was intended?* If the money has been diverted to other purposes, there may be a case for considering seeking repayment. Before someone begins to receive direct payments, a Trust should explain the circumstances in which it would seek repayment.

*Have services purchased by use of the direct been received?*

A Trust should satisfy itself that services purchased by the direct payment are being suitably delivered.

*Has the money been spent wisely?*

If not, the person may need more support to enable him or her to manage, or a Trust may decide that he or she is not capable of continuing to manage direct payments and should receive services instead.

18.6 Some Trusts have concerns that they might be perceived as being liable for the actions of the direct payment recipient (e.g. the way in which the direct payment recipient treats their employees). This can happen where full control of managing the direct payment does not pass to the direct payment recipient. Trusts should arrange their direct payment schemes in the light of legal advice about their liabilities and should discuss the issue with direct payment recipients as part of their overall planning, monitoring and reviewing of the way in which they operate direct payments.

## **Section 19. Discontinuing direct payments**

- 19.1 Either a Trust or the individual may decide at any time that they no longer wish to continue with direct payments. For example, a Trust may decide this because it is not satisfied that the person's needs are, in fact, being met. This might be because the person is no longer able to manage direct payments, because it has had cause to seek repayment of funds and has reason to fear that further payments may be misspent. However a Trust should not automatically assume that when problems arise, the solution is to discontinue direct payments.
- 19.2 The Trust should inform people as soon as possible if it is considering discontinuing direct payments and if appropriate, give recipients an opportunity to demonstrate that they can continue to manage direct payments albeit with greater support. Trusts should set a minimum period of notice which will normally be given before direct payments are discontinued and include it in the information to be provided to people who are considering direct payments. In exceptional circumstances it may be necessary to discontinue direct payments without giving notice. Before direct payments begin, Trusts should explain the circumstances in which this might occur and discuss the implications which this might have for the arrangements that direct payment recipients might make.
- 19.3 Clearly, wherever possible, the decision to discontinue should follow discussion with the direct payment recipient and any carer, and a Trust should, in any case, keep the individual informed throughout the process. Trusts may also need to keep in touch with the ILFs and share information where appropriate in cases where the individual is also receiving ILF funding. If a Trust does decide to withdraw direct payments then it will need to arrange the relevant services instead, unless the withdrawal was following a reassessment after which the Trust concluded that the services were no longer appropriate.
- 19.4 There may be circumstances in which a Trust wishes to discontinue direct payments temporarily. Examples might be when a person does not require assistance for a short period because his or her condition improves or when a person is temporarily unable to manage direct payments. In these cases, Trusts will need to discuss with the person

how best to manage. The aim should be to enable the person to resume responsibility for his or her own care after the interruption, if that remains his or her wish. Trusts might decide to take over the management of the person's arrangements in the interim. In considering whether it is practical, desirable and cost-effective to maintain the person's arrangements, a Trust should bear in mind any contracts into which the person has entered. How this situation is handled is an issue which Trusts should discuss with the person before starting to make direct payments.

- 19.5 Where direct payments are discontinued, some people may find themselves with ongoing contractual responsibilities or having to terminate contracts for services (including possibly making employees redundant). Trusts may wish to discuss this with people before they begin to receive direct payments and agree how this would be handled. Trusts should also consider how to recover unspent direct payments if the recipient dies. For example, if someone wishes to pay an agency in advance for its services, Trusts should bear in mind that it may be difficult to recover the money paid for services which were not in fact delivered. Trusts should also consider, if the direct payment recipient does leave unspent funds to be recovered, that before his or her death, the direct payment recipient may have incurred liabilities which should legitimately be paid for using the direct payment (e.g. he or she received services for which payment had not been made at the time of death).

## **Section 20. When to seek repayment**

20.1 The Act enables Trusts to require some or all of the money they have paid out to be repaid if they are not satisfied that it has been used to secure the provision of the service to which it relates. They may also require repayment if the person has not met any condition that a Trust has properly imposed and those imposed by the regulations. Trusts which decide to require payment by someone who they know is also receiving ILF payments should inform the ILFs as soon as possible and should seek to agree if possible a common approach if the ILFs are also seeking recovery.

20.2 It is up to the Trusts to decide when it is appropriate to seek recovery. However Trusts should bear in mind that this power is intended to enable them to recover money which has been diverted from the purpose for which it was intended or which has simply not been

spent at all. It is not intended to be used to penalise honest mistakes. Before they start to make direct payments, Trusts should be satisfied that people who receive direct payments understand all of the conditions they will be required to meet. In addition Trusts should also discuss with people the circumstances under which they might wish to consider seeking repayment. Hardship considerations should be taken into account in deciding whether to seek repayments. When considering whether to recover unspent funds, Trusts should also bear in mind that there may be legitimate reasons, which may involve outstanding legal liabilities, for a direct payment recipient to build up an apparent surplus (for example, to pay their employees' quarterly PAYE, or to pay outstanding bills from a care agency).

## **Section 21. Complaints Procedure**

21.1 Trusts are required to operate a procedure for considering any representations (including any complaints) that are made to them with respect to the discharge for their personal social services functions or about any failure to discharge those functions. People who receive, or who consider receiving, direct payments are entitled to have access to the complaints procedure in the same way as anyone else for whom Trusts have a power or a duty to provide a service. It is important to ensure that people are aware of the complaints procedure particularly when they are informed of a decision they may not welcome. People may make complaints about any action, decision or apparent failing of the Trust but not about services which they have secured from independent providers (including people they employ directly) using direct payments. People will need to address any complaints about the services they receive to the service providers.

**Produced by: Department of Health, Social Services & Public Safety**  
**Castle Buildings**  
**Belfast**  
**BT4 3SJ**  
**Telephone: 028 90520682**

This document is also available on [www.dhsspsni.gov.uk](http://www.dhsspsni.gov.uk)