

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

BACKGROUND AND SUMMARY

Part 5 – Miscellaneous

Direct payments in lieu of provision of care services

56. Direct payments are cash in lieu of social services. They offer individuals who are assessed as needing community care services the opportunity to arrange their own personalised care, rather than receiving services directly provided by a local authority.
57. Direct payments have been available for adults of working age since 1997 (created by the Community Care (Direct Payments) Act 1996 and now made under the Health and Social Care Act 2001). The scheme was extended in 2000 to include older people and was further extended in 2001 (through the Health and Social Care Act 2001) to include carers, parents of disabled children and 16 and 17 year olds.
58. Direct payments are not currently available to people who lack capacity (within the meaning of the Mental Capacity Act 2005). A person lacks capacity in relation to a matter if they are unable to make a decision for themselves in relation to a particular matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
59. The current legislation (section 57(1) of the Health and Social Care Act 2001) states that an individual must be able to give their consent in order to receive a direct payment. People who lack capacity are unable to give this consent. In addition, regulations made under section 57 provide that individuals must also be able to manage their direct payments (with help if necessary) in order to be eligible to receive them.
60. This Act extends the existing direct payments scheme to include people who lack capacity (within the meaning of the Mental Capacity Act 2005). It allows a direct payment to be made to a person who can receive and manage the payment on behalf of a person who lacks capacity. This fulfils a commitment made in the 2006 White Paper “*Our health, our care, our say*”. Extending direct payments will enable individuals currently unable to receive a direct payment, because they cannot consent to or manage the payment, to benefit from the flexibilities that direct payments offer. The section only covers direct payments made to adults under section 57 of the Health and Social Care Act 2001. It does not cover the direct payments made to the groups specified by section 17A of the Children Act 1989 (as substituted by section 58 of the Health and Social Care Act 2001): people with parental responsibility for a disabled child, disabled people with parental responsibility for a child, or disabled children aged 16 or 17.