

Summary: Intervention & Options

Department /Agency:
Department of Health

Title:
Impact Assessment of Extending Direct Payments

Stage: Implementation

Version: Final

Date: 13 July 2009

Related Publications: Response to the consultation on the extension and revision of direct payments regulations

Available to view or download at:

<http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>

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What is the problem under consideration? Why is government intervention necessary?

Currently a direct payment can only be made to an individual who has the capacity to consent to have one, and who is able to manage the payment (with help if necessary). In addition, a number of groups are also currently excluded from receiving direct payments as they are subject to various sections of the Mental Health Act 1983. This means that individuals who lack capacity to consent or are excluded due to restrictions under Mental Health legislation are unable to benefit from the flexibility that direct payments offer. Legislative changes are required to widen the scope of direct payments and therefore Government intervention is necessary.

What are the policy objectives and the intended effects?

To offer individuals lacking in capacity (via individuals acting on their behalf) and those subject to sections of the Mental Health Act 1983:

- greater choice and control over the way the services they receive are delivered;
- increased consumer satisfaction;
- greater consumer participation in and ownership of care;
- improved health and well-being outcomes

What policy options have been considered? Please justify any preferred option.

1. Do nothing; 2. Extend the availability of direct payments (preferred option)

Option 2 – Intended effects:

Option 2 widens the scope of direct payments to allow certain previously excluded groups to benefit from the flexibilities they can offer. As part of the Government's drive towards high quality, personalised services, direct payments are a key mechanism in supporting independence, choice and control for service users and their carers. Extending direct payments to these groups will therefore enable more people to design and manage their care and support in a way that suits them and their families best, leading to better outcomes, enhanced self-esteem and social inclusion and participation.

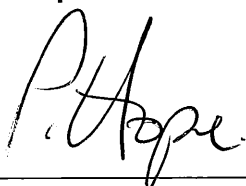
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be reviewed 3 years after implementation in 2012.

Ministerial Sign-off For Final Proposal Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Date: 14/07/09



Summary: Analysis & Evidence

Policy Option: 2

Description: Extending the availability of direct payments

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Increased demand for DPs may occur as a result of widening eligibility. This will potentially increase costs for councils. The average net unit cost of a DP is around £180 p/w at 07/08 prices. Increased demand may result in approx 200 to 500 additional DPs across all councils, which amounts to £1.75m to £4.75m per annum recurrent. This amounts to approx £9.75m aggregated over 3 years (adjusted for inflation).
	One-off (Transition)	Yrs	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 1.75 - 4.75million		Total Cost (PV) £
Other key non-monetised costs by 'main affected groups' None			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The benefits are not monetised. However, we expect benefits to exceed costs.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' Research has shown that direct payments can lead to increased consumer satisfaction with services, greater participation in, and ownership of, care, as well as improved health and well-being.			

Key Assumptions/Sensitivities/Risks

- The average cost to councils per client week of direct payments will be similar to the average cost for packages of care for similar clients.
- The extension of direct payments will lead to increased overall demand in the range of 200 to 500 extra clients (who would not have elected to receive services if direct payments were not available).

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		England	
On what date will the policy be implemented?		October 2009	
Which organisation(s) will enforce the policy?		Local authorities	
What is the total annual cost of enforcement for these organisations?		£ 1.75 – 4.75 million	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?		Yes	
What is the value of the proposed offsetting measure per year?		£	
What is the value of changes in greenhouse gas emissions?		£	
Will the proposal have a significant impact on competition?		No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium Large
Are any of these organisations exempt?	No	No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of £	Decrease of £	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Option 2 - Extend the availability of direct payments

This option means extending the offer of direct payments to certain people currently excluded either because they lack the capacity to consent to them or because they are subject to various provisions of mental health or criminal justice legislation relating to mental disorder.

Background

Direct payments for adults of working age were introduced in April 1997, through the Community Care (Direct Payments) Act 1996. They were extended to older disabled people in 2000. Since April 2001 (Carers and Disabled Children's Act 2000), direct payments have been available to carers, parents of disabled children and 16 and 17 year olds.

In April 2003, the Government changed the law placing a duty upon local councils to make direct payments to individuals who consent to have them.

Direct payments accounted for nearly 7% of net expenditure on community services in 2006-07, amounting to £344 million. Direct payments have increased considerably over recent years. As of 31 March 2008, 55,900 adults and older people used direct payments- an increase of 38% on 2007 (40,600)¹.

In December 2007 the cross-government agreement *Putting People First* described a shared vision for the transformation of adult social care. This vision builds on and reinforces the principles of choice and control established by direct payments. Central to reform is the concept of personal budgets, which give individuals a clear understanding of how much is to be spent on their support and allows them to make their own decisions about how to spend this amount to meet their assessed needs. It is the Government's aim that everyone eligible for social care support will be able to have a personal budget through which they can exercise choice and control over how that support is delivered. This move towards personalisation therefore upholds direct payments as a key vehicle for managing care and support arrangements, and it is expected that the numbers of people using direct payments will increase substantially as a result.

Consultation

Within Government

1. We have consulted with the Ministry of Justice, the Home Office, Office of the Public Guardian, the Department of Children, Schools and Families and the Welsh Assembly extensively and they are content with our proposals.

Public Consultation

2. Three public consultations have taken place which included the proposals to extend direct payments:

¹ *The state of social care in England 2007-08*, Commission for Social Care Inspection, January 2009
http://www.csci.org.uk/about_us/publications/state_of_social_care_08.aspx

- The Green Paper consultation for *Independence, well-being and choice* took place between 21 March to 28 July 2005. Over 1,500 formal responses were received. A wide range of organisations and individuals were represented in this response, including key stakeholders from all sectors. In addition, it is estimated that more than 2,000 individuals participated in discussions at regional and national consultation events. A document detailing the responses to the consultation was published in October 2005.²
 - The White Paper *Your health, your care, your say*, was an innovative and deliberative listening exercise, one of the largest research based consultations ever to take place in the country. It took place during the autumn of 2005. Further details and a full summary of the responses to the listening exercise are available on the DH website.³
 - A public consultation specifically on the draft regulations extending direct payments took place between 19 August and 11 November 2008. Over one hundred responses were received. A summary of the consultation responses including how they will inform the final regulations and accompanying guidance can be found on the DH website.⁴
3. All three consultations showed wide public and stakeholder support for increasing the availability of direct payments in general and enabling previously excluded groups to benefit from the advantages they offer.
 4. This IA draws greatly upon the IA produced when the draft revised direct payments regulations were put out for public consultation in August 2008 (available at http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_087108). We have made some small amendments to the regulations in light of the consultation responses, and the responses have also helped inform the accompanying revised guidance for local authorities. These amendments do not carry material cost implications.

Costs and Benefits

Sectors and Groups affected

5. Local authorities will be able to make direct payments to a third party acting on behalf of people eligible for social care services who lack the requisite mental capacity to consent to receiving direct payments. In addition, they will be able to make direct payments to people previously excluded from the scheme by certain provisions of mental health or criminal justice legislation relating to mental disorder.
6. Service providers may be affected due to the fact that direct payments enable people to choose how their care and support is provided rather than simply relying on services provided directly by their council. This may have the effect of stimulating the market but may also impose some degree of pressure upon small independent providers of traditional services, as demand for newer, more personalised services increases. However we would expect this trend to occur with or without this particular extension of the direct payments

² A summary of the responses can be found at the following link:
http://www.dh.gov.uk/Consultations/ResponsesToConsultations/ResponsesToConsultationsDocumentSummary/fs/en?CONTENT_ID=4121622&chk=6lcaV%2B

³ A summary of the responses can be found at the following link:
http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4127357&chk=UYgWq5

⁴ A summary of the responses can be found at the following link:
<http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>

scheme as the overall numbers of direct payments continue to rise, in line with the Government's ambition to increase personalisation, choice and control.

7. The beneficiaries of these changes will be users of social care services who either lack capacity or are subject to provisions of mental health or criminal justice legislation. It will also benefit carers and families.

Benefits

8. Giving councils a duty or a power to offer direct payments to service users currently unable to receive them would give those users greater choice and control over the way the services they receive are delivered.
9. We expect benefits to individuals and families to outweigh costs. Individuals (or individuals acting on their behalf) who opt for direct payments may expect to receive greater benefits in terms of independence, choice and control, for the same public expenditure.
10. The main group likely to benefit from extending the availability of direct payments to those lacking the capacity to consent are severely disabled children approaching adulthood. Currently, parents of disabled children are able to receive and manage a direct payment on their child's behalf. However, children who turn 18 and still lack the mental capacity to consent to a direct payment cannot currently retain their direct payment following transition to adult services. We want to change this so these individuals can remain in receipt of their direct payments upon turning 18 and their families can continue to arrange care in the way that suits them best. At 31 March 2008, there were reported to be 10,200 carers of disabled children receiving direct payments. However, we do not know how many of these children will lack capacity to make decisions for themselves upon turning 18, especially as capacity is fluctuating and decision specific.
11. The removal of the blanket exclusion for people subject to certain provisions of mental health and criminal justice legislation will make it possible for people in that position to benefit from direct payments in the same way as other people. The current exclusions mean that no one in these groups, whatever their circumstances, can benefit from a direct payment. We believe this can work against the interests of those individuals where a direct payment could help them to regain their independence and to re-integrate into society after a period of detention in hospital. Problems are known to have arisen where a person receiving a direct payment becomes detained under the Mental Health Act, recovers sufficiently to return to the community but needs to remain under the Act for the time being, and so loses their direct payment. We want to change this so that where possible, people who can benefit from direct payments should be allowed the chance to do so.
12. It is assumed that promoting choice and independence through direct payments will result in:
 - Increased consumer satisfaction with the services that they are provided with;
 - Greater consumer participation in and ownership of care;
 - Improved health and wellbeing outcomes.
13. These benefits are backed up by research. A study of direct payments has been conducted by three research teams from the London School of Economics; the Universities of Leeds, Edinburgh and Glasgow, and the Health and Social Care Advisory Service, the Mental Health Foundation and the University of Birmingham. Two reports have been published – Direct Payments: A National Survey of Direct Payments Policy and Practice (Davey et al, 2007) and Schemes Providing Support to People Using Direct Payments (Davey et al, 2007) – and are available at www.pssru.ac.uk

14. It is not possible to monetise benefits. For service users, it is likely that only those people who expect to benefit from direct payments (or people acting on behalf of those lacking capacity) will seek direct payments under the wider scheme. However for local authorities, evidence does suggest that direct payments have the potential to be as, if not more, cost-effective in comparison to services directly provided by a council. A study in 2006 by the Audit Commission found that the benefits of direct payments for local authorities include lower administration costs (since much of the administration is handled directly by users) and lower overall costs of provision in cases where prices for direct payments are set at lower rate than for domiciliary home care.⁵ These benefits are relatively small given the relatively low take-up of direct payments, but we would expect to them increase over time as take-up increases. Such a conclusion is also supported by the evaluation report of the individual budget pilots which found evidence to suggest that across all the different user groups involved in the pilots, individual budgets are more cost-effective in achieving overall social care outcomes.⁶ A report by Care Services Efficiency & Delivery suggests that in order for savings to be realised, direct payments must be embraced as a core component of delivering support— not as an exception or incremental process.⁷ Extending direct payments to previously excluded groups would support this objective.
15. In theory, there is a risk that individuals acting on behalf of those lacking capacity will not act in the best interests of the person lacking in capacity. However, we have included various provisions in the legislation to mitigate this risk. This includes the obligation for anyone receiving a direct payment on behalf of someone lacking capacity to act with regard to the best interests of that person, within the meaning of the Mental Capacity Act 2005.

Costs

16. Any additional costs associated with the extension of direct payments would fall on local authorities. We would expect one-off set-up costs to be minimal given that the systems to administer and support direct payments are already in place in local authorities, who have had a duty to make direct payments since 2003. Furthermore, we would expect on-going costs per client week to be similar for direct payment users and users of council-provided care services.
17. Most individuals who are currently excluded from receiving direct payments will be in receipt of alternative packages of care at broadly equivalent cost. There may, however, be a small increase in demand as a result of these legislative changes. Currently, a small number of people assessed as needing social care services refuse packages of care because the package they are offered does not suit their individual requirements. Widening the scope of direct payments may increase demand from newly eligible service users (or, rather, their agents) as direct payments will allow for greater flexibility to design personalised packages of care. It seems likely that such increase in demand will be small. We allow for an estimated increase in demand of 200 – 500 people across 150 councils with social services responsibilities.⁸
18. The local authority allocations for 2008/09 to 2010/11 take account of the additional cost pressures arising from the extension of the direct payment scheme.
19. If an increase in direct payments alters the pattern of demand for services, it is possible that some small providers may suffer financially as a result. For example, it is possible that the extension of direct payments will reduce demand for more traditional social care services,

⁵ Audit Commission, *Choosing well: analysing the costs and benefits of choice in local public services* (2006)

⁶ *Evaluation of the individual budgets pilot programme: final report* (2008)

⁷ Care Services Efficiency & Delivery, *Cost-effective implementation of direct payments* (2007)

⁸ These figures represent a 'best estimate' of numbers likely to seek direct payments as a result of widening the scheme.

such as day care, and increase demand for personalised services that are provided closer to home. This possibility and the potential impact are discussed further in the *Competition Assessment* and *Small Firms Impact Test* (see annex). However, we should place this impact within the wider context of increasing numbers of direct payments being made year on year, in keeping with the Government's drive towards greater choice and control for public service users.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Equality Impact Assessment

By increasing choice and control for people who receive social care services, direct payments help maintain independence and reduce the risk of social exclusion for recipients.

Anecdotal evidence suggests that extending direct payments to those without capacity and removing exclusions imposed by restrictions under mental health legislation may benefit those from ethnic minority backgrounds. By enabling more freedom and control over the way in which services are delivered, it will be possible for care to be adapted to suit the social and cultural needs of the user and their carers. For example, the flexibility of a direct payment can enable better compatibility between users and care assistants.

The extension of direct payments to groups currently excluded by mental health or criminal justice provisions relating to mental disorder will mean that there is no longer a need to treat these groups differently from other users of community services. Local authorities will have a duty to make direct payments to this group unless they are conditionally discharged or required by mental health legislation to receive a particular service, in which case local authorities will have a power to offer a direct payment.

The extension of direct payments to people who lack capacity or who fall under mental health legislation should help promote social inclusion and facilitate greater involvement within the local community. This is of particular significance for people from black and minority ethnic communities, where there is some evidence of inequalities in the way services are accessed and experienced.

A full Equality Impact Assessment has been completed for direct payments as a policy tool, although it should be noted that the changes to the regulations simply extend the scope of direct payments, they do not put a new policy tool in place. The amendments to the regulations seek to address problems in the initial policy around the exclusion of certain groups from the benefits of direct payments, including adults with head injuries, some people with dementia and severely disabled children, who cannot receive a direct payment once they reach the age of 18 if they do not have capacity to consent.

Small Firms Impact Test

Many small businesses operate in the market for social care services. The extension of direct payments will not lead to an increase in regulatory burden faced by small businesses operating in the market for adult social care services. As outlined in the competition assessment below, there is a possibility that giving more choice and control to previously excluded service users will lead to changes in the pattern of demand for social care services. However, we have already identified that the number of people newly entering the social care system as a result of this extension will be small – 200 – 500 service users. This figure should be placed within the wider trend for increasing the uptake of direct payments. It is therefore likely that extending direct payments will have at most a small, gradual impact on the small business sector.

Competition Assessment

The market for care services can be broadly divided into two: the market for domiciliary care services and the market for residential care services. In 2007-08 gross expenditure by councils with social services responsibilities on residential services for adults was £7.4 billion

(48% of their total adult spend). Gross expenditure on day and domiciliary care for adults was £6 billion (39% of their total adult spend).

Enabling service users to assume greater choice and control and to access information to support their choices may reduce the demand for traditional services such as residential care or day care and increase demand for new and more personalised services that allow users to be supported closer to home. Equally, it may well provide opportunities for smaller independent and voluntary organisations to enter the social care provider market, with the ability to offer tailored and flexible solutions according to the individual needs of the direct payment recipient. Commissioning staff within councils will need to work with both providers and service users to shape local markets so that new services develop and existing services adapt to meet individual needs in more person-centred ways.

We estimate that the extension of direct payments described in this impact assessment will have a negligible effect on the social care market as it merely extends a scheme already in place and expanding. Any impact on providers will be indirect and will depend on the decisions of service users as to how they spend their direct payments. The increase of users receiving direct payments as a result of this extension is likely to be small and occurs against a backdrop of gradually increasing uptake of direct payments.

By improving choice for users and by providing better information to facilitate those choices, the amendments to the direct payment regulations should support the move towards a more dynamic and efficient social care market. Increased choice and control for users should provide incentives for new providers to enter the market and current providers to adapt if they are able to supply affordable services that meet the needs of users.

Legal Aid

It is not anticipated this proposal will have any impact on legal aid.

Sustainable Development, Carbon Assessment and Other Environment

No impact has been identified

Health Impact Test

Direct payments are intended give service users more choice and control over their care and support, enabling people to decide how to meet their needs according to their own wishes and preferences. However, there is no obligation for service users to take up direct payments if they decide that they would prefer their council to retain control over the resources for their care and support. Therefore, it does not appear that the extension of direct payments to people lacking mental capacity and those subject to mental health legislation would bring about any negative effects on health. There were some concerns raised in the most recent consultation about the additional burden potentially placed on a “suitable person” managing a direct payment on behalf of someone else lacking capacity. However, the regulations specify that direct payments can only be made in this way with the express consent of the “suitable person”. In addition, the accompanying guidance to local authorities will specify the importance of support being in place for all direct payment recipients, to enable them to reap the greatest benefits from the scheme.

Rural Proofing

We have considered the likely effects of these changes on rural populations and do not believe that the impact will be disproportionate or disadvantageous. Indeed, the extension of

choice and control to more service users may well be of benefit to users who are then able to choose packages of care delivered in, or closer to, their homes. Direct payments have been shown to make provision of care and support easier and more convenient for users and carers in rural areas, for whom accessing traditional services can sometimes be most problematic.