

## SCHEDULE 1

### Pilot Scheme

## PART 2

### Circumstances in which direct payments may be made

#### **Request for direct payments**

3.—(1) Where a local authority has—

- (a) served a copy of a statement or an amended statement of special educational needs in accordance with paragraph 6 of Schedule 27 to the 1996 Act; or
- (b) carried out an assessment of a beneficiary's learning difficulties in accordance with section 139A of the 2000 Act, and has prepared the written report referred to in section 139B(3) of the 2000 Act<sup>(1)</sup>,

the authority must provide P with information and advice about direct payments under section 532A(1) of the 1996 Act and if P requests the authority to consider making a direct payment under that section, the authority must consider that request.

(2) In this paragraph P means—

- (a) the parent of a beneficiary where the beneficiary has not yet attained the age of 16;
- (b) the beneficiary where the beneficiary has attained the age of 16 and has capacity to consent to the making of direct payments to them; or
- (c) a representative.

#### **Goods and services in respect of which direct payments may be made**

4. A local authority may make direct payments in respect of any qualifying goods and services.

#### **Persons in respect of whom direct payments may be made**

5. Direct payments may be made in respect of a beneficiary.

#### **Persons to whom direct payments may be made**

6.—(1) Subject to sub-paragraph (2), a local authority may make direct payments to a person who is either—

- (a) the parent of a beneficiary, where the beneficiary has not yet attained the age of 16; or
  - (b) the beneficiary, where the beneficiary has attained the age of 16.
- (2) Direct payments may only be made to a person falling within sub-paragraph (1) if the person—
- (a) appears to the local authority to be capable of managing direct payments without assistance or with such assistance as may be available to them;
  - (b) has attained the age of 16;
  - (c) has capacity to consent to the making of direct payments to them; and
  - (d) is not a person described in Part 4.

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(1) Section 139B was inserted by section 80 of the 2008 Act and amended by [S.I. 2010/1158](#).

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## **Nominees**

7.—(1) Subject to sub-paragraph (2), a local authority may make direct payments to a nominee where—

- (a) the parent of a beneficiary, where the beneficiary has not yet attained the age of 16; or
- (b) the beneficiary, where the beneficiary has attained the age of 16,

with capacity to consent to the making of direct payments to them, nominates in writing a person (a “nominee”) to receive the direct payments on their behalf.

(2) Direct payments may only be made to a nominee where the nominee—

- (a) agrees in writing to—
  - (i) act on behalf of the parent or beneficiary in relation to the direct payments;
  - (ii) use the direct payments to secure the agreed provision; and
  - (iii) act in the best interests of the beneficiary when securing the agreed provision; and
- (b) is not a person described in Part 4.

(3) If the parent or beneficiary notifies the local authority in writing that they wish to withdraw or change their nomination, the local authority must stop making direct payments to the nominee as soon as reasonably practicable and, where applicable, consider whether to make direct payments to the alternative nominee.

## **Representatives**

8.—(1) Subject to sub-paragraph (2), a local authority may make direct payments to a representative where—

- (a) the parent; or
- (b) the beneficiary who has attained the age of 16,

does not have capacity to consent to the making of direct payments to them.

(2) Direct payments may only be made to a representative where the representative—

- (a) agrees in writing to—
  - (i) act on behalf of the parent or beneficiary in relation to the direct payments;
  - (ii) use the direct payments to secure the agreed provision; and
  - (iii) act in the best interests of the beneficiary in relation to the direct payments; and
- (b) is not a person described in Part 4.

## **Transition - beneficiary attains the age of 16**

9.—(1) This paragraph applies where a beneficiary in respect of whom direct payments are already being made attains the age of 16 and is a person falling within paragraph 6(2).

(2) Where the beneficiary agrees in writing, the local authority must continue to make direct payments to the parent or the parent’s nominee or representative, as the case may be.

(3) Where the beneficiary wishes to receive and manage the direct payments themselves, the local authority must follow the process set out in paragraphs 11 and 12 to determine whether it is appropriate for the beneficiary to receive and manage the direct payments and obtain their consent in writing in accordance with paragraph 10.

(4) Where the beneficiary notifies the local authority in writing that they do not consent to the making of direct payments, the authority must stop making the direct payments as soon as reasonably practicable.

### **Requirement to reach agreement about direct payments and obtain consent**

- 10.**—(1) Before making direct payments, a local authority must—
- (a) agree with the person to whom the direct payments are to be made the qualifying goods and services or that part of those goods and services which are to be secured by means of direct payments; and
  - (b) obtain the consent in writing of the person to whom the direct payments are to be made; and
  - (c) in a case where a nominee is to receive the direct payments on behalf of the parent or beneficiary, the agreement and the consent in writing of the parent or the beneficiary, as the case may be.
- (2) The consent referred to in paragraph (1) must specify—
- (a) the name of the beneficiary in respect of whom the direct payments are to be made;
  - (b) the agreed provision; and
  - (c) the amount of the direct payments and whether to be paid in a lump sum and if so the date of payment of the lump sum or by instalments and if so the intervals at which the instalments are to be paid.

### **Decision to make direct payments**

- 11.** Before deciding whether to make direct payments in respect of a beneficiary the local authority must be satisfied—
- (a) that the way the person who will receive direct payments proposes to use them to secure the agreed provision is an appropriate way to do so;
  - (b) that where a parent, nominee or representative is to receive direct payments on behalf of a beneficiary, that person will act in the best interests of the beneficiary when securing the agreed provision;
  - (c) that the making of direct payments in respect of the beneficiary will not have an adverse impact on other services which the local authority provides or arranges for children and young people in its area for whom it maintains a statement of special educational needs under section 324 of the 1996 Act or who are subject to a learning difficulty assessment arranged under section 139A of the 2000 Act; and
  - (d) that securing the agreed provision by means of direct payments in the case of that beneficiary is compatible with the authority's efficient use of its resources.

### **Permission of school or college**

**12.** A local authority may not make direct payments in respect of goods or services which will be used or provided in a school<sup>(2)</sup> or college unless the head teacher, principal or the person occupying an equivalent position at the school or college agrees.

### **Decision not to make direct payments**

- 13.**—(1) Where a local authority decides not to make direct payments, it must—
- (a) inform P of its decision, in writing, giving reasons and informing P that P has the right to request a review of that decision;
  - (b) where requested, review its decision and in carrying out the review consider any representations made by P; and

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(2) School is defined in section 4 of the 1996 Act.

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(c) notify P of the outcome of the review, giving reasons.

(2) In this paragraph “P” means the person who wishes to receive direct payments and, if different, the parent, or the beneficiary, where the beneficiary has attained the age of 16.

#### **Amount of direct payments**

**14.**—(1) The local authority must ensure that the amount of the direct payments is sufficient to secure the full cost of the agreed provision.

(2) The local authority may at any time increase or reduce the amount of the direct payments provided that the authority is satisfied that the new amount is sufficient to secure the full cost of the agreed provision.

(3) The local authority may reduce the amount of a direct payment for such period as it determines where—

- (a) direct payments have accumulated and remained unused; and
- (b) the local authority considers that it is reasonable to offset the monies accumulated against the outstanding amount to be paid for that period.

(4) Where the local authority decides to increase or reduce the amount of direct payments it must—

- (a) give reasonable notice in writing to the person receiving the direct payments; and
- (b) where it decides to reduce the amount of direct payments in the circumstances described in sub-paragraph (2) or (3), it must give reasons for that reduction in the notice.

#### **Monitoring and review of direct payments**

**15.**—(1) The local authority must monitor the use of direct payments by persons to whom direct payments are made.

(2) The local authority must review the making and use of direct payments whenever any changes are made in relation to the qualifying goods and services and, in any event—

- (a) at least once within the first three months of direct payments being made in respect of a beneficiary;
- (b) at the end of the period of one year of direct payments being made; and
- (c) thereafter at appropriate intervals.

(3) Where the local authority is notified or becomes aware of a change in the circumstances of the beneficiary which may affect whether the amount of the direct payments is sufficient to secure the agreed provision, it must consider whether that amount is sufficient.

(4) Where the local authority is satisfied that the amount of the direct payments is not sufficient to secure the full cost of the agreed provision, it must increase the amount of the direct payments to ensure that the amount is sufficient to secure the full cost.

(5) When carrying out a review under sub-paragraph (2) the local authority must consider whether—

- (a) it continues to be appropriate to secure the agreed provision by means of direct payments;
- (b) the direct payments have been used effectively;
- (c) the amount of the direct payments continues to be sufficient to secure the agreed provision;
- (d) it is still satisfied as to the matters set out in paragraph 11; and
- (e) the person receiving the direct payments has complied with the obligations imposed on them under Part 3.

16.—(1) Following a review, the local authority may—

- (a) substitute the person receiving the direct payments with a representative, a nominee, a parent or the beneficiary where the beneficiary has attained the age of 16, as appropriate;
- (b) increase, maintain or reduce the amount of the direct payments;
- (c) stop making direct payments;
- (d) require that the person receiving the direct payments complies with either or both of the following conditions—
  - (i) the person must not secure a service from a particular person;
  - (ii) the person must provide such information as the local authority considers necessary;
- (e) take any other action that the local authority considers appropriate.

(2) Where, following a review, the local authority decides to increase the amount of the direct payments, the local authority must notify the person receiving the direct payments.

(3) Where, following a review, the local authority decides to reduce the amount of, or stop making, the direct payments, the local authority must give reasonable notice in writing to the person receiving the direct payments, giving reasons.

(4) On receipt of a notice under sub-paragraph (2), the person receiving the direct payments may request the local authority to reconsider its decision.

(5) The local authority must give written notice to the person receiving the direct payments of the decision on any further reconsideration, giving reasons.

(6) The local authority need not undertake more than one reconsideration of a decision under sub-paragraph (2).

### **Stopping making direct payments**

17. The local authority must stop making direct payments if—

- (a) any consent required under paragraph 10 is withdrawn;
- (b) the person receiving the direct payments ceases to be a person to whom direct payments may be made in accordance with paragraphs 6 to 8;
- (c) where the person receiving the direct payments is a nominee or a representative, and the nominee or representative no longer meets all of the conditions set out in paragraph 7 or, as the case may be, paragraph 8;
- (d) following a review under paragraph 15, it appears to the local authority that the person receiving the direct payments is not using the direct payments to secure the agreed provision;
- (e) following a review under paragraph 15, it appears to the local authority that the agreed provision can no longer be secured by means of direct payments;
- (f) at any point the local authority becomes aware that the making of direct payments in respect of a beneficiary is—
  - (i) having an adverse impact on other services which the local authority provides or arranges for children and young people in its area for whom it maintains a statement of special educational needs under section 324 of the 1996 Act or who are subject to a learning difficulty assessment arranged under section 139A of the 2000 Act; or
  - (ii) no longer consistent with the authority's efficient use of its resources.

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### **Repayment and recovery of direct payments**

**18.**—(1) Subject to sub-paragraph (2), the local authority may require that all or part of any direct payments must be repaid if it is satisfied that it is appropriate having regard in particular to whether—

- (a) there has been any change in the qualifying goods and services following a review of the statement of the beneficiary's special educational needs maintained under section 324 of the 1996 Act, of the educational and training needs identified in the beneficiary's learning difficulty assessment conducted under section 139A of the 2000 Act or of the arrangements under section 508B, 508F or 509AA of the 1996 Act that apply in relation to the beneficiary;
- (b) the circumstances of the beneficiary have changed in a way that has an impact on the agreed provision;
- (c) all or part of the direct payments have not been used to secure the agreed provision;
- (d) the direct payments have been used otherwise than to secure the agreed provision;
- (e) an offence has been committed in connection with the direct payments; or
- (f) the beneficiary has died.

(2) The local authority may only seek repayment of any portion of the direct payments that has not already been spent on agreed provision.

(3) Where the local authority requires a sum to be repaid, it must give notice in writing to the person receiving the direct payments, stating—

- (a) the reasons;
- (b) the amount to be repaid; and
- (c) the time within which the sum must be repaid.

(4) On receipt of a notice under sub-paragraph (3), a person receiving the direct payments may request the local authority to reconsider its decision.

(5) The local authority must give written notice to the person receiving the direct payment of the decision on any reconsideration, giving reasons and setting out the amount to be repaid, if any, and the time within which any sum must be repaid.

(6) The local authority need not undertake more than one reconsideration of a decision under sub-paragraph (1).

(7) The local authority may waive any requirement pursuant to a decision under sub-paragraph (1) or (5) for all or part of any direct payments to be repaid.

(8) Where the local authority requires a sum to be repaid pursuant to this paragraph, that sum may be recovered as a debt due to the local authority.

### **Information, advice and support**

**19.**—(1) The local authority must make arrangements for a person to or in respect of whom direct payments are made to obtain information, advice or other support in connection with direct payments.

(2) The local authority must provide the person receiving direct payments with written information about organisations that may be able to provide advice and assistance in connection with direct payments.

(3) Where the information, advice or support is subject to a charge by an organisation, such information, advice or support may be treated as goods or services in respect of which direct payments may be made.

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