

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Direct payments

Section 31 – Adults with capacity to request direct payments

209. As section 8 sets out, a direct payment is one of the ways in which needs may be met. A direct payment is a payment that a local authority can make to an adult to enable that person to arrange care and support to meet assessed eligible needs. This section specifies conditions which must be met to receive a direct payment. It relates to adults who have the capacity to request a direct payment.
210. *Subsection (1)* makes clear that a direct payment may not be made unless the local authority is required to contribute towards the costs of meeting the adult's needs and the adult requests a direct payment to be made to the adult or to someone who is nominated by the adult to receive the direct payment.
211. *Subsection (2)* states that the local authority must agree to the request for and make a direct payment if the four conditions specified in *subsections (4) to (7)* are met (unless provisions in regulations made under section 33 provide otherwise). The four conditions are:
- in *subsection (4)* that the adult must have capacity to make the request for a direct payment, and that any person nominated to receive a direct payment of their behalf must agree to doing so;
 - in *subsection (5)* that the local authority is not prohibited by regulations made under section 33 from meeting the adult's needs by making direct payments to the adult (or person nominated). For example, these regulations may specify that some people will not be able to receive a direct payment, such as those undergoing some types of drug treatment;
 - in *subsection (6)* that the local authority must be satisfied that the adult (or anyone nominated on their behalf) is capable of managing a direct payment, either on their own or with whatever help is available to them (for instance from family members); and,
 - in *subsection (7)* that the local authority is satisfied that making direct payments (either to the adult or someone nominated) is an appropriate way of meeting the needs for care and support.

Section 32 – Adults without capacity to request direct payments

212. This section sets out provisions in relation to adults who lack the capacity to request the local authority to meet some or all of their needs by making a direct payment. The section provides for the local authority to meet the needs of the adult by making direct payments to the authorised person.

213. *Subsection (1)* makes clear that a direct payment may not be made unless the local authority is required to contribute towards the costs of meeting the adult's needs and an authorised person requests the local authority to meet some or all of the adult's needs by making a direct payment to the authorised person.
214. By *subsection (2)* the local authority must make payments to an authorised person (defined in *subsection (4)*), subject to any regulations specified under section 33 and provided that the five conditions (set out in *subsections (5) to (9)*) are all met.
215. *Subsection (4)* sets out who is an "authorised person" for these purposes. An authorised person is either: someone who is authorised under the Mental Capacity Act 2005 to make decisions about the adult's needs for care and support; or a person who the local authority and a person who is so authorised agree is a suitable person to receive the direct payments or; if there is no person authorised under the Mental Capacity Act to make decisions about the adult's needs for care and support, a person who the local authority considers is a suitable person to whom to make the payment.
216. *Subsections (5) to (8)* set out the conditions which must be met. They include that the local authority: is not prohibited by regulations from making direct payments to the authorised person; is satisfied that the authorised person will use the direct payment in the best interests of the adult to meet their care and support needs; is satisfied that the authorised person is able to manage the direct payment by themselves, or with whatever help they may have available to them; and, is satisfied that making a direct payment to the authorised person is an appropriate way of meeting the adult's needs for care and support.

Section 33 – Direct payments: further provision

217. This section makes further provisions about direct payments.
218. *Subsections (1) and (2)* require the Secretary of State to make regulations, which may specify a number of further matters in relation to direct payments.
219. *Subsection (3)* makes clear that that a direct payment must only be used for the purpose of meeting the needs specified in the care and support or support plan.
220. *Subsection (4)* provides that the local authority must stop making direct payments if any of the conditions in sections 31 or 32 are no longer met.
221. *Subsection (5)* allows the local authority to stop making direct payments and to require repayment of direct payments it has already made if there is a breach of any condition imposed by the local authority as permitted by regulations made under *subsections (2) (b) and (3)* or if the direct payment is not used to pay for the needs specified in the care and support plan.