



Social Services and Well-being (Wales) Act 2014

2014 anaw 4

PART 4

MEETING NEEDS

Direct payments

50 Direct payments to meet an adult's needs

- (1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting an adult's needs for care and support under section 35 or 36.
- (2) But regulations under subsection (1) may not require or allow such payments to be made unless condition 1 or 2 is met.
- (3) Condition 1 is that—
 - (a) the payments are to be made to the adult who has needs for care and support (“A”),
 - (b) A has, or the local authority believes that A has, capacity to consent to the making of the payments,
 - (c) the local authority is satisfied that—
 - (i) making the payments is an appropriate way of meeting A's needs, and
 - (ii) A is capable of managing the payments (either by himself or herself or with the support that is available to A), and
 - (d) A has consented to the making of the payments.
- (4) Condition 2 is that—
 - (a) the adult who has needs for care and support (“A”) does not have, or the local authority believes that A does not have, capacity to consent to the making of the payments,

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- (b) the payments are to be made to a person (“P”) other than A,
 - (c) P is a suitable person,
 - (d) the local authority is satisfied that—
 - (i) making the payments is an appropriate way of meeting A's needs,
 - (ii) P is capable of managing the payments (either by himself or herself or with the support that is available to P), and
 - (iii) P will act in A's best interests in managing the payments, and
 - (e) the necessary consent has been obtained to make the payments to P.
- (5) For the purposes of subsection (4)(c), P is a “suitable person”—
- (a) if P is authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A's needs for care and support,
 - (b) where P is not authorised as mentioned in paragraph (a), if a person who is so authorised agrees with the local authority that P is suitable to receive payments towards the cost of meeting A's needs for care and support, or
 - (c) where P is not authorised as mentioned in paragraph (a) and there is no person who is so authorised, if the local authority considers that P is suitable to receive payments of that kind.
- (6) For the purposes of subsection (4)(e), the “necessary consent” means—
- (a) the consent of P, and
 - (b) where P is a suitable person by virtue of subsection (5)(b), the consent of a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A's needs for care and support.
- (7) A payment under this section is referred to in this Act as a “direct payment”.

Commencement Information

II S. 50 in force at 6.4.2016 by [S.I. 2016/412](#), **art. 2** (with [art. 4](#), [Schs. 1, 2](#))

51 Direct payments to meet a child's needs

- (1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting a child's needs for care and support under section 37, 38 or 39.
- (2) But regulations under subsection (1) may not require or allow payments to be made unless conditions 1 to 4 are met.
- (3) Condition 1 is that the payments are to be made to a person (“P”) who is—
 - (a) a person with parental responsibility for a child who has needs for care and support, or
 - (b) a child who has needs for care and support.
- (4) Condition 2 is that—
 - (a) where P is an adult or a child aged 16 or 17, P has, or the local authority believes that P has, capacity to consent to the making of the payments;
 - (b) where P is a child aged under 16, the local authority is satisfied that P has sufficient understanding to make an informed decision about receiving direct payments.

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- (5) Condition 3 is that the local authority is satisfied that—
- (a) making the payments is an appropriate way of meeting the child's needs,
 - (b) the well-being of the child will be safeguarded and promoted by the making of the payments, and
 - (c) P is capable of managing the payments (either by himself or herself or with the support that is available to P).
- (6) Condition 4 is that P has consented to the making of the payments.
- (7) A payment under this section is referred to in this Act as a “direct payment”.

Commencement Information

I2 S. 51 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

52 Direct payments to meet a carer's needs

- (1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting a carer's needs for support under section 40, 42 or 45.
- (2) But regulations under subsection (1) may not require or allow payments to be made unless conditions 1 to 4 are met.
- (3) Condition 1 is that the payments are to be made to the carer who has needs for support (“C”).
- (4) Condition 2 is that—
- (a) where C is an adult or a child aged 16 or 17, C has, or the local authority believes that C has, capacity to consent to the making of the payments;
 - (b) where C is a child aged under 16, the local authority is satisfied that C has sufficient understanding to make an informed decision about receiving direct payments.
- (5) Condition 3 is that the local authority is satisfied that—
- (a) making the payments is an appropriate way of meeting C's needs, and
 - (b) C is capable of managing the payments (either by himself or herself or with the support that is available to C).
- (6) Condition 4 is that C has consented to the making of the payments.
- (7) A payment under this section is referred to in this Act as a “direct payment”.

Commencement Information

I3 S. 52 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

53 Direct payments: further provision

- (1) Regulations under section 50, 51 or 52 may also make provision about the following matters (among other matters)—
- (a) the manner in which the amounts of the direct payments are to be determined;

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- (b) the making of direct payments as gross payments or alternatively as net payments;
- (c) the determination of—
 - (i) the financial resources of specified persons, and
 - (ii) the amount (if any) that it would be reasonably practicable for those persons to pay by way of reimbursement (in the case of gross payments) or contribution (in the case of net payments);
- (d) matters to which a local authority may or must have regard when making a decision of a specified type about direct payments;
- (e) conditions which a local authority may or must attach, and conditions which it must not attach, in relation to direct payments;
- (f) steps which a local authority may or must take before, or after, making a decision of a specified type about direct payments;
- (g) support which a local authority must provide or arrange for persons to whom it makes direct payments;
- (h) cases or circumstances in which a local authority may act as an agent on behalf of a person to whom direct payments are made;
- (i) conditions subject to which, and the extent to which, a local authority's duty or power to meet a person's needs for care and support or a carer's needs for support is displaced by the making of direct payments;
- (j) cases or circumstances in which a local authority must not, or is allowed not to, make payments to a person or in relation to a person;
- (k) cases or circumstances in which a person who no longer lacks, or who the local authority believes no longer lacks, capacity to consent to the making of direct payments must or may nonetheless be treated for the purposes of sections 50 to 52 as lacking capacity to do so;
- (l) cases or circumstances in which a local authority making direct payments may or must review the making of those payments;
- (m) cases or circumstances in which a local authority making direct payments may or must—
 - (i) terminate the making of those payments;
 - (ii) require the repayment of the whole or part of a direct payment;
- (n) the recovery of any amount due to a local authority in connection with the making of direct payments.

(2) In subsection (1)(b) and (c)—

“gross payments” means direct payments—

- (a) which are made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of the care and support (or, in the case of carers, the support) in respect of which the payments are made, but
- (b) which may be made subject to the condition that a person specified in regulations pays to the authority, by way of reimbursement, an amount or amounts determined under the regulations;

“net payments” means direct payments—

- (a) which are made on the basis that a person specified in regulations will pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the care and

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- support (or, in the case of carers, the support) in respect of which the payments are made, and
- (b) which are accordingly made at a rate below the rate the local authority estimates to be equivalent to the reasonable cost of securing the provision of that care and support (or, in the case of carers, that support) so as to reflect the contribution to be made by that person.
- (3) Regulations under section 50, 51 or 52 may make provision in relation to direct payments which corresponds to the provision which is made by, or may be made under, sections 59 to 67 or section 73.
- (4) For the purposes of subsection (3), provision corresponds to that which is made by or under sections 59 to 67 or section 73 if it makes, in relation to reimbursements or contributions, provision which is in the opinion of the Welsh Ministers equivalent in effect to the provision made by or under those sections in relation to charges for providing or arranging the provision of care and support (or, in the case of carers, support) to meet a person's needs.
- (5) Regulations under section 50, 51 or 52 must require a local authority to take specified steps to enable relevant persons to make informed choices about the use of direct payments.
- (6) In subsection (5) “relevant persons” means persons whose consent must be obtained to the making of direct payments under regulations made under section 50, 51 or 52.
- (7) Regulations under section 51 must specify that where direct payments are made to a person who receives a benefit falling within a specified category, the payments—
- (a) must be made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of the care and support in respect of which the payments are made, and
- (b) must not be made subject to any condition that requires a person to pay any amount to the authority by way of reimbursement.
- (8) In subsection (7) “benefit” includes any allowance, payment, credit or loan.
- (9) A person to whom a local authority makes a direct payment may, subject to regulations made under section 50, 51 or 52, use the payment to purchase care and support (or, in the case of a carer, support) from any person (including, among others, the authority which made the payment).
- (10) A local authority may impose a reasonable charge for the provision of care and support (or, in the case of a carer, support) to meet needs in respect of which a direct payment has been made.
- [^{F1}(11) The ways in which a local authority may discharge its duty under section 117 of the Mental Health Act 1983 include by making direct payments; and for that purpose Schedule A1 (which includes modifications of sections 50 and 51 and this section) has effect.]

Textual Amendments

- F1** S. 53(11) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **297(b)**

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Commencement Information

14 S. 53 in force at 6.4.2016 by [S.I. 2016/412](#), **art. 2** (with [art. 4](#), [Schs. 1, 2](#))

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 162(4)(ga) inserted by [2022 asc 1 Sch. 4 para. 30\(2\)\(b\)](#)
- s. 163(4A) inserted by [2014 c. 23 s. 75\(10\)](#) (Effect inserting (4) not applied at s. 163 as it appears to relate to s. 194 in view of the title of the section as cited i.e. "ordinary residence". In s. 194 another (4), identically worded, is inserted on the same date by S.I. 2016/413, regs. 2(1), 316(a))