



A guide to receiving direct payments from your local council

*A route to
independent living*

This guide contains information
implemented in April 2003,
under the provisions
contained in the
Health and Social Care Act 2001.

A guide to direct payments

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FOREWORD

From April 2003 every local council must offer people who need help to stay in their own home money instead of arranging services for them. These direct payments will enable you to choose how you organise the help you need in a flexible way.

Direct payments are an important way of ensuring more people can continue to live independently in their own homes. Giving you money instead of services will give you greater control over your life, because you make the decisions about how your care is provided.

We want to see more people using direct payments, particularly older people who, despite being the largest single group of people using community care services, are the least likely to be offered and to get a direct payment.

1. ABOUT THIS GUIDE

■ This guide offers advice to people who are thinking about or who are already getting direct payments from their local council social services department. We have tried to make it as accurate and helpful as possible, but you should still check the information for yourself. This is particularly important for legal issues. The guide contains information on where you can go for extra help.



About this guide

- You can find more detailed advice on direct payments in the direct payments guidance which has been issued by the Department of Health. Details of where you can get copies of the guidance can be found in [Appendix C](#) of this guide.
- For the purpose of this guide the term 'local council' means any local council in England with social services responsibilities. Telephone numbers for social services departments can be found in the *Yellow Pages* or the local phone directory.

2. INTRODUCTION

What are direct payments?

■ From April 2003 every local council must offer those who are eligible money, instead of arranging services for them. When a council gives someone money in this way, it is known as a **direct payment**.

■ The vast majority of people getting social services from the council have a right to direct payments. Your social worker should discuss this with you when they assess your care needs.

■ This guide deals with direct payments as an alternative to social services provision.

■ People get this money to arrange services for themselves to meet their social care needs. Direct payments will not be taken into account for the purpose of assessing income for social security benefits, and are not liable to income tax. This is explained further on page 56.

Why would I want direct payments?

■ Direct payments allow people to take more of the decisions which affect their lives. They give you more flexibility and choice, by enabling people of all ages to purchase care for themselves that better suits their individual needs.

■ If you receive direct payments, you can decide how your needs will be met, by whom and at what time. You are in control. You may make arrangements directly, so that any staff you employ report directly to you. If you have a contract with an agency, the agency will be accountable to you, not the local council.

■ For example, some older people may not always find social services flexible enough to respond to their needs, or some may feel that services lack in continuity. You may find that the

home help or carer arranged by the council cannot come at the time you want. With direct payments, you can arrange for someone to come whenever it suits you.

Who can receive direct payments?

- The vast majority of people getting social services from the council have a right to direct payments. More specifically, they are:
 - older people who have been assessed as needing community care services;
 - disabled people aged 16 and over, including those with short as well as long term needs;
 - carers, in place of receiving carers' services;
 - families with disabled children for children's services;
 - disabled parents for children's services.

There are only very limited circumstances when direct payments would not be offered.

Older people and direct payments

■ Older people are the largest single group of community care service users. And yet older people are less likely to receive direct payments than any other group.

■ It is vital that older people should have the opportunity to benefit from the flexibility that direct payments offer. As an older person, direct payments will give you choices over the services you get, whether for short term help after a hip operation, for example, or in the longer term.

How do direct payments work?

■ The vast majority of people who are assessed as needing services have a right to direct payments. Equally, you should not be pressured to have direct payments if you prefer for services to be arranged by the council.

Your council will tell you more about the arrangements and the limited circumstances in which direct payments are not appropriate.

■ Having read this guide you may still have many questions about direct payments. Do not worry. You should not feel that you are the only person asking these questions, and you may receive help from someone else with managing direct payments if you need it. Most local councils have established support services for people wishing to use direct payment schemes. They will be able to tell you about services in your area. You will also find details of useful organisations in **Appendix C**.

■ Many people considering direct payments for the first time find it helpful to talk to people with experience of using direct payments. Your local council or support scheme should be able to put you in touch with other direct payment users.

3. GETTING DIRECT PAYMENTS

What do I have to do to get direct payments?

■ Your social worker should discuss this option with you when they assess your care needs. If they do not, or if you already get services, ask your local council about direct payments. It will probably be best to start by asking the person you usually speak to.

What if the local council has not previously assessed my needs?

■ To get direct payments you need an assessment in the same way as you would for any social care service. Contact your local council to ask them to assess your needs. You will find details of how to contact them in the local *Yellow Pages* under Social Services.

■ You might wish to think about your needs before the assessment. Some people find it helpful to keep a diary for a week before the assessment, recording what they do, how long it takes, and what help they receive, as well as what they would like to be able to do if they had the necessary help. If you decide to do this, take care not to overlook things that do not happen every week. You may be asked to complete a form before the assessment to say what you think you need help with. The local council may not be able to offer you assistance with everything you identify, but this process will help to define your needs in a way you are comfortable with.

■ You might find it helpful to get advice from a friend or relative, or from a local support group, to help you to prepare for your assessment. Your local council may be able to

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suggest groups for you to contact, or you may wish to contact one of the organisations listed at the back of this guide.

What if I am already receiving social care services arranged by my local council?

■ As already noted, the majority of people who get social services from the council have a right to direct payments. Your local council is obliged to offer you direct payments in place of the services you currently receive.



What if my local council has assessed my needs before but has not arranged services for me?

■ If your local council concluded that you did not need social care services, then it will not offer you direct payments. If you think your needs or circumstances have now changed, ask your local council for a new assessment.

■ If your local council offered you services but you turned down what they offered, direct payments may be an alternative. Ask the council about this.

If I am entitled to social care services, am I automatically entitled to direct payments?

■ Yes, most people who get social services have a right to direct payments. There are some limited circumstances where direct payments are

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not given and your council will be able to tell you about these.

- You will have a discussion about whether you can manage direct payments. If you cannot have direct payments or choose not to, you may wish to consider indirect payments or a trust arrangement.

- As the person receiving the direct payments you must have arrangements in place to manage the necessary paperwork, either alone or with help. Help should be available from your local direct payment support service. You will also need to satisfy the council that the services which you intend to buy with the direct payments will meet your assessed needs adequately. For disabled children, the council must be satisfied that the services bought with direct payments safeguard and promote the welfare of the child.

In addition, if you plan to employ staff, you will need to show that you will meet your legal requirements as an employer.

If my local council offers me direct payments, can I refuse?

■ **Yes.** Everyone should have the opportunity to refuse direct payments if they prefer to receive services arranged by the council.

■ There are pros and cons to direct payments. Clearly they offer much more flexibility, but managing them is also a responsibility. If you get direct payments, then it is your responsibility to arrange the services you need, to sort out any problems with the service and to account for the way you use the money, but you should be able to get help and support to do this. If you use the money to employ your own staff, you will have the legal responsibilities of an employer.

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These are described in [Appendix A](#).

■ It's important that you ask questions if you feel you do not have enough information to make your decision. It may be helpful to talk to someone already getting direct payments. Your local council or nearest independent living scheme may be able to put you in touch with a suitable person.

■ If you accept direct payments, you can change your mind at any time. You will need to contact your local council to ask them to stop making direct payments and arrange services instead.



What can I spend my direct payments on?

■ The money is for you to use to arrange the services (including equipment) which the local council has assessed you as needing. Your local council social services department will explain what the money can and cannot be spent on. You will need to discuss with the council how you intend to use your direct payments to arrange services. If you prefer to receive local council services to meet some of your needs, the council may agree to offer you a combination of direct payments and services.

Can I purchase services from my local council?

■ You cannot buy services from your local council as it is not allowed to sell its services in this way.

Can I purchase residential care with my direct payments?

■ Direct payments are intended to support adults in independent living, so you cannot use them to pay for permanent residential accommodation. You may be able to use direct payments to secure occasional short periods in residential accommodation, if your local council agrees that is what is needed.

Can I get direct payments if I live in residential care?

■ Direct payments are not intended to support residential care. This is the reason for the restriction on their use in residential care. However, the regulations which permit direct payments to be used to purchase occasional short periods in residential care may also be used to enable people who are living in

residential care to have temporary access to direct payments. This will enable them to try out independent living arrangements before deciding to move out of residential care.

Can I use direct payments to employ my relatives?

■ Direct payments are not intended to replace existing support networks within families and communities. For this reason, you may not normally use direct payments to secure a service from:



- Your spouse or partner;
- A close relative that you live with.

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■ You should discuss your situation with the local council if you think that any person you would like to employ or purchase services from might fall into one of these categories. In exceptional circumstances, your local council may be prepared to consider allowing you to use direct payments to pay a close relative who shares the same household.

Can I change how I spend my direct payments?

■ You will need to discuss with the local council the amount of flexibility you have in how you spend your direct payments. You need to know what changes to the way you spend the money you have to agree with the council in advance, and what changes you can make without asking.

Will the local council give me enough money to meet my needs?

■ Local councils have to give you enough money to make adequate arrangements to meet your assessed needs, including any legal responsibilities you may have as an employer. You should not find yourself having to do without services that the council has assessed you as needing.

■ The local council also has a responsibility to secure best value. Therefore, it may not be prepared to pay the full cost of the particular method of purchasing services which you choose, if your needs can be met just as well in different ways which cost less. For example, it may not be prepared to cover the charges of the particular agency you prefer if another agency charges less for an adequate service.

Will I have to make a financial contribution if I receive direct payments?

■ Local councils can require you to make a financial contribution to the cost of your care, just as they can already charge you for other services. You should not be charged more than it is reasonably practicable for you to pay. If you are a disabled person and are working or intending to enter work, you will not be charged against your earned income. Ask your local council about its charging policy and how it applies to people who receive direct payments. The way the local council decides how much to charge you should be the same way that it decides how much to charge people who receive equivalent services.

■ If you think the money you are offered is not enough, you do not have to accept it. You can complain about the amount offered. You

will need to discuss with your local council what will happen while your complaint is being considered. You can accept the direct payments if you wish, without affecting your complaint that they are not enough. If you are not prepared to accept the amount that is offered while your complaint is being considered, you can choose to receive services instead.

How will I get the money?

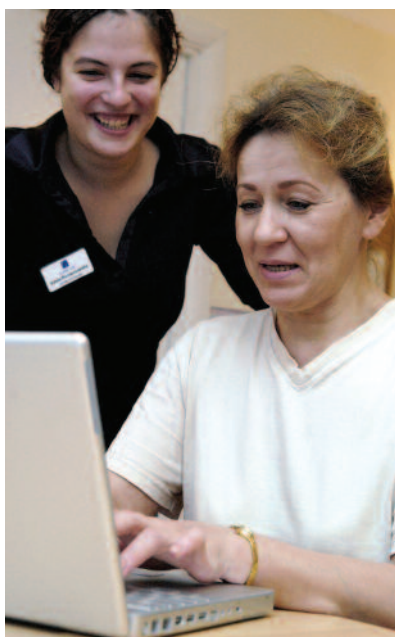
■ It is up to your local council to decide how it makes direct payments. However, councils should consult people using direct payments when deciding how such arrangements will work. Ask about the arrangements in your local area. When your direct payments are being set up the council should discuss with you whether payments are to be made net of charges or gross.

If I decide to accept direct payments, where can I get help?

- Direct payments offer great flexibility, but by accepting them you take on the responsibility for managing the money and arranging services which meet your needs.
- You can ask for help from your local council. Most councils either provide help directly or commission a local support service to advise people wishing to use direct payments.
- You can also get help and advice from a friend or relative, or from other people who are receiving direct payments. Ask your local support service to suggest people to contact. You could also contact one of the organisations listed at the end of this guide.
- Many people with learning disabilities will benefit from support in managing direct payments. Independent living schemes or more

informal circles of support can be utilised to assist with managing paperwork, employing staff, etc. The self-advocacy organisation People First has a lot of experience in helping people with learning difficulties to manage direct payments. Your local council should be able to give you details of branches in your area.

■ If you use mental health services you may wish to set up a support structure to help you



manage at times when you are not feeling well. Your local direct payments support scheme or local branch of the mental health charity Mind should be able to assist in setting up the support you need.

■ If you are worried that you might suffer from dementia in the future or some other cognitive impairment, the Alzheimer's Society can provide help. Contact details can be found in [Appendix C](#).

What do I need to do before I start receiving direct payments?

■ Before direct payments start, you should discuss and agree the following points with your local council social services department:

- What needs the direct payments relate to;
- What services the direct payments are meant to cover;
- The value of direct payments you will receive;
- How much you will be expected to contribute to the cost of your care;

- How you intend to use the money to secure services to meet your needs;
- Whether you need help to manage your direct payments, and where you can get help;
- What the money may and may not be spent on, and how much flexibility will be allowed;
- What changes to the way you secure services would the local council expect to agree in advance;
- Back-up arrangements to cover emergencies;
- What steps should be undertaken to safeguard the welfare of children;
- How often and in what form payments will be made;
- The information you will need to give the local council about how the money is spent;

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- The arrangements the local council proposes for monitoring;
- Any conditions attached to the direct payment;
- The date when your arrangements will next be reviewed;
- The circumstances in which your local council will consider discontinuing direct payments;
- The period of notice the council will give you if it decides to discontinue direct payments, and the circumstances under which it would stop payments immediately;
- How any outstanding commitments will be handled if direct payments are discontinued;
- The circumstances in which the local council would seek repayment.

4. BECOMING AN EMPLOYER

What do I need to know about employing my own staff?

- If you employ your own staff, you will have legal responsibilities. It is up to you to ensure that you are aware of, and comply with, these responsibilities. If you are employing an individual to care for a child using direct payments, you should ask your local council to carry out appropriate checks via the Criminal Records Bureau. Your council must carry out the check free of charge if you request them to do so. See also page 40.
- You may find it helpful to consult a local support organisation or one of the organisations or publications listed at the end of this guide.

How do I find people to employ?

■ First, decide what kind of person you want and how many people you need, drawing on the local council's assessment of your needs. Prepare a list of the tasks you want your employees to do, then ask yourself what skills and personal qualities they will need to do those tasks properly. For example, if part of the job is to enable you to get out and about, you may need someone who can drive. If you think you will need more than one person, you might also consider whether they all need to have all these skills and qualities. You will also need to think about what hours you would expect them to work. Examples of the type of tasks you might want your 'personal assistant' to carry out can be found in some of the booklets listed in **Appendix C**.

■ When you have decided on the skills and personal qualities you are looking for, you need to decide how to go about finding the right people. You might find someone by word of mouth, by asking around among your friends and neighbours, or you could put a notice in a public place, such as a local post office, shop or college of further education, or advertise in a newspaper or job centre. Advertising in job centres is free, but there is likely to be a charge for placing a notice in a shop window or in a newspaper. Local organisations may also have newsletters in which you can advertise.

■ If you are placing an advertisement, you will need to describe briefly what the job involves, how many hours per week, what kind of person you are looking for and the rate of pay, and give a contact number or address. You may prefer not to give your own address or telephone number

at this stage, for security reasons. Your local council or local organisation of disabled people may allow you to use their address. Alternatively, you could arrange with the post office to set up a PO box or use an email address.

How do I decide how much to pay people?

■ You may be able to ask someone who is already employing people using direct payments how much they pay, or look at advertisements for similar jobs. You can also discuss rates of pay with your local council. How much you can afford to pay will of course depend on the value of the direct payments you receive, but the amount should be enough to enable you to pay for the services you have been assessed as needing. If you cannot recruit anyone at the pay rates you are able to offer, you should discuss this with your local council.

- You may need to offer different rates of pay for different bits of the job. For example, you may find that you need to offer higher rates for evenings or weekends than for weekdays. Or you might have to pay more if you need someone with particular skills (for example, driving) for some parts of the job.
- You will need to ensure that your rate of pay conforms to the requirements of the national minimum wage. The Department for Business, Enterprise and Regulatory Reform produces *A detailed guide to the national minimum wage* which is available online at www.dti.gov.uk/files/file11671.pdf or from the BERR Publications Orderline on 0870 150 2500. The Inland Revenue also operates a confidential helpline on the minimum wage on 0845 6000 678.

Payroll services

■ Many people find it helpful to use a specialised payroll service. Such services will take on responsibility for paying wages, tax and National Insurance based on information supplied by you. For details of payroll services in your area ask your local council or direct payment support service.

Do I need to prepare a job description?

■ A job description sets out clearly what the job requires. It will help you to think through what sort of person you are looking for and to explain to applicants what the job involves. It will also serve as a record of what you expect from your employees, which will help if any difficulties arise.

■ The job description should list the tasks your employee will be expected to do, how often they are needed and the likely variations, and anything else you will expect of your employee (for example, punctuality, confidentiality). It may be helpful to start with a brief overview of the purpose of the job and how you expect your employees to fit into your life. You could use your care plan to help write a list of the main tasks. Try to leave sufficient flexibility to allow you to ask your employees to perform tasks which contribute to the overall purpose of the job, as and when they arise, even if they are not specifically listed in the job description.

What information should I ask applicants to provide?

■ To help you decide whom to invite for interview, you will need to ask for information so you can form a judgement about the applicant. You may decide to ask people to complete an application form, or to write you a letter saying why they want the job, accompanied by an outline of their employment history. If you are short of time, you may prefer to ask a standard set of questions on the telephone. The fuller a picture of the applicant you can obtain at this stage, the easier it will be to decide whom to interview.

You might want to ask:

- For details of experience, training and employment history;
- When the applicant is able to work and when he or she is able to start;

- Why the applicant is interested in working for you.

You should always ask:

- If the applicant has any criminal convictions;
- For references, and to check those references before offering anyone a job.

How do I go about interviewing?

- Go through the applications you receive, comparing them with your list of the skills and personal qualities you are looking for. Decide which of the applicants to interview and arrange dates for the interviews. You might find it useful to ask someone else to help you make this choice and with the interviews.
- For security reasons you may not want to hold interviews in your own home. Your local council or local disability or carer organisations may be able to give you the use of a room.

Becoming an employer

■ Think through before the interviews the questions you will need to ask to find out more about the candidates. It may be helpful to begin the interview with an explanation of what the job involves, to ensure that the applicant has understood the advertisement and to provide additional information. Aim to give the candidates a chance to talk, so that you can see what they are like. Give them an opportunity to ask any questions they may have.

■ When you come to choose between the candidates, you will need to consider whether they will be able to do the job, and whether you are likely to be able to get along with them.

Will I need a contract with my employee(s)?

■ A contract of employment exists as soon as your employee starts work. By starting work your employee demonstrates that he or she has

accepted the terms and conditions you have offered. The contract does not have to be in writing. Its terms can be written, orally agreed, implied, or a mixture of all three. Written details, whether in the form of a contract or statutory written statement, ensure that both you and your employee have the same understanding about the terms on which your employee is employed, and may be helpful if any disagreements arise. The Department for Business, Enterprise and Regulatory Reform booklet PL810 *Contracts of Employment* gives further information. **Appendix B** tells you how you can get a copy of this.

■ Regardless of whether they have been given a written contract, most employees are entitled to a written statement of the main particulars of their employment (see Department for Business, Enterprise and Regulatory Reform

booklet PL700 *Written Statement of Employment Particulars*).

How can I get the best from my staff?

■ It will help if you establish clearly from the start the standards you expect. Be prepared to discuss with your employees how you like things done and listen and respond to any difficulties, questions or suggestions they may have. Tell your employees when they are doing well.

■ Tell your employees straight away if you are not satisfied with any aspect of their work. If the problem continues, you may need to consider giving them a formal warning that an improvement must be made. You are the employer, and you have the power to dismiss them if their work is persistently unsatisfactory.

If I employ staff, what legal responsibilities might I have?

■ You will find a summary of the type of legal responsibilities you are likely to have in **Appendix A**. Every effort has been made to ensure that this information is accurate at the time of publication, but you are strongly advised to check it for yourself.

Can I check if the person I want to employ has a criminal record?

■ If you are employing an individual to care for a child using direct payments, you should ask your local council to carry out checks under the Protection of Children Act via the Home Office agency, the Criminal Records Bureau. Your council must carry out the check free of charge if you request them to do so.

Becoming an employer

■ If you are a disabled 16 or 17-year-old and are thinking about employing a care worker yourself, you can also request your council to carry out a criminal records check. Again, the council must carry out the check if you ask them to at no charge.

■ Disabled adults who want a similar degree of reassurance about the suitability of their personal assistants will need to enter into a contract with an agency instead of being an employer themselves. Your local council or direct payment support service will be able to offer you more advice about vetting potential workers.

■ From autumn 2008, checks for people working with children and vulnerable adults will be available through a new Independent Safeguarding Authority.

These checks can be made by people who arrange and pay for their own care as well as people who receive direct payments.

What can I do to protect my child?

■ Parents are understandably cautious about allowing someone to have close contact with a child who is especially vulnerable because of their disability. By carefully following up references, ensuring police checks are done, and by being alert to signs of distress in their child, parents can reduce the risk of abuse. For further advice please contact the Department for Children, Schools and Families.

5. CONTRACTING WITH SOMEONE WHO IS SELF-EMPLOYED

■ If the person you employ says that they would like to be self-employed and you are not sure whether this is correct, contact your local tax office or Inland Revenue enquiry centre for help. Self-employment is not a matter of choice but depends on the contractual arrangements between you and the worker; that is, the terms on which you engaged him or her. A variety of different factors play a part in judging whether or not someone is self-employed, such as the degree of control you have over the way the work is done.

■ The Inland Revenue leaflet IR56/N139, *Employed or Self-Employed? A Guide for Tax and National Insurance*, will help you.

■ If the person is not self-employed, you will be regarded as his or her employer, with all the associated obligations. Someone who is genuinely self-employed will make arrangements for paying their own tax and National Insurance contributions. You will have no responsibility for paying these. If you are in doubt about whether someone is employed or



self-employed, ask for help as advised above, and operate PAYE and pay National Insurance contributions in the meantime, as if the person was an employee of yours.

6. CONTRACTING WITH AN AGENCY

What do I need to know about contracting with an agency?

■ There are many agencies which provide care services. Purchasing services from an agency means that you do not employ directly the people who provide your care, and you do not have the responsibilities of an employer.

Instead, you have a contract with the agency.

■ Your local council may be able to give you names of agencies in your area which provide the kinds of services you need. You may also be able to find out about agencies from other people who receive direct payments, your GP or district nurse, libraries, local voluntary councils or Citizens' Advice Bureaux, or by looking in the *Yellow Pages*.

■ Before contacting an agency, it is important to be clear in your own mind what help you are looking for.

Start by preparing a list of the tasks you are expecting agency staff to do, just as you would if you were recruiting your own staff. Then think about what is most important to you about the way those tasks are done. This will help you prepare questions to ask agencies you are considering to identify the one which best meets your needs.

■ Always contact more than one agency before committing yourself. Remember that you are the customer. If one agency is not prepared to meet your requirements, you may be able to find another which will.

■ You might find it helpful to ask some of the following questions before making a decision:

- What services are available?
- What charges will be made?

Contracting with an agency

- Is the price all inclusive, or are there any extras, for example VAT, National Insurance or travelling expenses?
- Is there a minimum service that has to be bought?
- Can I choose the person who provides my care?
- Can I expect to see the same person on a regular basis?
- What if the regular person is sick or on holiday?
- Can the organisation be contacted at all times when care is being provided?
- How can I contact the out-of-hours emergency service? Is there an extra charge?
- How can I complain about the service I receive?

- What obligations will I have if I cancel the service?
 - Does the organisation have full professional and employer's liability insurance?
 - Does the organisation work to a recognised code of practice?
 - How are agency staff recruited? Are they required to give references? What training are they given?
 - What evidence can I see that employees have had police checks?
- Employment agencies are required to meet certain minimum standards designed to protect their workers and those hiring them. Details can be obtained from the Department for Business, Enterprise and Regulatory Reform employment agency standards helpline on 08459 555 105.

7. NOW YOU ARE RECEIVING DIRECT PAYMENTS

What will happen in emergencies?

■ Whatever arrangements you make, there will be occasions when they break down. For example, your personal assistant may be taken ill. You will need to make back-up arrangements to provide cover for sickness, etc. You might arrange this with an agency, or with off-duty or former employees. You will need to discuss with your local council what arrangements they expect you to make to prepare for emergencies.

■ Your local council may be prepared to give you extra money to enable you to purchase services in an emergency.

■ If your back-up arrangements break down, you should not be left without the services you need. The local council has a responsibility to step in if it is not satisfied that your needs are

being met by your own arrangements using direct payments. Contact your local council as soon as you realise you need help.

What if my needs change?

- Contact your local council social services department as soon as possible and ask for your needs to be reassessed.



What if I don't need to spend all the money?

- If you don't need assistance for a short period, for example, if you are in hospital, or if you need less than usual because your condition improves, tell your local council as soon as

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possible, as they may need to adjust your direct payments.

- Do not spend your direct payments on something which does not meet your assessed needs. Your local council has the power to require you to repay any money which you do not spend on meeting your assessed needs.

Will I need to keep records?

- Yes. The money you receive in direct payments is for services to meet your social care needs. It remains public money; it is not yours to spend as you wish. Your local council will require you to account for the money you receive. You will be told what records you need to keep and what information you will be expected to provide.

- For example, you may be asked to keep timesheets signed by your personal assistants recording the hours they have worked, or receipts for services purchased from agencies. It is highly recommended that you set up a separate bank account for your direct payments, so that the money you receive from the local council can be identified separately from your own personal finances.
- You will probably find it easier to keep records as you go along, rather than leaving completion of any forms until they have to be returned.

Will the local council check on the services being provided?

- By agreeing to accept direct payments you are taking on responsibility for purchasing services to meet your assessed needs.

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■ The council will have to satisfy itself that the needs for which it is giving you direct payments are being met. The council should tell you how they will go about this. This may involve someone visiting you in your home.

■ The arrangements you make using your direct payments will be reviewed in the same way as if you received services, to establish whether your needs are being met and whether these have changed.

What happens if I get into difficulties with direct payments?

■ Inform your local council as soon as possible. If your needs are not being met, the council may have a responsibility to step in and help you. It might do this by arranging services directly, or it might give you some extra help to enable you to carry on with direct payments.

- If you do not spend the money on the services for which it has been provided, or if you have spent it in a way which does not meet any conditions the local council has set, then the council could require you to repay some or all of the money.
- If you decide not to carry on with direct payments, then the local council will arrange services instead. If the council does not think you can manage direct payments any more, it might decide to stop giving you the money and to arrange services instead.
- The local council should involve you in any decisions that are being made about your care, and ensure that you know what is decided.

Who can I complain to if I am not happy with the service?

■ If you are not happy with any action, decision or apparent failing of the local council, you can use the local council complaints procedure. The council will be able to explain how to make a complaint.

■ If you are not happy with the services being provided by an agency or an individual, you should complain to the agency or take it up with the person concerned. You may find that an independent mediator can help to solve the problem.

■ Depending on the nature of the complaint the Department for Business, Enterprise and Regulatory Reform Employment Agency Standards Inspectorate may be able to help. They can be contacted on 08459 555 105.

8. OTHER ISSUES

If I receive direct payments, can I still get payments from the Government's Independent Living Funds?

■ Yes. Your eligibility for payments from either the Independent Living (Extension) Fund or the Independent Living (1993) Fund is not affected by whether any help you get from your local council in the form of services or direct payments.

If I get direct payments, will the money be regarded as adding to my income?

■ No. Direct payments will be ignored in the calculation of income-related social security benefits. They will also be ignored when maintenance is assessed under the child support formula. Nor will the Inland Revenue regard direct payments as forming part of your taxable income.



9. FURTHER INFORMATION

Where can I get further advice?

■ Each council will implement direct payments in its own way, so the best sources of advice are likely to be local. Start by directing any questions to the council. They should be able to put you in contact with a support service in the area. The National Centre for Independent Living also has a list of organisations helping people use direct payments. The appendices at the end of this guide tell you how to obtain relevant government publications and list other sources of advice.

APPENDIX A

Employing staff

■ The following is a summary of the type of employer responsibilities you are likely to have. Every effort has been made to ensure that this information is accurate at the time of publication, but you are strongly advised to check it yourself. [Appendix B](#) gives details of how to obtain the booklets mentioned, and how to get in touch with organisations that will be able to give you authoritative advice.

Written statement of employment particulars –

Most employees who are employed for one month or more must receive, within the first two months, a written statement of the main employment particulars, including information about their pay, holidays, notice and disciplinary procedures. Department for Business, Enterprise and Regulatory Reform booklets PL700 *Written*

Statement of Employment Particulars, and PL810 *Contracts of Employment* give more detail.

Unfair dismissal – Employees have the right not to be unfairly dismissed. In most circumstances they must have at least one year's continuous service before they have this right. For further information see Department for Business, Enterprise and Regulatory Reform booklets PL707 *Rights to Notice and Reasons for Dismissal*, PL716 *Individual Rights of Employees* or PL714 *Fair and Unfair Dismissal, A Guide for Employers*.

Period of notice – Someone who has been employed continuously for one month or more and less than two years is entitled to at least one week's notice of termination of employment. After two years' continuous

employment, this rises to two weeks' notice. An additional week's notice is required for each completed year of continuous service after that, up to a maximum of 12 weeks. The contract of employment may specify a longer period of notice than these statutory periods. See Department for Business, Enterprise and Regulatory Reform booklet PL707 *Rights to Notice and Reasons for Dismissal*.

Tax – By law, you must operate Pay as You Earn (PAYE) on the pay of your employees. When you take on staff for the first time you will need to contact the Inland Revenue's New Employers Helpline (0845 60 70 143) to arrange for a PAYE scheme to be set up. You will be sent a new employer's starter pack which contains tax and National Insurance tables, various forms which you will need when you start, helpcards on how

to work out PAYE and a book called *Paying someone for the first time*. If you contract with someone who is self-employed, that person is responsible for meeting his or her own tax obligations; you do not have to operate PAYE on his or her pay. You will find more information about contracting with someone who is self-employed elsewhere in this guide.

National Insurance contributions – As an employer, you must pay National Insurance contributions for employees aged 16 years or over whose earnings reach or exceed a prescribed minimum level. You will also have to deduct an employee's contributions from the pay of anyone you take on. The Inland Revenue's *Employer's Helpcards* (CWG1) and *The Employer's Further Guide to Pay as You Earn and National Insurance Contributions* (CWG2),

explain how the contributions are calculated and how you should pay them. If you contract with someone who is self-employed, he or she is responsible for meeting his or her own National Insurance obligations; you do not have to pay contributions on their behalf.

Statutory sick pay – If an employee is sick for four consecutive days or more, they may be entitled to statutory sick pay from you. More details are in *The Statutory Sick Pay Manual for Employers* (E14 supplement) and in the *Employer's Helpcards* (CWG1). Both of these are available from the Inland Revenue Employers Orderline on 0845 764 66 46.

Maternity – Your employee has certain rights if she becomes pregnant. For example, she is entitled to take time off work for ante-natal care, up to 52 weeks statutory maternity leave

(26 weeks, with an extra 26 weeks if she meets certain conditions) and perhaps may be entitled to receive statutory maternity pay for up to 39 weeks from you. Full details of maternity provisions are in the Department for Business, Enterprise and Regulatory Reform booklet PL958-Rev8 *Maternity Rights*. Information about statutory maternity pay is in *The Statutory Maternity Pay Manual for Employers* (AC29) and in *Employer's Helpcards* (CWG1), both of which are available from the Employers Orderline on 0845 764 66 46.

Paternity – Your employee may have some rights if his partner has a baby. Information about paternity leave is in the Department for Business, Enterprise and Regulatory Reform booklet *Working fathers: rights to paternity leave and pay* (PL517).

Adoption – Your employee has certain similar rights if adopting a child. They may have entitlements to adoption leave and perhaps to statutory adoption pay. Further information may be found in the Department for Business, Enterprise and Regulatory Reform booklet, *Adoptive parents: rights to leave and pay – a basic summary* (PL515) and from the Inland Revenue in *Advice on pay and time off work for adoptive parents* (E16).

Redundancy – In most circumstances, employees with at least two years' continuous service since the age of 18 are entitled to a redundancy payment. Further information is in the Department for Business, Enterprise and Regulatory Reform booklet PL808 *Redundancy Payments*. There is a national helpline for advice about redundancy on 0845 145 0004. Helpline staff will also be able to put you in touch with

your local redundancy office for processing claims.

Equal opportunities – Generally jobs must be open to all regardless of colour, race, nationality, ethnic or national origin, sex, marital status or sexual orientation, unless the reason for discrimination arises from a genuine requirement for the job. The Race Relations Act does not apply to private households. The following leaflets are available free from Employment Service job centres or direct from the Department for Children, Schools and Families publication helpline on 0845 602 2260.

- New Start: equal opportunities good practice guide (NSE01)
- Developing good practice: equal opportunities

The code of practice on employment under the Disability Discrimination Act 1995 covers

discrimination against disabled persons or persons who have had a disability. Further information is contained in *Disability Discrimination Act 1995 – What Employers Need to Know* (DL170), available from the the Disability Rights Commission on 08457 622 633 or 08457 622 644 (textphone).

Unions – Employees have the right to belong or not to belong to a trade union. Further information is contained in the Department for Business, Enterprise and Regulatory Reform booklet PL871 *Union Membership Rights of members and non-members*.

Insurance – Some household insurance policies include employer's liability as part of the cover provided. As an employer you will be required to obtain employer and public liability insurance to cover you against liability for an employee's

injury or disease. Advice may be available from your local support service, the National Centre for Independent Living or your local council. If you need to purchase this because it is not part of your household insurance then this will be funded by your local authority as part of your direct payments.

Health and safety – If you employ staff you take on responsibilities for ensuring their health and safety while at work. If you contract with an agency, then the agency, as the employer of the person providing the service, will usually have the main responsibility for safeguarding the health and safety of that person. For further information, contact the Health and Safety Executive Infoline on 0870 1 545 500. The National Centre for Independent Living also produces leaflets covering health and safety issues for people employing personal assistants.

APPENDIX B

Further information

The **New Employers Helpline** can help with a range of queries about being an employer and put you in touch with local agencies for more specific queries. Tel: 0845 60 70 143. More experienced employers may wish to use the **Employers Helpline** on 08457 143 143. Both services are open from 8am to 8pm Monday to Friday and from 8am to 5pm on Saturday and Sunday. Calls are charged at the local rate.

A **business support team** can be accessed through your local Inland Revenue office. They provide support to individuals, arrange training and can set up home visits to discuss issues.

If you wish to contact **local support organisations**, your local council should be able to provide you with details. You can also obtain information about local support organisations from the National Centre for Independent

Living. A list of local services is published on their website at www.ncil.org.uk

- The publications mentioned in this guide can be obtained as follows:

Home Office publications can be obtained by calling 0870 000 1585.

The Employers Orderline provides a range of stationery and forms for employers on 08457 646 646

Inland Revenue publications are available from any tax enquiry centre or Inland Revenue Office locally and from the Employers Helpline.

Publications relating to the Disability

Discrimination Act 1995 can be obtained by writing to: The Disability Rights Commission (DRC) Helpline, FREEPOST MID 02164, Stratford-on-Avon CV37 BR, or by contacting the DRC helpline on 08457 622 633 or textphone 08457 622 644.

The Department for Business, Enterprise and Regulatory Reform produces a number of factsheets aimed at small employers, which give a basic introduction to some aspects of employment law, including fair and unfair dismissal, maternity rights, itemised pay and written statements of employment terms. They are available free of charge from employment service job centres. Or you can order them from the BERR Publications Orderline on 0870 150 2500, email publications@dti.gsi.gov.uk. You can download most of their publications from www.dti.gov.uk/publications. Online help is available via the interactive BERR website – Tiger – on www.direct.gov.uk/en/Diol1/EmploymentInteractiveTools/index.html, or from the ACAS national helpline on 08457 474747.

The Advisory, Conciliation and Arbitration Service (ACAS) also provides information services for employers on a wide range of employment matters, through its public enquiry points (listed under ACAS in local telephone directories). ACAS produces a number of helpful publications, details of which can be obtained by writing to ACAS Publications, PO Box 235, Hayes, Middlesex UB3 1HF or by calling 0870 242 9090, by fax on 020 8867 3225 or via their website at www.acas.org.uk.

Redundancy payments offices

■ A free helpline is available to answer any of your queries. The helpline can tell you which regional office will be able to deal with your claim. The number to ring is 0845 145 0004. You can also find online redundancy forms and further information at www.dti.gov.uk/employment/redundancy

APPENDIX C

Other useful publications

Direct Payments – Direct Payments Guidance
Published by the Department of Health. Copies
are available from Department of Health, PO
Box 777, London SE1 6XH or email at
dh@prolog.uk.com

***Everything you need to know about getting
and using direct payments.*** Published by the
National Centre for Independent Living, whose
address is given on *page 74*.

Independently, the newsletter from the
National Centre for Independent Living, is
available from www.ncil.org.uk.

The Rough Guide to Managing Personal Assistants. Published by the National Centre for Independent Living, whose address is given on *page 74*.

Funding Freedom: 2000. Published by Values into Action, whose address is given on *page 74*.

Plain Facts: Direct Payments for People with Learning Difficulties. Published by Values into Action.

Making Decisions: Best practice and new ideas for supporting people with high support needs to make decisions Published by Values into Action.

Other sources of help

The following organisations may be able to give you information or the address of your local branch of their organisation.

National Centre for Independent Living

4th Floor, Hampton House, 20 Albert Embankment,
London, SE1 7TJ

Tel: 020 7587 1663 **Fax:** 020 7582 2469

Textphone: 020 7587 1177

Website: www.ncil.org.uk

Email: ncil@ncil.org.uk

Values into Action

Oxford House, Derbyshire Street, London, E2 6HG

Tel: 020 7729 5436 **Fax:** 020 7729 7797

Website: www.viauk.org

Email: general@viauk.org

People First

299 Kentish Town Road, London, NW5 2TJ

Tel: 020 7485 6660 **Fax:** 020 7485 6664

Carers UK

20/25 Glasshouse Yard, London EC1A 4JT

Tel: 0808 808 7777 **Fax:** 020 7490 8824

Website: www.carersonline.org.uk

Email: info@ukcarers.org

Contact a Family

209-211 City Road, London, EC1V 1JN

Tel: 020 7608 8700 **Fax:** 020 7608 8701

Textphone: 0808 808 3556

Helpline 0808 808 3555 For parents and families with disabled children (10am-4pm, Mon-Fri)

Website: www.cafamily.org.uk

Email: info@cafamily.org.uk

Council for Disabled Children, National Children's Bureau

8 Wakley Street, London, EC1V 7QE

Tel: 020 7843 1900 **Fax:** 020 7843 6313

Website: www.ncb.org.uk

Email: cdc@ncb.org.uk

MIND (The Mental Health Charity)

15-19 Broadway, London, E15 4BQ

Tel: 020 8519 2122 **Fax:** 020 8522 1725

Website: www.mind.org.uk

Email: contact@mind.org.uk

Alzheimer's Society

Gordon House, 10 Greencoat Place,

London, SW1P 1PH

Tel: 020 7306 0606 **Fax:** 020 7306 0808

Website: www.alzheimers.org.uk

Email: enquiries@alzheimers.org.uk

Help the Aged

207-221 Pentonville Road, London N1 9UZ

Tel: 020 7278 1114 **Fax:** 020 7278 1116

Website: www.helptheaged.org.uk

Email: info@helptheaged.org.uk

The National Centre for Disabled Parents

Unit F9, 89-93 Fonthill Road, London N4 3JH

Tel: 0800 018 4730 **Fax:** 020 7263 6399

Textphone: 0800 018 9949

Website: www.dppi.org.uk

Email: info@dppi.org.uk

Disability Alliance

Universal House

88-94 Wentworth Street, London E1 7SA

Tel (voice and minicom): 020 7247 8776

Fax: 020 7247 8765

Website: www.disabilityalliance.org

Information on work permits can be found on the

Border and Immigration Agency website:

www.ind.homeoffice.gov.uk

The National AIDS Trust

New City Cloisters, 196 Old Street, London EC1V 9FR

Tel: 020 7814 6767 **Fax:** 020 7216 0111

Website: www.nat.org.uk

Email: info@nat.org.uk



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