

SCHEDULE 1

Article 2

Pilot Scheme

PART 1

General

Interpretation

1. In this Schedule—

“the 1996 Act” means the Education Act 1996;

“the 2000 Act” means the Learning and Skills Act 2000(1);

“the 2005 Act” means the Mental Capacity Act 2005(2);

“agreed provision” in respect of a beneficiary(3) means the qualifying goods and services or that part of those goods and services which it is agreed is to be secured by means of direct payments in accordance with paragraph 10(4);

“college” means the institution attended or to be attended by the beneficiary in relation to an assessment of their learning difficulties arranged in accordance with section 139A of the 2000 Act(5);

“local authority” means the local authority that—

- (a) maintains a statement of special educational needs under section 324 of the 1996 Act for a beneficiary or is responsible for arranging an assessment of a beneficiary’s learning difficulties in accordance with section 139A of the 2000 Act; or
- (b) is responsible for arranging transport or anything else that may be the subject of arrangements under section 508B(1)(6), 508F(1)(7) or 509AA(7)(b)(8) of the 1996 Act that apply in relation to a beneficiary;

“nominee” means a person nominated in accordance with paragraph 7;

“qualifying goods and services” means any of the goods and services mentioned in section 532A(2) of the 1996 Act that are, in the case of a beneficiary, specified in a statement of special educational needs under section 324 of the 1996 Act, identified in a learning difficulty assessment under section 139A of the 2000 Act, or the subject of arrangements under section 508B(1), 508F(1) or 509AA(7) of the 1996 Act;

“representative” means—

- (a) in the case of a parent(9) of a beneficiary—

(1) [2000 c.21](#).

(2) [2005 c.9](#).

(3) Beneficiary is defined in section 532A(1) of the 1996 Act.

(4) Direct payment is defined in section 532A(1) of the 1996 Act.

(5) Section 139A was inserted by section 80 of the Education and Skills Act 2008 ([c.25](#)) (“the 2008 Act”) and amended by [S.I. 2010/1158](#).

(6) Section 508B was inserted by section 77(1) of the Education and Inspections Act 2006 ([c.40](#)) (“the 2006 Act”) and amended by [S.I. 2010/1158](#).

(7) Section 508F was inserted by section 57(1) and (2) of the Apprenticeships, Skills, Children and Learning Act 2009 ([c.22](#)) (“the 2009 Act”) and amended by [S.I. 2010/1158](#).

(8) Section 509AA was inserted by paragraphs 1 and 3 of Schedule 19 to the Education Act 2002 ([c.32](#)) and amended by sections 83(1)(b) and (c) of the 2006 Act, sections 55(2) and 56(1) and (3) of the 2009 Act and [S.I. 2010/1080](#) and [2010/1158](#).

(9) Parent is defined in section 576 of the 1996 Act.

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- (i) where a deputy has been appointed by the Court of Protection under section 16(2)(b) of the 2005 Act (powers to appoint deputies) to make decisions on the parent's behalf in relation to qualifying goods and services, any such deputy;
 - (ii) where the parent has appointed a donee of a lasting power of attorney within the meaning of section 9 of the 2005 Act (lasting powers of attorney) to make decisions on the parent's behalf in relation to qualifying goods and services, any such donee;
 - (iii) where the parent has created an enduring power of attorney within the meaning of Schedule 4 to the 2005 Act (provisions applying to existing enduring powers of attorney), which is registered in accordance with paragraphs 4 and 13 of that Schedule or in respect of which an application has been made for such registration, any attorney in whom the power is vested;
- (b) in the case of a beneficiary who has attained the age of 16, but does not have capacity to consent to the making of direct payments to them, the parent of the beneficiary, or the parent's representative, as the case may be.

Effect of direct payment

2.—(1) Goods and services acquired by means of direct payments made in accordance with this scheme are to be treated as goods and services provided or arranged by a local authority in pursuance of the relevant statutory duty.

(2) In this paragraph “the relevant statutory duty” means—

- (a) where the goods and services are the special educational provision specified in a statement of special educational needs under section 324 of the 1996 Act, the duty specified in section 324(5)(a)(i) of that Act;
- (b) where the services relate to the travel arrangements specified under section 508B of the 1996 Act, the duty specified in section 508B(1) of that Act;
- (c) where the services relate to the provision of transport or of anything else that may be the subject of arrangements under section 508F of the 1996 Act, the duty specified in section 508F(1) of that Act; and
- (d) where the services relate to the provision of transport or anything else which may be the subject of arrangements under section 509AA of the 1996 Act, the duty specified in section 509AA(7)(b) of that Act.

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⁽¹⁰⁾,

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

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.

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

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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⁽¹¹⁾ 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
- (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—

⁽¹¹⁾ School is defined in section 4 of the 1996 Act.

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- (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.

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.

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(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.

PART 3

Conditions to be complied with by the person receiving direct payments

20.—(1) The local authority must require the person receiving direct payments (“R”) to comply with the conditions set out in this paragraph.

(2) The conditions are that R must—

- (a) use the direct payments only to secure the agreed provision;
- (b) notify the local authority if any relevant circumstances of the beneficiary change in a way that would impact on their need for the agreed provision;
- (c) ensure that the bank account approved by the local authority into which the direct payments are paid is—
 - (i) used only for purposes connected with the direct payments; and
 - (ii) accessible only by R or any other named persons approved in writing by the local authority;

- (d) keep a record of money paid in and withdrawn from the account mentioned in paragraph (c) and, on request, or at intervals specified by the local authority, provide the local authority with information or evidence relating to—
 - (i) that account; or
 - (ii) the goods or services secured by means of the direct payments.
- (3) The local authority may impose on R a condition that R must not secure a service from a particular person or provider.

PART 4

Persons to whom direct payments may not be made

21. The following persons may not receive direct payments—
- (a) a person who is subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003(12), imposed by a community order within the meaning of section 177 of that Act or by a suspended sentence order within the meaning of section 189 of that Act;
 - (b) a person who is subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003, imposed by a community order within the meaning of section 177 of that Act or by a suspended sentence order within the meaning of section 189 of that Act;
 - (c) a person who is released on licence under Part 2 of the Criminal Justice Act 1991(13), Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997(14) subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug-related or alcohol-related behaviour;
 - (d) a person who is required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act(15);
 - (e) a person who is subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000(16).

(12) 2003 c.44; section 209 was amended by paragraphs 71 and 88 of Schedule 4 to the Criminal Justice and Immigration Act 2008 (c.4).

(13) 1991 c.53.

(14) 1997 c.43.

(15) 2000 c.6. Sections 41 and 51 were repealed, with savings, by Schedule 37 to the 2003 Act.

(16) Section 52 was repealed, with savings, by Schedule 37 to the 2003 Act.