

CHANGES TO DIRECT PAYMENTS LEGISLATION.

This fact sheet:

- **Gives a background to direct payments.**
- **Outlines current legislation on direct payments.**
- **Explains what changes the Community Care and Health (Scotland) Act 2002 have brought into place.**
- **Details when these changes come into effect.**

1. Introduction.

The Community Care and Health (Scotland) Act 2002 has made a number of changes to legislation on direct payments in Scotland. Section 7 of the act outlines the proposals on direct payments. This fact sheet outlines when these changes came into effect. The provisions in the act are based on proposals made in the consultation document Better Care for All Our Futures (April 2001).

2. What are direct payments?

A direct payment is money paid by the local authority directly to a person whom it has assessed as needing **community care** or **housing support** services. The local authority makes the payment instead of arranging services. The person uses the payment to purchase the relevant services (for example help in the house, to go out to work or with social activities).

In practice, recipients often employ their own personal assistants but this is not a requirement. Support can be purchased through agencies or in the form of services. The key benefit is that direct payments increase the amount of choice, control and flexibility disabled people have over the way they live their lives.

3. What was the Previous Legislation on Direct Payments?

The Community Care (Direct Payments) Act 1996 allowed local authorities to make direct payments to disabled people with community care needs. However they did not have to offer people direct payments.

4. What has changed with the Community Care and Health (Scotland) Act?

- On 1st June 2003, it became **a duty** for local authorities in Scotland **to offer direct payments** to disabled people who require community care services. The Act now ensures that each authority must have a system in place to offer direct payments to anyone that is eligible and willing to receive them. Eligible groups are anyone aged 16 or over, disabled by:
 - Physical or sensory impairments.
 - Learning or mental health difficulties.
 - Illness (e.g. HIV or AIDS, cancer).

AND

- Parents, or those with parental with parental responsibility to purchase services for a disabled child.
- Disabled parents to purchase children's services to assist them in their parenting role.

There are certain groups of disabled people who are currently not eligible for a direct payment. These are:

- Patients subject to after care under a community care order under the mental health legislation.
- Patients detained under mental health legislation who are on leave of absence from hospital.
- restricted patients conditionally discharged under mental health or criminal justice legislation.
- Offenders serving a probation 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; or people subject to equivalent mental health or criminal justice legislation applicable in England and Wales.

The Scottish Executive announced on 29 January 2004, a 'phased roll out' of direct payments to non-disabled community care groups starting immediately with a short-life working group to look at direct payments for older people.

- Currently, direct payments are only available to disabled people and people over 65 with assessed community care needs. However people that have care needs because, for example, they are fleeing domestic abuse, are a refugee, are homeless, are an ex-offender, or are recovering from alcohol or drug dependency, may become eligible to be considered for direct payments. Currently there is no timescale for this.
- Recipients of direct payments are now **able to purchase care services from local authorities (if the local authority are selling their services)**. Prior to 1 June 2003, local authorities were not allowed to sell their services to direct payments recipients. Allowing direct payments recipients to buy services from any local authorities gives them greater choice and control over delivery of services. It also helps make direct payments available to people in remote areas where the local authority may be the only provider of some services.
- **A representative** can consent to, set up, vary and receive direct payments on behalf of a person who is unable to give consent himself. This means that attorneys and guardians, with the relevant powers, are able to make the necessary arrangements to ensure that a person can receive direct payments. Prior to 1 June 2003, there was a low uptake of direct payments amongst people with mental health problems or learning difficulties. By allowing a representative to consent on someone's behalf, more people with learning or mental health difficulties will be empowered through direct payments. Parents are also **allowed to consent to direct payments to purchase the services their children are assessed as needing**.
- Direct payments still require a personal contribution from some recipients. However the legislation makes it clear that **payments can be made on a "gross" basis** and the user's contribution recovered later. This puts direct payments recipients on an equal footing with people receiving local authority services. The Act gives authorities a mechanism to recover the amount it has

assessed a person as being able to contribute. This provision commenced on **1 June 2003**.

5. Further Reading.

- A Guide to Receiving Direct Payments in Scotland – Scottish Executive (October 2003).
- Direct Payments: Policy and Practice Guidance (June 2003) – Scottish Executive.
- Better Care for All Our Futures – Scottish Executive (April 2001).
- Regulation of Care Act (Scotland) 2001– Scottish Executive.
Community Care and Health (Scotland) Act 2002 – Scottish Executive.

6. Further Information.

UPDATE, Scotland's National Disability Information Service.

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