

A Guide to Receiving Direct Payments in Scotland

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For further copies of this guide (free), please write to the following:

Direct Payments Scotland
27 Beaverhall Road
EDINBURGH
EH7 4JE

A Guide to Receiving Direct Payments in Scotland

1 . ABOUT THIS GUIDE

This guide offers advice to people who are thinking about or who are already getting direct payments from their local authority. It has been written for the person who uses services. Sometimes parents or attorneys and guardians can receive direct payments to buy services for a disabled child or adult and so they may find this guide helpful too. We have tried to make the guide as accurate and helpful as possible. You should still check the information for yourself especially about what the law says is possible. The guide also has information on where you can get extra help if you need it.

You can find more detailed advice on direct payments in the policy and practice guidance that the Scottish Executive has given to local authorities. Appendix A gives details of how you can get a copy. For the purpose of this guide the words 'local authority' could mean the social work, children's services or housing department, depending on services you need. Telephone numbers for these departments can be found in the Yellow Pages or the telephone directory.

2. INTRODUCTION TO DIRECT PAYMENTS

What are direct payments?

If your local authority decides that you need community care or children's services it can give you money so that you can arrange and buy the services yourself. This is called direct payments.

If your local authority decides that you need community care or children's services, they must offer you direct payments as an alternative to arranging the services for you. If you get direct payments you must use it to arrange services that meet your assessed needs. It is not money to spend as you choose.

Why would I want direct payments?

Direct payments can give you more control and choice over the decisions that affect your life. For example, many people need help to get out of bed in the morning. You may find that the home help employed by the local authority cannot come at the time you want. If you get direct payments you can arrange for someone to come at whatever time you decide.

Can I get direct payments?

The following people can get direct payments:

- disabled adults assessed as needing community care services;
- disabled 16 and 17 year olds assessed as needing children's services;
- parents, or people with parental responsibility for, a disabled child (under the age of 18) who has been assessed as needing children's services, and
- attorneys and guardians with welfare and financial powers to act on behalf of the person who needs the services.

Whether you are the person who needs the services, a parent of a disabled child or an attorney or guardian you must agree before you can get direct payments. But you can get as much help as you need to make that decision.

The local authority will only give you direct payments if it is satisfied that you will be able to manage them. You can however get as much help as you need to manage the payments. Your local authority will be able to tell you more about managing payments and where you can get help locally.

What can I use my direct payments for?

Direct payments can only be given to buy community care services and services for children. This includes equipment and **temporary** adaptations, housing support services and short breaks. The money is for you to use to arrange the services that the local authority has assessed you as needing. Your local authority will explain what the money can and cannot be spent on. You will need to discuss with your local authority how you intend to use your direct payments to arrange services to meet your needs. If you prefer to receive local authority services to meet some of your needs, your local authority can provide a mixture of direct payments and services.

Where can I go to buy the services I need?

You can make arrangements yourself and employ your own staff and they will report direct to you. Or you can contract with an agency, a private service provider or voluntary organisation to arrange this for you. They will be responsible to you, not to the local authority.

Can I buy services from my local authority?

Yes, you can buy services from any local authority provided it agrees to sell its services to you.

Can I buy residential care with my direct payments?

You can use your direct payments to buy **occasional** short breaks if your local authority agrees that is what you need. Direct payments are intended to support you in your community, so you cannot use them to pay for **permanent** residential accommodation.

Can I use direct payments to employ my relatives?

Direct payments are not meant to replace the help you get from your family and community. So you cannot use direct payments to get a service from:

- your husband, wife or partner or
- close relatives or their partner or husband or wife if they live in the same house as you.

You should discuss your situation with the local authority if you think that any person you would like to employ or buy services from might be in one of these categories. In very unusual situations, your local authority may be prepared to consider allowing you to use direct payments to pay a close relative who does not live in the same house as you or a friend who does share the same house.

3. GETTING DIRECT PAYMENTS

What do I have to do to get direct payments?

If you are entitled to get direct payments, your local authority will offer you them as an alternative to arranging services for you. It is up to you and you do not have to take them. If you have not been offered direct payments, ask your local authority whether you are entitled to get them. It will probably be best to start by asking the person you usually speak to.

What if I am already getting services arranged by my local authority?

Ask the local authority about direct payments.

What if my local authority has assessed my needs before but has not arranged services for me?

If your local authority decided that you did not need services, then it will not offer you direct payments. If you think your needs or circumstances have now changed, ask your local authority for a new assessment.

What if the local authority has not previously assessed my needs?

Contact your local authority to ask them to assess your needs. To get direct payments you have to have an assessment.

It is a good idea to think about your needs before the assessment. Some people find it helpful to keep a diary for a week before the assessment, writing down:

- what they do;
- how long it takes;
- what help they get, as well as
- what they would like to be able to do if they had the necessary help.

Take care not to overlook things that do not happen every week. You may be asked to complete a form before the assessment to say what you think you need help with. The local authority may not be able to offer you assistance with everything but your own assessment will help to make sure that nothing is missed and that your needs are described in a way you are comfortable with.

You might find it helpful to get advice from a friend or relative, or from a local user-led support group, to help you to prepare for your assessment. Your local authority will be able to suggest groups for you to contact, or you may wish to contact one of the organisations listed at Appendix B.

If my local authority offers me direct payments, can I refuse?

Yes. The local authority cannot give you direct payments without your agreement. If you do not agree, you will get services instead.

What responsibilities will I have?

Managing direct payments is a major responsibility but you can get as much help as you need. It is your responsibility to arrange the services you need, to sort out any problems with the service and to account for the way you use the money. If you use the money to employ your own staff, you will have the legal responsibilities of an employer.

Where can I get help to manage direct payments?

Don't rush into a decision to accept direct payments. Ask questions if you feel you do not have enough information to make a decision. It is often a good idea to speak to someone already receiving direct payments. Your local authority, Direct Payments Scotland or SPAEN (Scottish Personal Assistant Employers Network) may be able to put you in touch with a suitable person. Your local authority can also give you details of local and national organisations that can offer advice about direct payments.

Can I change how I spend my direct payments?

You will need to discuss with the local authority what needs to be agreed in advance and what changes you can make on your own without asking.

Will the local authority give me enough money to meet my needs?

Your local authority has to give enough money so that you can make arrangements that will meet your assessed needs. This will include any legal responsibilities you may have as an employer. You should not find yourself having to do without services that the local authority has assessed you as needing.

The local authority has a responsibility to get value for money that is spent. So it may not be prepared to pay the full cost of the particular way of buying services which you choose. It may decide that your needs can be met just as well in different ways which cost less. For example, it may not be prepared to cover the charges of the particular agency you prefer if another agency charges less for an adequate service.

What can I do if I think the payments are not enough?

If you think the money you are offered is not enough, you do not have to accept it. You can complain about the amount offered. You will need to discuss with your local authority what will happen while your complaint is being worked on. You can accept the direct payments if you want, while your complaint is being dealt with. If you do not want to do this while your complaint is being considered, you can choose to get services instead.

Will I have to pay a part of the money for the services that I get direct payments for?

Your local authority will charge you in the same way that it charges people it provides services to. Often the charges will be taken off before you get the direct payments. You can ask to get the full cost of the direct payments and make arrangements with your local authority to pay your part of this later. You should not be charged more than it is reasonable to ask you to pay. Ask your local authority about its charging policy and how it applies to getting direct payments.

Can I get direct payments for 'Free Personal Care'?

If you are disabled and aged 65 or over and wish to use direct payments to buy personal care services at home you will not be asked to pay part of the cost of these services.

How will I get the money?

It is up to your local authority to decide how it makes direct payments. Ask about the arrangements in your local area.

If I decide to get direct payments, where can I get help?

By accepting direct payments you take on the responsibility for managing the money and arranging services which meet your needs. You can get help and advice from a friend or relative. Your local authority can put you in touch with a local user-led support organisation that can offer information and advice, as well as services such as payroll. You can also choose to get in touch with one of the organisations listed at the end of this guide for their advice.

What do I need to do before I start getting direct payments?

Before direct payments start, you should discuss and agree with your local authority:

- what needs the direct payments are to meet;
- what services the direct payments are meant to cover;
- the value of direct payments you will get;
- how much you will be expected to pay;
- how you intend to use the money to get services you need;
- where you can get help if you need it;
- what you can and cannot spend the money on;
- what flexibility you have in the way you get your services and what the local authority would expect to agree before it happens;
- cover for emergencies;
- how often and in what form payments will be made;
- the information you will need to give the local authority about how the money is spent;
- the arrangements the local authority proposes for checking how things are going;
- any conditions attached to the direct payments;
- the date when your arrangements will next be reviewed;
- the circumstances in which direct payments will be stopped
- how much notice the local authority will give you if it decides to stop direct payments, and the circumstances in which it would stop payments immediately;
- how any outstanding commitments will be handled if direct payments are stopped;
- the circumstances in which the local authority would try to get some money paid back.

4. CONTRACTING WITH A SERVICE PROVIDER

What do I need to know about contracting with a service provider?

Buying services from a service provider means that you do not employ directly the people who provide the services, and so you do not have the responsibilities of an employer. Instead, you have a contract with the provider.

The Care Commission regulates the services provided by service providers. You can find out about the quality of any service provider from the Care Commission's website. Details of how to contact the Care Commission are given in Appendix C. Your local authority will be able to provide names of regulated service providers in your area, which provide the kinds of services you need. You may also be able to find out about providers from other people who receive direct payments, your GP or District Nurse, libraries, local voluntary councils or Citizen's Advice Bureaux, or by looking in the Yellow Pages.

How do I choose a service provider?

Before contacting a provider it is important to be clear in your own mind what help you are looking for. Start by making a list of the tasks you would expect staff to do, just as you would if you were employing your own staff. Then think about what is most important to you about the way those tasks are done. This will help you get questions ready to ask providers when you are working out which one best for you.

Always contact more than one provider before deciding. Remember that you are the customer. If one provider is not able to meet your needs, you may be able to find another that will.

You might find it helpful to ask some of the following questions before making a decision:

- What services are available?
- What charges will be made?
- Is everything in the price or are there extras to be added in, for example, National Insurance or travelling expenses?
- Is there a minimum service that has to be bought?
- Can I choose the person who provides the services?
- Can I expect to see the same person on a regular basis?
- What if the regular person is sick or on holiday?
- Can the organisation be contacted at all times?
- How can I contact the out-of-hours emergency service?
- Is there any additional charge?
- How can I complain about the service I receive?
- What happens if I cancel the service?
- Does the organisation have full professional and employer's liability insurance?
- Does the organisation work to a recognised code of practice?
- How does it recruit staff? Are they required to give references? What training are they given?

5. BECOMING AN EMPLOYER

What do I need to know about employing my own staff?

If you employ your own staff, you will have legal responsibilities. It is your own responsibility to ensure that you are aware of, and comply with, these responsibilities. You may find it helpful to consult a local support organisation or one of the organisations listed in Appendix B.

How do I find people to employ?

The first step is to decide what kind of person you want and how many people you need. The local authority's assessment of your needs and what it has said you can spend direct payments on will make this clear. Start by preparing a list of the tasks you want your employees to do. Then ask yourself what skills and personal qualities they will need to do those tasks properly. For example, if part of the job is to enable you to get out and about, you may need someone who can drive. If you think you will need more than one person, you might also consider whether they all need to have all these skills and qualities. You will also need to think about what hours you would expect them to work.

When you have decided on the skills and personal qualities you are looking for, you need to decide how to go about finding the right people. You might find someone by word of mouth, by asking around amongst your friends and neighbours, or you could put a notice in a public place, such as a local Post Office, shop or college of further education, or advertise in a newspaper or in the Job Centre.

Advertising in Job Centres is free, but there is likely to be a charge for putting a notice in a shop window or in a newspaper. Local user-led support organisations may also have newsletters in which you can advertise.

If you are placing an advertisement, you will need to:

- describe briefly what the job involves;
- say how many hours per week you are offering;
- describe what kind of person you are looking for;
- give the rate of pay (usually hourly) and
- give a contact number or address.

You may prefer not to give your own address or telephone number at this stage. Your local support organisation may let you to use their address. Or, you could arrange with the Post Office to set up a P.O. box.

How do I decide how much to pay people?

You can ask people who are already employing people using direct payments how much they pay or look at advertisements for similar jobs. You can also discuss rates of pay with your local authority. How much you can afford to pay will of course depend on how much your direct payment is, but the amount should be enough for you to pay for the services you have been assessed as needing. If you cannot recruit anyone at the pay rates you are able to offer, you should discuss this with your local authority.

You may need to offer different rates of pay for different bits of the job. For example, you may find that you need to offer higher rates for evenings or weekends than for weekdays. Or you might have to pay more if you need someone with particular skills (for example driving) for some parts of the job. Details about the national minimum wage can be obtained from the National Minimum Wage hotline on 0845 6000 678 0845 6000 678 .

Do I need to prepare a job description?

A job description will help you set out clearly what the job is. It will help you to think through what sort of person you are looking for and to explain to applicants what the job involves. It will also be a record of what you expect from your employees, which will help if there are any problems later.

The job description should list the tasks your employee will be expected to do, how often they are needed and anything else you will expect of your employee (for example, being on time, confidentiality). It may be helpful to start by saying what the job is for and how you expect your employees to fit into your life. You could use your personal/care plan to help write a list of the main tasks. Remember to make it clear that you may sometimes need them to do a little more than what is listed in the job description.

What information should I ask applicants to provide?

To help you decide who to invite for interview you will need to ask for information which will help you to decide. You should ask applicants to complete an application form, or ask for a letter saying why they want the job, with full details of where they have worked before. The fuller a picture of the applicant you can get now, the easier it will be to decide who to interview.

How do I go about interviewing?

Go through the applications you get, comparing them with your list of the skills and personal qualities you are looking for. Decide which of the applicants you will interview and arrange dates for the interviews. You might find it helpful to ask someone else to help you choose who to interview. It is a good idea to ask someone else to sit in on the interview with you.

To keep safe you may not want to hold interviews in your own home. Your local authority or local support organisations may be able to give you the use of a room.

What should I do at the interview?

It is helpful to begin the interview with an explanation of what the job involves, to make sure that the applicant has understood the advertisement and to get more information.

You should ask each person:

- for details of experience, training and where they have worked before.
- when the applicant is able to work and when he or she could start.
- why the applicant is interested in working for you.
- if the applicant has any criminal convictions, spent or unspent?

Give the candidates a chance to talk, so that you can see what they are like. Give them an opportunity to ask any questions they may have. When you come to choose between the candidates, you will need to consider whether they will be able to do the job, and whether you are likely to be able to get along with them.

It is essential that you ask for and check references before offering anyone a job.

Will I need a contract with my employee(s)?

A contract of employment exists as soon as your employee starts work. By starting work your employee shows that he or she has accepted the terms and conditions you have offered. The contract does not have to be in writing. Written details, however, whether in the form of a contract or statutory written statement, make sure that both you and your employee have the same understanding and may be helpful if there are any disagreements later. The Department of Trade and Industry booklet PL810, *Contracts of Employment*, gives more information.

Whether they have been given a written contract of employment or not, most employees are entitled to receive a written statement of the main particulars of their employment (see Department of Trade and Industry booklet PL700, *Written Statement of Employment Particulars*). Appendix C at the end of this booklet tells you how you can get a copy of Department of Trade and Industry booklets.

How can I get the best from my staff?

Make it clear from the start the standards you expect. Be prepared to discuss with your employees how you like things done and listen and respond to any difficulties, questions or suggestions they may have. Tell your employees when they are doing well. Tell your employee straight away if you are not satisfied with any aspect of their work. If the problem continues, you may need to consider giving them a formal warning that an improvement must be made. You are the employer, and you have the power to dismiss them if their work is unsatisfactory.

If I employ staff, what legal responsibilities might I have?

You will find a summary of the type of legal responsibilities you are likely to have in Appendix D. Every effort has been made to ensure that this information is accurate at the time of publication, but we advise you to check for yourself.

Can I contract with someone who is self-employed?

Yes, but you must first be sure that they are self-employed. If you are unsure, you should contact your local Tax Office or Contributions Agency Office for help. Self-employment is not a matter of choice but depends on the terms on which you engage the person. A variety of different factors play a part in whether or not someone is self-employed, such as the degree of control you have over the way the work is done. The Inland Revenue produces a leaflet 1R56/N 139, entitled *Employed or Self-Employed? A Guide for Tax and National Insurance*, which will help you.

If the person is not self-employed, you will be seen as his or her employer, with all that goes with this. Someone who is genuinely selfemployed will make their own arrangements for paying their own tax and National Insurance contributions. Then you will have no responsibility for paying these. If you are in doubt about whether someone is employed or self-employed, ask for help as advised above and operate PAYE and pay National Insurance Contributions in the meantime as if the person was an employee of yours.

6. NOW YOU ARE RECEIVING DIRECT PAYMENTS...

What will happen in emergencies?

Whatever arrangements you make, there will be times when they break down. For example, your personal assistant may be ill. You will need to make arrangements to provide cover for sickness etc. You might arrange this with an agency or with off-duty or former employees. You will need to discuss with your local authority what arrangements they expect you to make to prepare for unexpected events like this. Your local authority may be prepared to give you extra money to enable you to buy services in an emergency.

If something happens which your arrangements cannot cover, you should not be left without the services you need. The local authority has a responsibility to step in if it is not satisfied that your needs are being met by your own arrangements using the direct payments. Contact your local authority as soon as you realise you will need help.

Don't worry about contacting your local authority as this does not automatically mean you are not able to manage the direct payments. Almost everyone needs help at one time or another. It is impossible to plan for every situation that may arise. Having to contact your local authority does not mean that you will be taken off direct payments. However your local authority may wish to discuss with you the arrangements you have put in place for emergencies.

What if my needs change?

Contact your local authority as soon as possible and ask for your needs to be reassessed.

What if I don't need to spend all the money?

If you don't need services for a short period, for example if you are in hospital, or if you need less than usual because your condition improves, tell your local authority as soon as possible, as they may need to adjust your direct payments.

Do not spend your direct payments on something that has not been agreed. Your local authority has the power to require you to repay any money that you do not spend on meeting your assessed needs.

Will I need to keep records?

Yes. The money you get in direct payments is for services to meet your assessed needs. It is public money and so it is not yours to spend as you wish. Your local authority will require you to account for the money you receive. You will be told what records you need to keep and what information you will be expected to provide. You will probably find it easier to keep records as you go along, rather than leaving completion of any forms until they have to be returned.

For example, you may be asked to keep timesheets signed by your personal assistants recording the hours they have worked, or receipts for services purchased from agencies.

Will the local authority check on the service being provided?

By agreeing to accept direct payments you are taking on responsibility for buying services to meet your assessed needs. However your local authority will have to satisfy itself that your needs are being met in the same way as if you received services. Your local authority should tell you how they would go about this. This may involve someone visiting you in your home to review the arrangements you make using your direct payments.

What happens if I get into difficulties with direct payments?

Tell your local authority as soon as possible. If your needs are not being met, the local authority will have a responsibility to step in and help you. It might do this by temporarily arranging services directly or it might give you some extra help so that you can carry on with direct payments.

Could I be asked to repay money?

Yes, your local authority could ask you to repay some or all of the money if you:

- do not spend the money on the services as agreed, or
- spend it in a way, which does not meet any conditions the local authority has set.

What do I do if I no longer want to receive direct payments?

Contact your local authority to ask them to stop making direct payments if you no longer want to get them. Your local authority will arrange services instead. If you refuse or withdraw your consent to receive direct payments, this alone will not stop you from getting them in the future.

Who can I complain to if I am not happy with the service?

You can 955 5105 (direct line).

7. OTHER ISSUES

If I receive direct payments, can I still get payments from the Independent Living Funds?

Yes. Direct payments do not affect your eligibility to receive payments from either the Independent Living (Extension) Fund or the Independent Living (1993) Fund.

If I get direct payments, will the money count as income?

No. Direct payments will be ignored in the calculation of the income related benefits (Income Support, Job Seekers' Allowance (income based), Working Tax Credit and Child Tax Credit, Disability Working Allowance, Housing Benefit, Council Tax Benefit). They will also be ignored when maintenance is assessed under the child support formula. Nor will the Inland Revenue regard direct payments as forming part of your taxable income.

Where can I get further advice?

Don't worry if this guide does not answer all your questions. Remember that people have been arranging their own support services for some time, and you should not feel that you are the only person who has questions. It is important that you know where to go to get answers to your questions.

Start by asking your local authority. Each local authority will apply direct payments in its own way so the best sources of advice are likely to be local. It may have set up a user-led support service that can answer your questions. It may be able to suggest other local organisations and support groups for you to contact. Try looking for information about local organisations on notice boards in public places, or in the Yellow Pages. **Direct Payments Scotland** or one of the organisations listed in Appendix B can also offer help and advice.

APPENDIX A: Other useful publications

The Social Work (Scotland) Act 1968: sections 12B and 12C — Policy and Practice Guidance. Published by the Scottish Executive (2003). Copies are available from Direct Payments Scotland, telephone 0131 558 3450 0131 558 3450 , or the Scottish Executive, Health Department, Community Care Division 1, St. Andrew's House, Edinburgh, EH1 3DG, telephone: 0131 244 3546 0131 244 3546 .

Direct Payments Scotland newsletter — available from Direct Payments Scotland.

Scottish Personal Assistant Employers Network — Code of Practice. Published by SPAEN (Scottish Personal Assistant Employers Network).

A Rough Guide to Managing Personal Assistants. Published by the National Centre for Independent Living.

The PA Users Newsletter Published by the British Council of Disabled People (BCODP). You have to be a member of the BCODP to be able to receive the Newsletter.

Take Control of Your Life: An Introduction to the Hampshire Direct Payments Scheme. Published by the Hampshire County Council Social Services.

Choices: It's Your Choice — Decision Making for People with Learning Disabilities. Published by Values Into Action

Make Your Move: A video guide to independent living for all people with learning difficulties. Published by Values Into Action.

Direct Payments for Mental Health Users/ Survivors: A guide to some key issues. Published by National Centre for Independent Living.

Everything you need to know about getting and receiving direct payments — published by the National Centre for Independent Living.

Trusting independence: a practical guide to independent living trusts — published by Values Into Action.

Your right to independent living - A guide to independent living, direct payments, ILF, and being an employer has template forms, guides on self assessment etc. — published by Lothian Centre for Integrated Living.

Direct payments: frequently asked questions — published by Scottish Consortium for Learning Disability - available from Direct Payments Scotland

For further details about these publications please contact Direct Payments Scotland.

APPENDIX B: Where to get more information about direct payments

Your local authority can give you details of local support organisations that can offer advice, information and services. Alternatively the following organisations can give you information or can direct you to your local branch of their organisation:

Direct Payments Scotland

27 Beaverhall Road
Edinburgh
EH7 4JE