



# Education Act 2011

## 2011 CHAPTER 21

### PART 8

#### DIRECT PAYMENTS

#### **75 Direct payments: persons with special educational needs or subject to learning difficulty assessment**

- (1) In Chapter 2 of Part 9 of EA 1996 (ancillary functions of local authorities) after section 532 insert—

*“Direct payments*

#### **532A Persons with special educational needs or subject to learning difficulty assessment**

- (1) A local authority in England may make a payment (a “direct payment”) for the purpose of securing the provision of any goods and services mentioned in subsection (2) to a person (“the beneficiary”)—
- (a) for whom the authority maintain a statement of special educational needs under section 324, or
  - (b) who is subject to learning difficulty assessment by the authority.
- This power is subject to subsection (3).
- (2) The goods and services referred to in subsection (1) are—
- (a) where the beneficiary is within subsection (1)(a), special educational provision specified in the statement of special educational needs;
  - (b) where the beneficiary is within subsection (1)(b) and the authority have arranged for an assessment to be conducted under section 139A of the Learning and Skills Act 2000, provision identified in the assessment as required to meet the beneficiary's educational and training needs;

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- (c) transport or anything else that may be the subject of arrangements under section 508B(1), 508F(1) or 509AA(7)(b) that apply in relation to the beneficiary.
- (3) A direct payment may be made only in accordance with a pilot scheme made under section 532B.

### **532B Pilot schemes**

- (1) The Secretary of State may by order make pilot schemes in accordance with which direct payments may be made under section 532A.
- (2) Subject to the following provisions of this section, a pilot scheme may include such provision as the Secretary of State thinks appropriate.
- (3) A pilot scheme must include provision about—
  - (a) circumstances in which, and the descriptions of goods and services in respect of which, direct payments may (or may not) be made;
  - (b) descriptions of persons to or in respect of whom direct payments may (or may not) be made;
  - (c) conditions with which a local authority must comply before, after or at the time of making a direct payment;
  - (d) conditions with which a person to or in respect of whom a direct payment is or may be made may be required by a local authority to comply before, after or at the time the payment is made;
  - (e) the principles by reference to which the amount of a direct payment is to be calculated;
  - (f) circumstances in which a local authority may or must stop making direct payments;
  - (g) circumstances in which a local authority may or must require all or part of a direct payment to be repaid, by the person to whom the payment is made or otherwise;
  - (h) the monitoring of the making of direct payments, of their use by the persons to whom they are made or of the goods and services they are used to secure;
  - (i) the arrangements to be made by a local authority for providing persons to or in respect of whom direct payments are made with information, advice or support in connection with direct payments;
  - (j) treating such support to any extent as goods or services in respect of which direct payments may be made.
- (4) The conditions referred to in subsection (3)(c)—
  - (a) must include a requirement to obtain the written consent of the person to whom a direct payment is to be made before making the payment;
  - (b) may include a requirement to obtain the written consent of one or more other persons before making a direct payment.
- (5) The circumstances referred to in subsection (3)(f) in which a local authority must stop making direct payments must include where the consent required by virtue of subsection (4)(a), or any consent required by virtue of subsection (4)(b), is withdrawn.

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- (6) A pilot scheme must include provision for a sum required to be repaid to a local authority by virtue of the scheme to be recoverable as a debt due to the authority.
- (7) A pilot scheme may provide for paid-for goods and services to be treated as goods and services provided or arranged by a local authority in pursuance of a statutory duty specified in the scheme.
- (8) A pilot scheme may provide for paid-for goods and services to be treated in that way—
  - (a) to the extent set out in the scheme, and
  - (b) subject to any conditions set out in the scheme.
- (9) The only statutory duties that may be specified are—
  - (a) section 324(5)(a)(i) (duty to arrange special educational provision specified in statement of special educational needs);
  - (b) section 508B(1) (duty to make travel arrangements for eligible children);
  - (c) section 508F(1) (duty to make arrangements for provision of transport etc for adult learners);
  - (d) section 509AA(7)(b) (duty to make, and secure that effect is given to, arrangements for provision of transport etc for persons of sixth form age).
- (10) “Paid-for goods and services” are goods and services acquired by means of a direct payment.

### **532C Pilot schemes: local authorities and duration**

- (1) An order under section 532B(1) making a pilot scheme must specify—
    - (a) the local authorities in respect of which the scheme operates, and
    - (b) the period for which the scheme has effect.
  - (2) The period specified under subsection (1)(b) must not exceed two years, subject to subsection (3).
  - (3) An order under section 532B(1) may extend the period for which a pilot scheme has effect, subject to subsection (4).
  - (4) The period for which a pilot scheme has effect may not be extended so as to end after the end of the relevant four year period.
  - (5) “The relevant four year period” is the period of four years beginning with the day on which the Education Act 2011 is passed.”
- (2) In section 568 of EA 1996 (orders)—
- (a) in subsection (3), after “other than” insert “ an order to which subsection (3A) applies or ”;
  - (b) after subsection (3) insert—

“(3A) A statutory instrument which contains (alone or with other provision) an order under section 532B(1) (direct payments: pilot schemes) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

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- (3) The provisions inserted into EA 1996 by subsections (1) and (2) are repealed at the end of four years beginning with the day on which this Act is passed.

**Changes to legislation:**

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