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## Adult Social Care

# DIRECT PAYMENTS

# POLICY

Applicable to:	All staff in Adult Social Care
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Approval date	01/04/2019
Planned review date	01/04/2021

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## Table of Contents

	Contents	Page
1	Introduction	3
2	Purpose	3
3	Definitions	3
4	Legal Context	3
5	Informing People and promoting choice.	3
6	Advocacy	4
7	Who can receive direct payments	4
8	Conditions for receiving direct payments	4
9	Declining a request for direct payment	6
10	Using direct payments	6
11	What direct payments cannot be used for	7
12	Managing direct payments	7
13	Being an employer under direct payment/Disclosure and Barring Services (DBS)	8
14	Making payments under direct payments	8
15	Integrated direct payments	9
16	Direct payment agreements	9
17	Monitoring and review direct payments	9
18	Discontinuing direct payments	10
19	When repayment is required	10
20	Complaints	11
21	Review of policy	12
22	Appendix 1 – Definition of terms used in policy	13
23	Appendix 2 - People excluded from direct payments	17

## **1. Introduction**

- 1.1 Lambeth council is committed to promoting and supporting individual wellbeing and independence by preventing, reducing or delaying the need for care and support.
- 1.2 When an individual (service user) becomes eligible for care and support due to their assessed eligible needs under the Care Act 2014, the Council will work out how much this will cost and allocate a personal budget. A personal budget can either be managed by the Council or by the service user. When the budget is managed by the service user, they receive a direct payment.
- 1.3 Direct payments are Lambeth council's preferred mechanism for providing care and support. This is because the care can be arranged in a much more flexible and personalised way and offer service users greater independence, choice and control.
- 1.4 Direct payments work by making a monetary payment to service users to enable them to make their own arrangements to meet their assessed eligible needs.
- 1.5 Direct payments may not suit all service users and they can only be issued when certain conditions are met under the Care Act 2014.
- 1.6 In other circumstances, the payments can be paid to someone acting on their behalf which is referred to as an indirect payment (see paragraph 8.2). For the purposes of this policy, the term 'Direct Payments' will be used to describe Direct and Indirect payments
- 1.7 Direct payments may also be used as a way of arranging After Care services provided under s117 of the Mental Health Act 1983 (MHA).

## **2. Purpose**

- 2.1 The purpose of this policy is to comply with the requirements of Part 1 of the Care Act 2014 which came into effect from 1<sup>st</sup> April 2015 and the Care and Support (Direct Payments) Regulations 2014.

## **3. Definitions**

- 3.1 Definitions of specific terms used within this policy are defined at Appendix 1.

## **4. Legal Context**

- 4.1 Policy derives from the following legislation and government guidance:

The Care Act 2014  
Care and Support (Direct Payments) Regulations 2014  
Care and Support Statutory Guidance issued under the Care Act 2014 by the Department of Health in October 2014.

- 4.2 Other relevant legislation includes but is not limited to:  
Mental Health Act 1983 (MHA)  
Mental Capacity Act 2005 (MCA)  
Equalities Act 2010

## 5. Informing People & Promoting Independence, Choice and Control

5.1 The Council will provide universal information about direct payments to raise awareness and advice on how they can be used.

5.2 When a plan to meet needs or discharge s117 duties is being developed, service users will be advised which of their assessed eligible needs, if any, or after care services may be met/provided through direct payments. They will be offered the option of having a direct payment and provided with information about direct payment rights and responsibilities as well as how to use and manage them so that they can make an informed decision.

5.3 Service users would be offered or may request direct payments and may opt in or out of direct payment arrangements by notifying Adult social care. Requests for direct payments are usually made at planning stage but may be made at any other time.

## 6. Advocacy Service

6.1 Service users who appear to be unable to understand their rights and responsibilities in relation to direct payments and have no other appropriate person to support them will be offered an independent advocate.

## 7. Who can receive direct payments

7.1 Providing the service user is not excluded from receiving direct payments as described in paragraphs 8.1 (in respect of adults with capacity) and 8.5 (in respect of adults without capacity) below, the Council has a duty to provide direct payments for people whose assessed eligible needs have been determined following a Care Act assessment.

7.2 The regulations exclude people placed under certain conditions or requirements by the courts in relation to drug and / or alcohol dependencies from receiving direct payments. **See appendix 2 for details.**

7.3 If the exclusion from direct payment does not apply then where the conditions described in paragraphs 8.1 and 8.5 are met, the Council may have a duty to provide direct payments for people to whom After Care services are provided under s117 of the MHA.

## 8. Conditions for receiving direct payments

8.1 Direct payments will be provided when requested by an **adult with capacity** when each of the five conditions stated below are fully met:

1. The adult has capacity and/or any nominated person (see paragraph 12.2) agrees to receive direct payments.

2. The regulations do not prohibit needs from being met through direct payments. See paragraph 11 for restrictions on the use of direct payments.
3. The adult or the nominated person is capable of managing direct payments either independently or with support.
4. Making direct payments is an appropriate way of meeting needs.
5. The adult or their nominated person agrees to adhere to the terms and conditions identified in Lambeth Borough Council's Direct Payment Policy

## **8.2 Indirect Payments**

Adults without capacity are not precluded from having direct payments when there is an authorised person to manage them. Direct payments will be provided when requested by an authorised person when each of the conditions listed in paragraph 8.5 are met.

8.3 An authorised person is someone who:

1. Is authorised under the Mental Capacity Act 2005 (MCA) to make personal welfare decisions for the adult (i.e. the holder of a lasting power of attorney given to them by the adult before they lost capacity or a Court appointed deputy), or
2. Is not MCA authorised, but the Council and any person authorised under the MCA to make personal welfare decisions for the adult, agrees that the person is suitable to whom to make direct payments, or
3. Is not MCA authorised and there is no MCA authorised person, but the Council considers that the person is a suitable person to whom to make direct payments.

8.4 When determining who is a suitable person to be an authorised person, the Council will consider all the relevant circumstances and the decision will be made on a case by case basis.

8.5 Direct payments will be provided when requested by an authorised person when the seven conditions stated below are fully met:

1. Where the person making the request is not authorised under the MCA to make personal welfare decisions for the adult, the Council would need to be satisfied that the person making the request is a suitable person to make decisions about the adult's care and support needs.
2. The regulations do not prohibit needs from being met through direct payments. (See paragraph 11 for restrictions on the use of direct payments)
3. The authorised person will act in the adult's best interest in arranging care and support with direct payments.
4. The authorised person is capable of managing direct payments either independently or with support.
5. Making direct payments to the authorised person is an appropriate way of meeting needs.

6. The authorised person cannot become the paid Personal Assistant (PA) in delivering any part of the person's care and support package.
7. The authorised person agrees to adhere to the terms and conditions identified in Lambeth Borough Council's Direct Payment Policy

8.6 The Council will take the following steps, as below, to assess whether making direct payments to the authorised person is an appropriate way of meeting needs:

1. So far as is reasonably practical and appropriate, the Council will consult and take into account the views of:
  - a. anyone named by the adult as someone to be consulted about whether indirect payments should be made to the authorised person;
  - b. anyone engaged in caring for the adult or interested in their welfare;
  - c. anyone authorised under the MCA to make decisions about the adult's needs for care and support.

2. So far as is reasonably ascertainable, the Council will consider:

- a. the adult's past and present wishes and feelings, particularly any relevant written statement made by the adult before they lost capacity;
- b. the beliefs and values that would be likely to influence the adult's decision if the adult had capacity, and
- c. other relevant factors the adult would be likely to consider if they were able to do so.

3. As individuals cannot carry out Disclosure and Barring Service checks (DBS) on other individuals, Lambeth Council will offer to carry out DBS checks for:

- a. anyone who is not the adult's spouse / partner, a friend of the adult who is involved in providing their care, or a close family member (see Appendix 1 definitions): who lives in the same household as the adult, and;
- b. the person with overall responsibility for the day to day management of direct payments where the authorised person is a body corporate or an independent body of persons.

8.7. The authorised person must:

- a. be named as the financial representative on the service user's electronic record to enable payments to be made;
- b. notify the Council if they reasonably believe that the adult has regained capacity;

- c. DBS check any person from whom a service is secured using direct payments where the conditions specified in paragraph 13.3 apply.

## **9. Declining a request for direct payments**

- 9.1. Requests for direct payments will be declined if any of the conditions set out at paragraphs 8.1 (for adults with capacity) and 8.5 (for adults without capacity) above are not met.
- 9.2. The Council will provide a written explanation of why the request was declined including:
  - a. which conditions are not met;
  - b. why the condition is considered to be unmet;
  - c. what the person making the request may need to do to obtain a positive decision.
- 9.3. Information about how to appeal the decision through the Council's complaints process will also be provided.
- 9.4. The Council will continue the planning process to agree with the person whose needs must be met, how this can be achieved without the use of direct payments.

## **10. Using direct payments**

- 10.1 Direct payments must be used to pay for arrangements to meet the needs specified in the care and support plan.
- 10.2 Direct payments must be used to purchase services which are safe, legal, value for money and which adequately safeguard and promote the person's welfare and wellbeing.
- 10.3 Direct payments may be subject to conditions imposed by the Council which are detailed in the Direct Payment Agreement and may be discontinued and / or recovered if the Council has a reason to believe that the funds may have been misspent or accumulated without good reason.

## **11. Direct payments cannot be used for**

- 11.1. Direct payments cannot be used to purchase:
  - a. Care services or support in managing direct payments provided by the adult's spouse / partner or a close family member (see Appendix 1 for definitions of 'close family member') living in the same household as the adult. In

exceptional circumstances, the Council may agree that a direct payment can be made to these excluded people.

- b. Any service directly provided by the Council.
  - c. Services, equipment and / or minor adaptations which are the responsibility of other public bodies.
  - d. Long term residential or nursing care but can be used to pay for:
    - short stays of up to 4 consecutive weeks in any 12-month period. In calculating the period of 4 weeks, a stay of less than 4 weeks is added to any succeeding stay if the two stays are separated by a period of less than 4 weeks but not otherwise;
    - non-residential services, for example to trial independent living or to take part in daytime activities.
- 11.2. Carer's direct payments are to meet the carer's own assessed needs and cannot be used to purchase services for the service user.
- 11.3. An authorised person must not use direct payments to pay themselves to provide services to the adult without capacity; except if specifically authorised in writing by the Council.

## **12. Managing direct payments**

- 12.1. Anyone who agrees to be responsible for managing direct payments must be capable of managing it either independently or with help.
- 12.2. Adults with capacity can nominate a third party to assist them to manage direct payments in whatever way they require. The third party is known as the nominated person and is usually a family member or a friend.
- 12.3. Adults with capacity and an authorised person may purchase assistance, for example record keeping, payroll and other employment related services or a managed account, from a commissioned direct payment support service of their choice.
- 12.4. In some circumstances, for example where the direct payment recipient has a poor credit rating, a managed account may be necessary.
- 12.5. Irrespective of the level and type of assistance provided by a third party including a commissioned direct payment support service, adults with capacity to consent to direct payments remain responsible and accountable for how direct payments are used.



12.6. An authorised person acting on behalf of an adult without capacity is in a position of trust and is as liable as a direct payment recipient with capacity would be for any misuse of direct payments.

12.7. Where the management and administration of a large payment is complex and the Local Authority deem that it is necessary, The Care and Support (Direct Payments) Regulations 2014, allows the person in receipt of Direct Payments to pay a close family member (see Appendix 1 for the definition of 'close family member') living in the same household who are managing the Direct Payments, a proportion of the direct payment, similar to that which many direct payment holders pay to third-party support organisations; as long as the local authority agree and allows this and this is detailed in the Care and Support plan

### **13. Being an employer under direct payment / Disclosure and Barring Service**

13.1. People may use direct payments to employ staff, or to pay an agency to provide services. The direct payment recipient must:

- a. be advised that there are legal responsibilities involved in becoming an employer and maintaining good employment practices,
- b. seek advice about employer legal responsibilities, including being responsible for all employment related costs, for example redundancy,
- c. be urged to seek advice about compulsory employers' liability insurance, and
- d. be provided with a list of commissioned direct payment support service providers which can provide information, advice and support.

13.2. People with capacity are not obliged to carry out Disclosure and Barring Services (DBS) checks for people they employ through direct payments. However, the Council strongly recommends that DBS checks are obtained for all personal assistants.

13.3. An authorised person must carry out DBS checking or obtain verification that DBS checking has returned a satisfactory result for any person from whom a service is secured through direct payments where the authorised person is:

- a. A body corporate or unincorporated body of persons **or**
- b. An individual who is **not** the adult's spouse / partner, a close family member (as defined at Appendix 1) or a friend of the adult who is involved in the adult's care.

13.4. An authorised person should considering carrying out DBS checking or obtain verification that DBS checking has returned a satisfactory result for any person from whom a service is secured through direct payments, where the adult with care and support needs lacks mental capacity to make a the decision on how their needs are to be met, or on who is to be employed.

13.5. Staff employed to provide services arranged through direct payments to service users who have children living in the household must have a DBS check.

13.6. Where DBS checking has returned an unsatisfactory result, but the adult still wishes to employ the person, and has the capacity to make that decision and understand any risks, DASL will be able to offer support and advice to develop an employment risk assessment.

13.7 Where DBS checking has returned an unsatisfactory result and the adult does not have the mental capacity to understand the risks involved in employing them, a Best Interest process will be required to be undertaken by Lambeth to make a decision about whether the person can be employed.

#### **14. Making payment under direct payments**

14.1. Direct payments must be made in accordance with the requirements of the Council's financial policies and procedures particularly Accounting Instruction 1 and Care Services Finance direct payments procedures.

14.2. Where a personal budget has been allocated, direct payments are paid net of any required contribution from the adult in need of care who must add their contribution, if any, to the direct payments account (refer to paragraphs 14.4 to 14.6 below).

14.3. Ongoing payments are made in advance at calendar month intervals. All costs must be met within:

- a. Any agreed personal budget which includes any personal contribution required from the person receiving services.
- b. The amount agreed as sufficient to meet the cost of s117 after care services.

An initial or one off payment may be made, for example for agreed set up costs, from within the agreed amount.

14.4. Direct payments must be paid into an account specifically set up for the purpose of receiving and managing direct payments.

14.5. When direct payments are made into an account that has been set up to manage other monies which are specific to personal assistance, a separate bank account may not be necessary, if agreed by the Council in writing,

14.6. Payments of small amounts for one off purchases will not require a separate bank account.

## **15. Integrated direct payments**

When an adult is receiving direct payments to meet both social care and health needs, steps will be taken to coordinate processes to minimise administrative and compliance requirements.

## **16. Direct payments agreement**

The respective direct payments agreement must be signed and a copy of the signed agreement provided to all signatories. There is one direct payment agreement. This is a standard agreement which is either:

- a. signed by the adult, where the adult is managing the direct payment
- b. countersigned by the adult and the nominated person, where the nominated person is managing the direct payment
- c. signed by an authorised person managing direct payments for an adult without capacity.

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

17.1. The Council will inform an individual about what records they must retain and what information they will be required to provide at each review before the direct payment agreement is entered into.

17.2. All direct payments will be reviewed within the first six months of being made. Review will be at 12 monthly intervals, but can be more frequent depending on the circumstances. Reviews would be incorporated with the standard care and support plan review.

17.3. Reviews will also be carried out at any time when the Council considers that:

- a. there has been a change in capacity, or
- b. any of the conditions listed at paragraphs 8.1 (in respect of adults with capacity) or 8.5 (in respect of adults with capacity) above is no longer met, or
- c. direct payments have not been used as intended, or
- d. the adult's safety and welfare have been compromised or
- e. there has been any change which may adversely affect the effectiveness and intention of the support arrangements.

17.4. The review will establish if direct payments are being used to meet needs as intended, conditions are met and public monies are being used effectively.

17.5. Reviews must involve the adult, any carer the adult has, any authorised person, any family member providing paid administrative or management support (as specifically approved by the Council – see paragraph 11.1 above) and anyone else that the adult requests be involved. If the adult lacks capacity to make such a request, anyone who is

authorised under the MCA to make personal welfare decisions (if different from the authorised person) or if there is no such person anyone who appears to be interested in the adult's welfare should be involved.

## **18. Discontinuing Direct Payments / Requiring Repayment**

18.1. People receiving direct payments, either for themselves or on behalf of another person, may decide at any time that they no longer wish to receive direct payments on giving 4 weeks written notice to the Council. The Council can agree to vary this notice period according to the individual's circumstances.

18.2. Notice will be given before direct payments are discontinued, unless in exceptional circumstances, direct payments will be discontinued without Notice. DASL can offer advice on notice periods and can assist in identifying if a notice period of more than 4 weeks is required

18.3. The Council will end direct payments if it is satisfied that:

- a. The person is no longer eligible for or no longer requires the services for which direct payments are made.
- b. The person becomes excluded from receiving direct payments because they have been placed under a condition or requirement by the Courts in relation to drug and / or alcohol dependencies. See appendix 2 for details
- c. Any of the conditions listed at paragraphs 8.1 and 8.5 are no longer met.
- d. Direct payments are not safeguarding or promoting the person's welfare.

## **19. When repayment is required**

19.1 The Council will require full or partial repayment of direct payments if any condition attached by the Council is unmet or the Council has reason to believe that direct payments have been used for purposes other than to meet needs as specified in the care and support plan.

19.1. The Council may require repayment of any unspent direct payment monies and these must be returned within the specified time.

19.2. The Council will require repayment of excess funds\* accumulated in the dedicated bank account or 3rd party payroll accounts. Advance written notice will be provided to the person and their representative of the amount to be returned to the Council.

19.3. Direct Payments do not form part of an estate in the event that someone dies while receiving them. The money at all times belongs to the Council and remains public funds.

## **20. Complaints**

20.1 People will be provided with information about how to use the Council's complaints procedure, including their right to access advocacy as part of the appeals process.

20.2 Any person may use the Council's complaints procedure if they are dissatisfied with a Council decision or the support they receive. People who receive, or consider that they should receive, direct payments have the same rights to access the Council's complaints procedure as people whose support is provided directly or arranged by the Council.

## **21. Review of Policy**

21.1 This policy will be reviewed in line with any changes in relevant local policy decision or national government changes in direct payment's legislation.

# APPENDIX 1

## Definition of terms used in policy

### Appendix 1 - Definitions

<b>Adult with capacity</b>	In the context of this policy, an adult who has the mental capacity to make decisions about direct payments
<b>Adult without capacity</b>	People are always assumed to have capacity until established otherwise. In the context of this policy, where there is any doubt about an adult's capacity to make decisions about direct payments mental capacity will be assessed in accordance with the Council's MCA policy. An adult will only be deemed to be without capacity when it has been established through assessment that this is the case.
<b>Assessment – of needs</b>	A S.9 Care Act 2014 assessment of an individual's needs for social care and support or s117 after care services to enable them to live as independently as possible.
<b>Assessment - financial</b>	An S17 Care Act 2014 assessment of an individual's financial circumstances to determine whether or not they must contribute towards the cost of services required to meet assessed eligible needs. No financial assessment is required for s117 after care services as these must be provided free of charge.
<b>Authorised person</b>	<p>Someone who is authorised under the MCA 2005 to make personal welfare decisions about an adult without capacity, i.e. someone who:</p> <ul style="list-style-type: none"> <li>Holds a lasting power of attorney given to them by the adult before they lost capacity, or</li> <li>Was appointed as a deputy for the adult by the Court of Protection under section 16 of the MCA.</li> </ul> <p>Where the person making the request for direct payments on behalf of an adult without capacity is not authorised to make</p>

	personal welfare decisions as described above, the Council and any person who is authorised to make personal welfare decisions must agree that the person making the request is a suitable person to act as the authorised person. See paragraph 8 of this policy.
<b>Body corporate</b>	A group of persons incorporated to carry out a specific enterprise. They may form a Trust to assist people with management of their direct payments. This is more than simply providing information and advice.
<b>Carer</b>	Someone of any age who provides unpaid support to family or friends who could not manage without this help.
<b>Close family member</b>	Someone who is the adult's: Parent or parent-in-law Son or daughter Son-in-law/daughter-in-law Stepson or stepdaughter Brother or sister Aunt or uncle Grandparent, or The spouse/partner of any of the people listed and living in the same household as the adult.
<b>Council</b>	Lambeth Council as the local authority but the direct payment service is administered by Adult Social Care.
<b>DBS checking</b>	Screening through Disclosure and Barring Services. This checks criminal history and identifies people barred from working with children and vulnerable adults.
<b>Direct payments</b>	Payment of the Council's contribution towards a personal budget direct to a dedicated bank account, so that the person or someone authorised to act on their behalf can arrange support services instead of having them arranged by the Council. Direct payments may also be provided in most instances to arrange s117 after care services.

<b>Direct payments agreement</b>	The written agreement which sets out the terms and conditions applicable to direct payments.
<b>Duty to make direct payments</b>	Where the Council has a legal obligation to make direct payments to eligible people because all
<b>Managed account</b>	Managed accounts are used in limited circumstances, for example where an adult / authorised person has a poor credit rating. Direct payments are made to a commissioned service which manages the funds on their behalf. The adult / authorised person remain responsible for how direct payments are used. For example, if direct payments are used to employ staff, the adult /authorised person is the employer, even though the commissioned service may carry out employment activities on a day to day basis. Adults who are able to provide consent may also elect to use a managed account.
<b>MCA</b>	Mental Capacity Act 2005
<b>MHA</b>	Mental Health Act 1983
<b>Minor adaptations</b>	An adaptation is defined as minor when the total cost including supply and fitting is less than £1000.
<b>Nominated person</b>	A person nominated by an adult with capacity to assist with day to day management of services and / or management of direct payment funds. An adult with capacity at all times remains responsible and accountable for how direct payments are used.
<b>Personal budget</b>	The amount of money allocated to fund the care and support required. The personal budget is means tested and therefore the adult may be required to make a financial contribution towards the total amount of the personal budget.
<b>Personalised care and support</b>	Tailoring care and support to the needs, wishes and preferences as far as this is possible so that the person concerned has as much choice and control over how their needs are met.



<b>Plan</b>	A plan which summarises how a person's needs will be met and which includes the details of needs to be met from direct payments. This may be either a care and support plan for an adult in need of care, or a support plan in the case of a carer.
<b>Reassessment</b>	A reassessment of needs for social care and / or support.
<b>Review</b>	Monitoring and review of direct payment arrangements to ensure that they continue to meet the needs. Usually carried out concurrently with a review of the person's plan
<b>Service User</b>	A person assessed by the Council as eligible to receive care and support services.
<b>S117 after care services</b>	A wide range of services necessary to meet a need arising from a person's mental disorder when a person ceases to be detained under the MHA.

# APPENDIX 2

## People excluded from direct payments

### Appendix 2

#### People excluded from direct payments

Direct payments may not be used to meet the needs of people who are:

(a) **subject to a drug rehabilitation requirement**, as defined by section 209 (drug rehabilitation requirement) of the Criminal Justice Act 2003 (“the 2003 Act”), specified in a community order (as defined by section 177 (community orders) of that Act, or a suspended sentence order (as defined by section 189(c) of that Act);

(b) **subject to an alcohol treatment requirement**, as defined by section 212 of the Criminal Justice Act 2003, specified in a community order (as defined by section 177 of that Act), or a suspended sentence order (as defined by section 189 of that Act);

(c) **released from prison on licence—**

(i) under Chapter 6 of Part 12 (sentencing: release, licenses and recall) of the 2003 Act or Chapter 2 of Part 2 (effect of custodial sentences: life sentences) of the Crime (Sentences) Act 1997 (“the 1997 Act”), subject to a non standard licence **condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour**; or

(ii) **subject to a drug testing requirement under** section 64 (as amended by the Offender Rehabilitation Act 2014) (release on licence etc: drug testing) **or a drug appointment requirement** under section 64A (release on licence etc: drug appointment) of the Criminal Justice and Courts Services Act 2000;

(d) required to comply with a **drug testing or a drug appointment requirement** specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act;

(e) **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;

(f) **subject to a drug treatment and testing order** imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;

(g) **required to submit to treatment for their drug or alcohol dependency** by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995 or **subject to a drug treatment and testing order** within the meaning of section 234B of that Act; or

(h) released on licence under section 22 or section 26 of the Prisons (Scotland) Act 1989 (release on licence etc) or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and subject to a condition that they **submit to treatment for their drug or alcohol dependency**.

**Source:**

Care and Support (Direct Payments) Regulations 2014 – Regulation 2, Schedule 1