



A parents' guide to direct payments in Scotland

Information for families

Scotland

Incorporating **The Lady Hoare Trust**

Introduction

If your social work department agrees that your child needs care services, you can choose to get money to buy these services yourself. This is called direct payments. Direct payments should give you more control over how your child's needs are met but it also involves more responsibility for you. This guide explains how to go about getting direct payments and how they work in practice.

Direct payments and self-directed support

Recent guidance issued by the Scottish government in July 2007 uses the term 'self-directed support' rather than direct payments. Self directed support is the name given to methods of providing care, which allow those people who receive services to have greater control and choice over how their needs are met. Direct payments are an essential tool in delivering self-directed support and the two terms are often used interchangeably. However, for the purposes of this guide we use the term direct payments throughout.

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What are direct payments?

A direct payment is money from your social work department, allowing you to buy the care that your child needs instead of having services organised by social work. Direct payments can be used by a whole range of people (such as disabled adults or older people), but this guide specifically looks at using direct payments to support families looking after a disabled child.

Control and flexibility

Parents using direct payments often find they have more control over the services that they receive, with care being provided in a more convenient and flexible way. Using direct payments means that you should be able to:

- decide who is going to provide services;
- arrange how and when this service is provided.

Using direct payments

You can use direct payments to buy services from an organisation that provides care such as a private care agency, a voluntary organisation, a nursery or even a local authority (if they agree to sell their services). Alternatively you can employ someone yourself. In this guide we refer to an organisation which provides care as a '**service provider**' and to someone you employ directly as a '**personal assistant**' (PA).

Using direct payments can mean extra responsibilities for you, since you will be more involved in arranging services. This is particularly true if you employ a PA to help meet your child's needs. Direct payments are not for everyone and you are under no obligation to use them if you don't want to. However, if

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you like the idea of having more control over services for your family then direct payments are an option worth exploring.

When direct payments may be the right option

Direct payments may be particularly appropriate if:

- the services that you currently receive don't meet the needs of your family or if you feel that you have little say over how those services are provided;
- you live in a remote and rural area where no suitable services exist - employing someone local as a PA may be the only realistic method of support;
- your child has cultural or language needs that your current service providers cannot meet;
- your child has been assessed as needing services but you have been waiting a long time for help to become available – you may be able to organise your own services straightaway.

How can I get direct payments?

The right to choose direct payments

You have the right to choose direct payments rather than getting services from social work. If you are already getting services from social work you can ask for direct payments instead. If you don't currently get services you will first need to ask social work to assess your child's care needs. For more details on assessments see our free factsheet 'A guide to assessments and services in Scotland' available from our helpline or at Web: <http://www.cafamily.org.uk/AssessScot>



After an assessment

Once social work has carried out an assessment they must decide whether there is a need for services. If they agree that services are needed they should then set out a 'care plan' which outlines the support required. At this point you should have the option of:

- asking social work to provide services to meet all of the needs identified in the care plan; or
- asking for direct payments so that you can buy services to meet the assessed needs; or
- opting for a 'mixed package', where social work provides some of the required services and you use direct payments to buy the rest.

No assessed needs?

If social work don't accept that your child

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needs support they will not offer you direct payments. If you disagree with their assessment you can challenge it via their complaints procedure. Contact our helpline for more details.

What can I use direct payments for?

Some of the ways direct payments can be used include:

- getting help with your child's personal care, for example bathing, dressing, eating or helping look after them overnight;
- a sitter service to look after your child when you are out;
- helping your child use leisure facilities;
- help with household tasks to free up your time to look after your child;
- a place at a day nursery or after-school care;
- someone to accompany your child on holiday;
- housing support services (for young disabled people aged 16 or over);
- short breaks (with some restrictions, see page 22);
- equipment (see page 21).

This list is not exhaustive. You should be allowed flexibility in how you spend your direct payments as long as you can show that the support you want to buy will meet your child's assessed needs and promotes their welfare.

Discuss plans with your social worker

You will need to discuss your plans with your social worker and they will want to draw up an agreement spelling out what care needs will be met via direct payments, how the services will be provided and how they will be monitored.

Are there any restrictions on how I use my direct payments?

There are restrictions on using direct payments to buy care from close relatives. See box on page 6 for more detailed information.

If you pay someone (other than a relative) to look after a child under 16 years of age in that person's home, then they need to be a registered childminder. This does not apply where you pay someone to look after your child in your own home.

Direct payments can only be used to buy services that would otherwise be provided by social work. However, where social work and your local Health Board are jointly funding a care package that meets both social and healthcare needs it is possible for direct payments to cover the healthcare elements too. If you use a direct payment to meet health needs you

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must ensure that this care is provided by a suitably qualified person.

Direct payments cannot be used to buy permanent residential care or permanent adaptations to your home. But they can be used to buy short breaks and temporary adaptations or equipment (see page 21).

How much money should I get in direct payments?

The amount of your direct payment will depend on the type and number of hours care your child is assessed as needing. It should be enough to cover the costs of buying a service of the same quality and quantity as social work would otherwise have provided.

Paying a personal assistant

There is no national set rate of hourly pay for PAs although you must at least pay the national minimum wage (see page 19). Social work may have a 'standard' pay rate which it generally uses in calculating direct payments. However, if your child has complex needs, your direct payments should cover the cost of purchasing appropriate care for him or her, even if this is above the rate being paid to meet the needs of other children. Scottish government guidance states that 'pay rates, other benefits and conditions on offer at local authorities should provide a bench mark for setting equivalent rates of pay for personal assistants'. The rate of pay allowed for should also take into account the range of different hourly rates that would need to be paid for day, night, weekends, bank and local holidays as well as emergency cover.

Covering additional costs

If you want to employ a PA, your direct payments must also include enough to cover any other costs without which the service could not be legally provided. This includes such costs as:

- employers national insurance;



- employers liability insurance;
- holiday pay;
- sick pay and cover;
- maternity/paternity/adoption pay and cover;
- training costs;
- redundancy costs (required if someone is made redundant after two years or more service);
- emergency cover for staff absence;
- any required protective clothing for the personal assistant;
- any pay-roll or book-keeping fees.

In addition, there are other costs associated with employing a personal assistant that Scottish government guidance recommends local authorities should meet where possible. This includes employers indemnity insurance and pensions contributions.

Expenses

When social work calculates the amount of your direct payments, you should discuss how you will cover your PA's expenses if they take your child out. For example, admission fees or a meal and

refreshments when they are out with your child. If you don't cover the expenses of the PA this is likely to limit the activities they do with your child outdoors.

What can I do if I don't think the direct payments are enough?

If you think that your direct payments won't be enough to meet your child's needs, you can complain about the amount offered. Contact our free helpline for more details about the complaints procedure.

Will I be asked to make a financial contribution to my direct payments?

If your social work department charges for children's services, they may ask you to pay towards the package of care that your direct payments fund. They will calculate this in the same way as they charge people they provide services to.

You should not be charged more than it is reasonable for you to pay and no deduction should be made at all if you or your partner gets Income Support, income-based Jobseeker's Allowance, Child Tax Credit at a rate higher than the basic family element or Working Tax Credit.

In the past social work could deduct your contribution from the direct payment before you received it. However, recent guidance makes clear that they should give you the full direct payment amount and then ask you to repay your contribution separately.

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Direct payments and employing close relatives

The general rule is that you cannot normally use direct payments to employ a close relative. However social work can agree to make an exception to this rule, and allow you to employ a close relative if they believe that this is necessary to 'safeguard or promote the welfare' of your child. Social work can agree to this even if the close relative shares your household.

Prior to November 12th 2007 the rules on employing close relatives with direct payments were different. For details of how a close relative is defined or for further information on these rules contact our free helpline.



assistance of parents, carers or a local support service. However, they must have the capacity to make their own choices about how their care needs are met.

If a 16 or 17 year old lacks the mental capacity to consent to direct payments their parent can receive them instead.

If your child is 16 years of age or over, receives Disability Living Allowance at the highest rate for personal care and requires a substantial package of care - you may also be able to access additional money to buy care services via the Independent Living Fund. Contact our helpline for more information.

When a young person reaches 18 years of age

Once a young person turns 18 it is not possible to receive direct payments for them unless you have been explicitly granted the power to do this as an attorney or a guardian under the Adults with Incapacity (Scotland) Act 2000.

Should I use a service provider or employ a PA?

Deciding which option is best is not always clear cut and there are a number of issues you will have to weigh up.

Using a service provider

- you will have no responsibility for employment issues as staff will be employees of the service provider;
- you may have less say in who works with your child;
- it may be more expensive than

employing someone directly.

Employing a personal assistant

- you will have all the responsibilities of an employer;
- you will have more control over who provides care to your child and how this care is provided;

Getting help in using direct payments

You can get advice about accessing and using direct payments from **Contact a Family's** free helpline on Tel: 0808 808 3555 (Mon-Fri 10am–4pm; Mon 5.30-7.30pm).

Guidance from the Scottish government also makes clear that every local council must ensure that parents can get the advice, support and training that they may need to manage direct payments. Where possible this should be provided by an independent, user-led service.

Independent support schemes

Many parts of Scotland have an independent support scheme to provide practical help to people in setting up and running direct payments. In those areas where no independent service exists, support with direct payments should be available from the local council.

These support services can help parents

- you may be able to employ someone who knows your child already.

It is possible to use a service provider to meet some of your child's needs and to employ a PA to meet the rest.

deal with the practical arrangements of setting up and managing direct payments. If you want to buy care from an organisation they may be able to provide advice on how to choose a suitable provider. If you want to employ someone yourself they can provide help in how to go about recruiting and employing someone. In some areas they also offer a 'pay-roll service'. This means that they will provide payslips, deduct tax and national insurance and help you deal with Her Majesty's Customs and Revenue.

Contact our free helpline for details of the direct payment support service in your area.

If you want to employ a PA you also may wish to contact the Scottish Personal Assistant Employers Network (SPAEN), a national organisation providing advice and training to people employing PAs. For more information on the services SPAEN provides see the section on useful contacts.

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Asked to contribute too much?

If you feel that the amount you are asked to contribute is unreasonable, you should consider challenging this amount. For further information on charging for services contact our helpline.

What happens as my child gets older?

If you have parental responsibility for a child, you can manage direct payments for them so long as they are under 16 years of age. However, as far as possible, you will be expected to take into account the views of your child in decisions affecting them, particularly about how intimate care needs are met.

When a young person reaches 16 years of age

Once a young person turns 16, payments can be made to them in their own right. In order for this to happen they must have the mental capacity to 'consent' to direct payments. This does not mean that they have to manage direct payments without help. They may still need the



Using your direct payments to buy care from a service provider

There are many organisations providing care services in Scotland. Some of them are large national charities, some are smaller, local voluntary organisations and some are private companies such as care agencies or nurseries. You can also use direct payments to buy services from a local authority so long as they agree to sell their services.

Finding services in your area

There are a number of ways to find out what services are available in your area. A good place to start would be your local direct payments support scheme. You might also want to ask your social work department for a list of 'approved' service providers it does business with itself. You should also be able to get lists

of registered and approved childcare providers in your area by contacting your local Childcare Information Service. For contact details Tel: 0800 096 0296 or go to Web: <http://www.childcarelink.gov.uk>

Services should be registered with the Care Commission

Check that any service provider you are considering using is registered with the Care Commission. The Commission is responsible for regulating services providing personal care and childcare in Scotland. Inspection reports should be available from the organisation in question or directly from the Care Commission website at Web: <http://www.carecommission.com>

Talk to other families using services

It is a good idea to talk to other families about their experiences of receiving care from specific service providers. Contact our free helpline for details of your closest

parent support group or carers centre.

Service provider is the employer

If you use a service provider, they will be responsible for employing, managing and paying the care workers they send to support your child. You will become their 'customer' paying them for the care services supplied.

Type of services you are looking for

Before talking to service providers it is a good idea to have a clear idea of what type of service you are looking for. Your care plan should make clear the types of help needed but think about whether there are particular ways you would like these tasks carried out.

Useful questions to ask service providers

Some of the following questions may be useful:

- Can they provide the type of care your child needs in the way that you want?
- What are the costs of the service?
- Does this price cover everything or are there extra costs (for example travelling expenses, VAT)?
- Do you have to buy a minimum amount of care?
- Do you have any choice over the worker(s) who cares for your child?
- Will the same care staff be sent out consistently?
- What is the agency policy on lifting and carrying and the use of hoists?
- Can the service provider be contacted at all times when a service is being provided?
- Is there an out of hours emergency service? Does this cost more?

- What obligations will you have if you want to cancel the contract?
- Is the provider registered with the Care Commission?
- Does it meet national care standards?
- Does it have full professional and employers liability insurance?
- Does it work to any recognised code of practice?
- How does it recruit its staff? What training is given? What police checks are undertaken?
- What is the complaints procedure in the event you are unhappy with the service?

Your child's views

It is a good idea to involve your child as far as possible in the decision about which services are used to meet their care needs. Depending on your child's age and understanding they could either accompany you on visits to the various service providers, or perhaps visit your first and second choices. As far as possible you should try and get your

If you use a service provider, they will be responsible for the care workers they send to support your child.

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child's opinions of (or gauge their reaction to) the adults who will be supporting them.

Agreeing a contract with the service provider

Once you have identified a service provider that you want to use, you will need to agree with them a written contract setting out:

- the service to be provided, for example the number of hours required and where and when this is to be provided;
- the terms and conditions for receiving the service, including the costs and how and when these are to be paid;
- arrangements for changing the agreement;
- arrangements for terminating the agreement.

Using your direct payments to employ a personal assistant (PA)

If you decide to employ someone yourself you will be responsible for recruiting that person and for managing them once they start working for you. This means that you will have all the responsibilities of that person's employer. A summary of some of the main issues that this involves are outlined in the following pages. **If this all seems very daunting – don't worry!** You should be able to get expert advice about every step of recruiting and employing someone from a local direct payments support scheme.



What and who are you looking for?

The first step in employing a PA is to decide what kind of person you are looking for and how many staff you need. The social work care plan will help you to do this, but you will also need to think in more detail about the types of tasks you will want the PA to do. Whoever you employ it is important that they have a positive attitude towards disability and are committed to helping your child meet their full potential.

Avoid unfairly discriminating against candidates

In recruiting someone you need to make sure that you avoid discriminating against candidates unfairly. It is sometimes possible to place certain restrictions around race and gender but only in specific circumstances. For example it may not be sex discrimination to restrict a job to the same sex as your child if the post involves providing personal care.

It also may not be considered racial discrimination to restrict a job to people of a particular racial group where this was the most effective way of personal services being provided to your child (for example, someone who can speak the same language as your child).

If you have any doubts about what might be considered as unfair discrimination then contact your local direct payments support service. Alternatively you should be able to get advice from the Commission for Equality and Human Rights on Tel: 0845 604 5510.

Drawing up a job description and an application form

Before setting out to recruit someone it is a good idea to draw up a job description. This allows both you and the PA to be clear about what is expected of them and this will be useful even if you want to employ someone you know. The job description should include an explanation of the purpose of the job, a breakdown of the main duties as well as details of working hours and the rates of pay. You may also wish to consider drawing up a person profile. This is a list of the type of skills, knowledge, experience and other qualities that you are looking for in a PA. In doing this you need to be very clear about what things are really essential for the person to already have and what skills they might be able to learn later.

We also recommend drawing up an application form. This should cover the following areas:

- biographical details, for example name, address;

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- employment history;
- details of personal experience or voluntary work with disabled children;
- training or qualifications;
- why the person wants to be your child's personal assistant;
- ownership of car or driver's licence (if required);
- name and address of two referees –this should always include the last place the person worked or did voluntary work at;
- whether the applicant has any criminal convictions;
- It is essential that you get their agreement that they are willing to apply for an enhanced disclosure check (see box on page 16) and to share any information arising from this with both you and your local authority.

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Your local direct payments support scheme can help you draw up a job description, person profile and an application form.

Advertising for a PA

Unless you intend to employ someone you already know, you will need to draw up an advert outlining some basic details such as:

- a short description of your child;
- what type of work you will require the person to do;
- the hours and pay;
- how to get in touch with you.

Where to advertise

There are a number of places where you may wish to place an advert. The local Jobcentre will place adverts free of charge. You may wish to consider advertising in local newspapers, local supermarkets, shops or community facilities. Some direct payments support schemes can also help with advertising for staff.

Word of mouth can be a useful tool – so mention what you are doing to friends and professionals involved in your child's care. If there is a support group in your area you may also want to mention your advert to other parents.

There are some groups of people who may be particularly suitable to work as a PA:

- people who have worked with disabled children;
- people who have worked with children;
- people who have worked with disabled

adults or older people.

With this in mind it may be worth sending your advert with a covering letter to local schools, nurseries, school transport departments, day centres or youth services. Some of these places may be happy to display your advert on a notice board, in case any of their staff are looking for additional work.

Ensuring your privacy

We recommend that you do not include your address in your advert although you will need to say the general area you live in. Consider using a PO box or telephone number instead.

Interviewing candidates

You will need to compare the list of applicants against the list of skills and attributes you are looking for. At the end of this process you should have a shortlist of people you wish to interview.

You will also need to decide where to carry out your interviews. If you are worried about privacy or safety you may prefer to hire a room in a community centre or family centre. However, you might then need to have a second more informal interview at home so that your preferred applicants can meet your child. It's a good idea to ask someone else to help with the interviews such as your partner or a friend. This will give you a second opinion on applicants. Take notes during the interview to help you remember what was said.

Questions to ask

There are some questions that you will want to ask all of the people you are



interviewing. This allows you to compare one candidate with another. These can cover why they are applying for the post, their experience and training, their ideas and views about disability and childcare. It may be worth making up a few scenario questions around situations that could arise in looking after your child. You may also want to ask a candidate specific questions arising from the information on their application form. For example, you should ask about a period in their career where there is a gap in their employment if this is not explained in their application.

Involving your child

Ideally it would also be good to involve your child in the interview process in some way. In particular you may want to consider allowing your first and second choice candidates to meet your child. This will allow you to see how they interact with your child – does the candidate appear confident and natural in how they relate to your child? You should also try

and assess what your child felt about the person either by talking to them or observing their behaviour and emotional response.

Now you've made a decision

Once you have decided to employ someone as a PA you should contact that person to offer them the job, subject to the appropriate checks. This **must** include an enhanced disclosure check (see box on pages 16-17 for more information) but in addition you should seek full proof of the PA's identity including current and recent addresses, and ask for their permission to share this with the local authority. The PA should also be asked for a declaration that any past criminal history, ongoing investigations, or other information about their conduct or behaviour does not make them unsuitable to work with children. **These checks still apply even if you know the person you want to employ.**

Contracts of employment

Once these checks have been completed you can then contact the candidate to make arrangements for them to start work. At this point you should send them a contract of employment to sign. Get help from your local direct payments support scheme in writing this.

While this may seem very formal, a written contract will make sure that both you and your child's PA have the same understanding about the job. It will also be helpful if there are any disagreements

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Enhanced Disclosure Checks – making sure your child is not put at risk

When you employ a PA to look after your child, the service they provide is not regulated by any outside agency. It is your responsibility to make sure that the person you employ is a suitable person to work with children.

You must ensure that you do not employ someone to look after your child until after they have had an enhanced disclosure (ED) check from Disclosure Scotland. An ED check is a thorough criminal records check.

Applying for the ED check

You cannot apply for the ED check yourself. Instead the application must be made by a registered organisation. All Scottish local authorities, and some direct payment support organisations such as SPAEN, are registered to do this. The application must be signed by the PA and countersigned by the registered organisation. You should ask the registered organisation to check that the ED Disclosure Form explicitly states that the post is a childcare one. This will ensure that Disclosure Scotland check the person's details against the Disqualified From Working With Children List.

When the check has been completed

Once the check has been completed Disclosure Scotland will send a copy of an ED certificate to your PA and to the registered organisation, showing the

results of the check. Although you will not be sent a copy of the ED certificate, the registered organisation can provide you with information about what it contains.

Information in the ED is confidential

Neither you nor the registered person can discuss the information in the ED check with anyone else without the PA's approval. Because of this you should always ask for the PA's written consent to share the information from the ED check with your local social work department. If social work are not given access to the results of the ED check, there is a risk that they will refuse to give you direct payments on the basis that they can't be sure that your child will be safe.

The ED certificate may or may not contain information. **If it contains no information** then you can go ahead and employ the prospective PA, subject to references and other standard checks.

ED shows they are disqualified from working with children

If the ED contains information from the Disqualified From Working With Children List or a similar list of people deemed unsuitable to work with children from elsewhere in the UK, you **cannot** employ that person.

ED contains other information

The ED certificate may contain other information such as unspent criminal convictions, spent (old) criminal convictions or if they have incurred any

reprimands or warnings. It may also contain information that the person is barred from working with adults under a scheme in England and Wales called the Protection of Vulnerable Adults List.

Guidance from the Scottish government suggests that you should not unfairly discriminate purely on the basis of other information in the disclosure. For instance, something declared in the ED certificate may not have been of a serious nature or not part of a pattern of offending behaviour. You should discuss any information in the ED certificate with the registered organisation that countersigned the application. If the registered organisation is someone other than your local authority, you may also wish to discuss the information with your social work department (having first got your prospective PA's permission to do so). They will want to assess the relevance of the information to the person's suitability as a PA for your child.

later. A contract should include the following areas:

- your name and that of the employee;
- job title;
- start date, and if a temporary post, the end date;
- pay – amount, when and how it will be received. You also need to explicitly state if tax and national insurance will be deducted;
- hours of work;
- duties (in as much detail as you feel appropriate);
- arrangements for taking holidays;
- sick leave and other special leave;
- period of notice;
- pension arrangements (even if only to state that there is no pension scheme);
- if it is a 'live-in' position, any specific arrangements for living in your house.

You should use a contract even if you are employing someone you know well.

Written statement of main conditions of employment

You are legally obliged to at least provide a written statement of the main terms and conditions of employment, within two months of your employee starting work. However, we recommend that you provide them with a full written contract of employment. You should also provide your PA with details of the disciplinary and grievance procedures that will apply in the event that problems develop. Get advice on appropriate procedures

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Before your PA starts you may wish to put together some notes on your child for them. Knowing about your child's likes and dislikes and their daily routines will help your PA settle in quicker.

from a local direct payments support service. Alternatively sample procedures can be downloaded from the Advisory, Conciliation and Arbitration Service (ACAS) at
Web: <http://tinyurl.com/2hnhml>

Employing a PA for an initial trial period

It is a good idea to offer the job on an initial probationary basis. This allows you to get to know what your PA is really like before offering them a permanent post. Make clear that there will be a probationary period in both the interview and the contract, and explain how long this will be.

Preparing for a PA starting

Before your PA starts you may wish to put together some notes on your child for

them. Knowing about your child's likes and dislikes and their daily routines will help your PA settle in quicker. You may also wish to agree a handover period where you will work alongside your PA to show them how you want the job done.

Pay, tax and national insurance (NI)

If you recruit a PA then you will become their employer. The only exception to this is where your PA is self employed (see box on page 20). As an employer you will be responsible for deducting tax and NI and passing this onto Her Majesty's Revenue and Customs, referred to as the Revenue in this guide.

When you take on your first PA, you must contact your local tax office to let them know. They should then send you a new employer's starter pack and arrange for a pay as you earn (PAYE) scheme to be set

up so that you can deduct tax from your employee's earnings.

In addition, you will also have to deduct NI contributions from your employee's earnings, so long as they earn more than a set weekly amount (which changes every year). As well as deducting your employee's contributions, you must also make payments (known as an employer's contributions) towards their NI.

How much to deduct for tax and NI

How much you have to deduct in tax and NI will depend on the average hours and earnings of the person that you employ. If your PA only works for a short period each week then they may earn too little to pay tax or NI. However, some personal assistants can work for a number of employers at the same time, all of whom may need to deduct some tax and national insurance.

There is no set rate of hourly pay for PAs and the amount that you need to pay

to recruit a suitable person may vary depending on where in the UK you live and the complexity of your child's needs. However, remember that at the very least, you must pay the national minimum wage. This amount varies depending on age and usually increases every October. Go to Web: <http://www.hmrc.gov.uk/nmw> for up-to-date rates and information.

Help with tax, NI and pay issues

A local direct payments support organisation should be able to provide you with detailed advice on how to deal with tax and NI issues. In some cases they may even offer 'a pay-roll service' - this means that they provide payslips, deduct tax and NI for you and otherwise help you to deal with the Revenue. You may also be able to get detailed advice from SPAEN (see useful contacts section for further details) or from the Revenue itself.

Phone your local tax office (look in your telephone book under Her Majesty's Revenue and Customs) and ask for the 'Employers section' or contact the Revenue's New Employers helpline on Tel: 0845 607 0143 (Mon-Fri 8am-8pm; Sat & Sun 8am-5pm).

You must have employers' liability insurance

All employers have a legal duty of care towards their employees while they are working. This is the case even if you are employing a friend or close relative. If a PA is injured as a result of

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an accident at work, or becomes ill as a result of their work, and believes their employer was responsible, they could sue for compensation. For this reason it is compulsory to take out employers' liability insurance. You should also ensure you are covered for public liability insurance, which offers protection if your PA injures somebody else or damages their property while working for you.

Consider taking out employer's indemnity

Some PA employers also take out employer's indemnity. This is optional and covers the employer against any costs relating to the terms and conditions of employment, for example, legal costs of defending a claim of unfair dismissal.

What happens if my PA says they want to be self-employed?

The normal arrangement when you hire a PA is that they are directly employed by you as an employee. However, in some circumstances, your PA may say that they are self-employed. Seek advice if this happens as some PAs may think they are self-employed when they are not.

Not sure if someone is an employee or self-employed?

Whether someone is treated as self-employed for tax and national insurance purposes is not a matter of choice. Ultimately it is a decision for the Revenue, who produce a straightforward leaflet, 'Employed or self-employed? A guide for tax and

Other insurance to consider

If the PA will be using your car you will also need to ensure that they are covered to do this.

Finding an insurer

Some insurance companies provide policies specifically aimed at employers of PAs. Seek the advice of a local support organisation or an insurance broker.

Holiday entitlement and other leave

All employees are entitled to at least 4.8 weeks paid leave a year. If your PA works 35 hours a week they will be entitled to at least 168 (4.8 X 35) hours as paid leave. If someone works 10 hours a week they are entitled to at least 48 (4.8 x 10) hours paid leave. A PA begins accruing annual leave entitlement from their first day of working. For every 13 weeks

national insurance' (IR56) to help you work out if someone is self-employed or not. If you have any doubts on this issue you should seek advice from the Revenue's New Employer's helpline (see section on useful contact details) and operate the standard tax and NI deductions until the issue has been clarified.

You should also seek advice from your local direct payment support service since there is a separate issue about whether someone is self-employed for the purposes of employment law. You will need detailed advice about the implications of this. For instance it may cause complications in accessing an enhanced disclosure check.



worked they will have earned one week's annual leave.

As an employer you will also be responsible for ensuring that any staff who are eligible receive statutory sick pay as well as any statutory maternity/paternity/adoption pay, where this applies. Further advice should be available from the Revenue's New Employer's helpline, ACAS or your local direct payment support service.

Training costs

The person you recruit to look after your child may require additional training. You may be able to provide some of this yourself, for example about your child's routine. Other training, for example, in lifting or handling, may have to come from a specialist trainer. You should speak to your local social work department and health trusts about how this can best be provided. In some cases an insurer may require proof of appropriate training as part of their agreement to provide employers/public liability insurance. The cost of any formal training should be included in your direct payments as part of setting up costs.

Health and safety issues

As an employer you are responsible for making sure that your PA does not injure themselves while working for you. This means checking basic things around your house to make sure that there are no potential dangers, for example frayed carpets and faulty electrical equipment. Ask social work if they feel there are any relevant health and safety issues, particularly where lifting and carrying is required. They should give you copies of any recent risk assessments carried out on your child and make sure suitable equipment is provided to ensure transfers are done safely.

Using direct payments to buy equipment

If your child's assessment identifies a need for equipment or temporary adaptations to your home you should have the option of buying this via direct payments. When deciding how much money is required, social work need to bear in mind the expertise needed to ensure the equipment is safe and appropriate, and whether extra funds are needed to provide training in its use.

Costs of maintaining equipment

You will also need to be clear whether ownership of the equipment will lie with you or social work. If you own the equipment then you will also be responsible for its service and repair, costs which should be included in the direct

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payments. Alternatively the local authority should arrange for the maintenance of the equipment.

Choosing more expensive equipment

You can top up your direct payment in order to buy a more expensive piece of equipment, so long as it still meets your child's needs.

Funding permanent adaptations

Please note that direct payments can only fund equipment and temporary adaptations that would be otherwise provided by social services. They don't fund permanent adaptations to your property. For more details of help with permanent adaptations contact our helpline or see our factsheet on 'Aids, equipment and adaptations' at Web: <http://www.cafamily.org.uk/aids.html>

Equipment that should be provided by the NHS

Direct payments cannot be used to

buy equipment that would normally be funded by the NHS, for example a wheelchair.

Using direct payments to buy short term breaks

Direct payments cannot be used to pay for permanent residential care but it can be used to buy short term breaks. This can include a child going into a residential respite unit, or more flexible breaks such as a child going to stay with a careworker or a PA accompanying a child on holiday.

Paying for overnight respite using direct payments

If two periods of overnight respite are separated by less than four weeks at home, they are added together to make a cumulative total. This cumulative total cannot exceed more than four weeks in a 12 month period. However, if the two periods are separated by more than four

weeks they are not added together.

For example:

Fatima spends one week in a residential respite unit every six weeks. Because each stay is separated by more than four weeks, they are not added together. Her parents can continue using direct payments to purchase this respite on a regular basis.

Archie spends three weeks in a residential unit, three weeks at home and then a further one week back in the residential unit. The respite is added together to make a cumulative total of four weeks. Archie's parents will not be able to use direct payments to buy further overnight respite for 12 months. However, there is nothing to stop social work from arranging further breaks instead.

Direct payments cannot be used to pay for permanent residential care but it can be used to buy short term breaks like staying with a careworker or a PA accompanying a child on holiday.

Now that you are receiving direct payments

Keeping a record of how your direct payments have been spent

Before direct payments start, social work are likely to ask you to sign an agreement stating that you will only use the money provided to meet your child's assessed needs. Thereafter you are likely to be asked to provide them with information about how you have spent your direct payments. This means that you will be expected to keep receipts for anything you use the direct payments for.

Social work will tell you what other records you will need to keep and what information you will be expected to provide.

Using a bank account to administer the payments

You will need a separate bank or building society account to keep track of how your direct payments have been spent. You can use this account to deposit the direct payments you receive from social work and to pay your PA or service provider.

Keeping social work informed

If social work are unhappy about how you have spent your direct payments, for instance if it wasn't used to meet the needs that they agreed to, they can ask for the money to be repaid. Given this you should make sure that you always let your social worker know if you intend

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met and that the quality of the service is adequate. Social work should arrange for regular reviews to take place but you can request a review if circumstances change suddenly. Following a review, the amount of direct payments may need to be increased or reduced.

Who can I complain to if I am not happy with the service I receive via direct payments?

If you are buying care from a service provider and you are unhappy with the service being provided then you should raise this with them directly. You should have a written agreement with the provider setting out what they are supposed to do. A local support service may be able to help in this process by advocating on your behalf. Alternatively you can complain to the Care Commission about the services being provided. Ultimately if you are not happy with the provider you can stop the service and use another. It is a good idea to keep the local authority informed, because if you struggle to find an alternative service they may need to step in temporarily to make alternative arrangements.

If you are not happy with the services provided by a PA then you will have to discuss the matter with them as soon as possible – preferably before the initial probationary period ends. As an employer you will need to follow the correct procedures when disciplining staff – you cannot just automatically dismiss staff if you are not happy. Failure to follow the correct disciplinary procedures could result in an employment tribunal, so always seek advice from your local direct payments support scheme.

to make any changes to the services you buy. The direct payments agreement may allow for some small changes to be made without notifying them, for instance changes to the time of day a service starts or finishes. However, more substantial changes should always be discussed with your social worker first.

Dealing with emergencies

There may be times when the care arrangements funded by your direct payments break down, for example because your PA is ill. When you first set up your direct payments you should speak to social work about what will happen if you require emergency cover. For example, you may be able to arrange for cover with an agency. If your emergency plan does not work for any reason, social work should step in and provide care during any period when your normal services are unavailable.

Reviewing your direct payments

The local authority is still responsible for reviewing the services purchased with the direct payments. The aim is to check that needs in the care plan are still being

What if I decide that direct payments are not right for me?

If you decide that you no longer wish to use direct payments, social work should arrange the services your child needs instead. However, you will need to take into account any commitments you have made to the existing service provider/PA, for example you will probably need to give a specific amount of notice.

Frequently asked questions

If I receive direct payments will this affect any of the benefits my family receives?

No – direct payments have no affect on benefit entitlement.

My local authority say that they do not give direct payments for services for children and that the payments are at their discretion. Is this correct?

Originally direct payments were a discretionary scheme. However, since 2003 local councils have been under a legal obligation to offer the option of direct payments to certain groups, including people with parental responsibility for disabled children, if they have assessed needs for services.

Can I add other money to my direct payments to buy more expensive or additional services?

Yes. If you are receiving direct payments there is nothing to stop you using other income to buy additional services or more expensive care than the social work department is willing to fund.

My social work department says that they have no more money in their direct payments 'budget' and that we will have to wait until next year before we can get direct payments. Can they do this?

Seek further advice from our helpline about challenging this decision. If social work has assessed your child's needs and agreed that services are required, they cannot use lack of financial resources as an excuse not to meet your child's needs. This applies regardless of whether you want to use direct payments or to get services provided by them.

Will I continue to get direct payments if my child is in hospital?

If you use direct payments to pay a PA, these should continue for at least the first four weeks of their hospital stay. Whether payments continue beyond that is at the discretion of social work and will depend on such factors as the likely duration of the hospital stay, and whether the PA's services would still be required while the child is in hospital. It is a good idea to discuss this issue with your social work department when your direct payments are first set up. They may agree to give you an extra amount which can be set aside to cover your PA's wages in the event that your child is in hospital for more than four weeks.

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Useful contacts

For further advice about any aspect of using direct payments call the Contact a Family helpline on Tel: 0808 808 3555 (Mon-Fri 10am–4pm; Mon 5.30-7.30pm). We can also provide details of the local direct payments support service for your area.

Detailed guidance on the use of direct payments is available from the **Scottish government's** website at
Web: <http://tinyurl.com/2ogbcw>

Scottish Personal Assistant Employers Network (SPAEN)

Tel: 01698 250 280
e-mail: info@spaen.co.uk
Web: <http://www.spaen.co.uk>

SPAEN is a national support organisation providing advice, training, advocacy and support on the practicalities of employing a personal assistant. This includes all aspects of the safe recruitment and day-to-day management of PAs. Underpinning SPAEN's services is an employer's indemnity scheme and access to a comprehensive system of personnel and employment law advice. SPAEN is also a registered body for vetting enhanced disclosure checks.

Her Majesty's Revenue and Customs New Employers Helpline

Tel: 0845 607 0143
Web: <http://www.hmrc.gov.uk>

Provides advice on a whole range of issues related to becoming an employer, but particularly in relation to pay, national insurance and leave. As well as their 'New

employers starter pack', the Revenue also produce a number of useful publications.

Disclosure Scotland

Tel: 0870 609 6006
Web: <http://www.disclosurescotland.co.uk>

For further information on carrying out an enhanced disclosure check.

The Care Commission

Tel: 0845 603 0890
Web: <http://www.carecommission.com>

Regulates and inspects care providers in Scotland.

Commission for Equality and Human Rights

Tel: 0845 604 5510
Web: <http://www.cehr.org.uk>

For advice on avoiding discrimination in recruitment and employment.

Department for Business, Enterprise and Regulatory Reform

Tel: 020 7215 5000
Web: <http://www.berr.gov.uk>

Produces a number of factsheets aimed at small employers covering issues such as maternity rights, contracts of employment, fair and unfair dismissal, and redundancy entitlements.

ACAS

Tel: 0845 747 4747
Web: <http://www.acas.org.uk>

Provides advice and information on employment law and good practice for employers.

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Freephone helpline: **0808 808 3555**
Web: **www.cafamily.org.uk**

Getting in contact with us

Free helpline for parents and families

0808 808 3555

Textphone

0808 808 3556

Open Mon–Fri, 10am–4pm;

Mon, 5.30–7.30pm

Access to over 100 languages

www.cafamily.org.uk
www.makingcontact.org

Contact a Family Head Office:

209-211 City Road, London EC1V 1JN

Tel **020 7608 8700**

Fax **020 7608 8701**

e-mail **info@cafamily.org.uk**

Web **www.cafamily.org.uk**



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Registered Office: 209-211 City Road,
London EC1V 1JN
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Other information booklets available

This factsheet is one of a series produced for parents and groups concerned with the care of disabled children. A full list of Contact a Family publications is available on request or can be downloaded from our website www.cafamily.org.uk

- Preparing for adult life and transition in Scotland (Scotland)
- Fathers (UK)
- Understanding your child's behaviour (UK)
- Benefits, tax credits and other financial help (UK)
- Siblings (UK)
- A guide to assessments and services in Scotland (Scotland)
- Dealing with debt (Scotland)
- Additional support for learning (Scotland)
- Finding and paying for childcare (UK)

Although great care has been taken in the compilation and preparation of this guide to ensure accuracy, Contact a Family cannot take any responsibility for any errors or omissions.