

Putting **People First**
Transforming Adult Social Care

Response to the consultation on the extension and revision of Direct Payments Regulations



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Description	The Health and Social Care Act 2008 extended direct payments to adults who lack the capacity to consent to their receipt. From August to November 2008 the Department of Health consulted on regulations implementing this extension. This document summarises the responses to the consultation and outlines what subsequent action the Department proposes to take.
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The Direct Payments consultation: a summary

Direct payments are a key mechanism in achieving the Government's aim of increasing independence, choice and control for service users and their carers. As such, they form a core component of the programme for the transformation of adult social care set out in *Putting People First*. Direct payments provide people with the greatest freedom to design services around their specific circumstances and needs. Increasing opportunities for independence, social inclusion and enhanced self-esteem will result in better outcomes for service users and their carers.

The Government is committed to increasing the uptake of direct payments and to broadening the range of people who can benefit from the scheme. The 2005 Green Paper, *Independence, wellbeing and choice*, consulted on the possibility of extending the scope of direct payments, focussing in particular on adults who lack capacity to consent, within the meaning of the Mental Capacity Act 2005.

The responses to that consultation showed strong support for enabling people in this position to benefit from direct payments. Consequently, a commitment to extend the availability of direct payments to people who lack capacity was made in the 2006 White Paper, *Our health, our care, our say*.

The Health and Social Care Act 2008 which provided for regulations extending direct payments received Royal Assent in July 2008. This will benefit a number of groups, including severely disabled children who currently lose their right to receive a direct payment when they reach 18, adults with severe head injuries and some people with dementia.

We have also taken the opportunity to review the current exclusions placed on those subject to certain provisions in mental health and criminal justice legislation. We think that people who are subject to these provisions on mental health grounds alone should have the chance to benefit from direct payments, where the circumstances are right.

Mental health service users are currently under represented as a group receiving direct payments and we believe that the removal of exclusions will help to improve uptake and to tackle the stigma that can be associated with treatment for mental disorder.

Between August and November 2008 the Department of Health held a formal consultation on revisions to the existing direct payments regulations. We want these new regulations to allow sufficient flexibility for as many people as possible to benefit from direct payments, whilst also ensuring that the person lacking capacity is safeguarded as far as possible. Consultation questions were directed specifically to address the need to get this balance right.

The consultation was aimed at anyone with an interest in the changes to the direct payments scheme, whether in a professional capacity, as someone who may benefit personally from the changes, or a friend, relative or carer of a person who may benefit. Through extending direct payments to currently excluded groups, greater numbers of people will have the opportunity to benefit from the flexibilities that direct payments offer. We would like to sincerely thank everyone who took the time to contribute responses.

Consultation process

The consultation took place over a twelve-week period between 19 August and 11 November 2008. Respondents were asked to fill in a questionnaire response form and return it either electronically or by post to the Department.

To make the consultation process as inclusive as possible, we also made available 'easy read' questionnaires that could be downloaded or sent on request, containing accessible questions about the regulations.

Who responded?

A total of 101 responses to the Extending Direct Payments consultation were received. Where the information about the respondent was given (98 responses), the greatest number of responses came from local authorities (30%) and charity or voluntary organisations (26%).

Breakdown of respondents:

Type of respondent	% of respondents
Local government	30%
Charity and voluntary organisations	26%
Health and social care professionals	12%
Professional and representative bodies	9%
User and carer groups and networks	5%
Individual members of the public	5%
Independent providers	4%
NHS bodies	4%
Social care and direct payment networks	3%
Regulators	2%

How they responded

It is worth noting that not all contributors responded to each of the consultation questions. Some only covered those points of particular interest to themselves or points where they had particular expertise or personal experience. Analysis figures, therefore, refer to percentages of people who replied to that particular question, rather than to the total number of respondents. Some respondents raised issues or made comments that were not directly related to the consultation questions. We have not been able to address every comment in this document but we have carefully considered all points made. Where appropriate, they will help to inform the revised guidance accompanying the regulations.

Next Steps

The new regulations are to be made under the regulation-making powers in the Health and Social Care Act 2001 as amended by the Health and Social Care Act 2008. The consultation responses have given us valuable insight into how our key stakeholders think direct payments can best operate for people lacking capacity and for those under mental health legislation. The views of respondents have helped construct both additional provisions or amendments in the new regulations and will also contribute to the practice guidance accompanying the regulations.

Responses to the individual consultation questions

1) Lifting of mental health exclusions

Regulation 7 provides a power for local authorities to make direct payments to these groups, but does not require them to. Do you agree that people subject to mental health legislation should no longer be barred from receiving direct payments? If so, do you agree that giving local authorities the power to make direct payments, rather than imposing a duty as applies to other groups, is the right approach?

Eighty-eight per cent of respondents provided a response to this question.

Respondents were overwhelmingly in favour (97%) of lifting the exclusion of people subject to mental health legislation from the direct payments scheme.

The Shaw Trust for example commented that;

"We believe that everyone should have the opportunity to access direct payment provision in order that they can manage their own care, and believe that this should also apply to people subject to mental health legislation."

The Mental Health Foundation noted that direct payments have already proved beneficial to mental health service users and therefore,

"Allowing people subject to mental health legislation to receive direct payments will potentially bring them significant mental health benefits... These benefits include a sense of control and self-determination, in addition to the ability to arrange an increasingly personalised care package to meet each individual's unique needs."

However, respondents were more divided about whether councils should be given a power or a duty to offer direct payments to people subject to mental health legislation. The consultation document highlighted a potential tension between specific conditions imposed upon someone under mental health legislation and a duty to offer direct payments to that person. The draft regulations therefore gave local authorities a power so that they might use their discretion in cases where they think there is a risk that making direct payments might compromise the effectiveness of conditions applied.

The majority of respondents (62%) supported the position that local authorities should have a power rather than a duty to offer direct payments to people under mental health legislation. Many respondents did not give a reason for this view but out of those who did, most cited increased flexibility for the local authority. Indeed, just over half of respondents supporting a power were either from local government or responding as individual health or social care professionals.

Despite this, a considerable number of respondents (29%) put forward arguments for stipulating a duty towards all direct payment recipients, including those under mental health legislation. Several respondents in particular felt that giving a power rather than placing a duty for this one particular group was discriminatory. The British Psychological Society for instance questioned whether people with mental health problems who are subject to compulsion should have less choice in the way that their services are provided. In addition, the view that a power could potentially lead to arbitrary decision-making by local councils was expressed by the Mental Health Foundation, the National Autistic Society and the London Direct Payments Forum.

It was noted by one respondent that the original direct payments legislation provided a power rather than a duty more generally and that this led to inconsistent application between councils. Some respondents suggested that providing a duty would sit more in line with the personalisation agenda, making it necessary for local authorities to find flexible ways to make direct payments work for all groups.

The Law Society, Age Concern England, the Mental Health Foundation, the Royal College of Psychiatrists and Dimensions all criticised the proposal for a blanket power on the grounds that it could also prevent people who come under the Mental Health Act 1983 from receiving direct payments for non-compulsory aspects of their care. Touchstone suggested that the starting position should be a duty, with more specific clauses stipulating where there should be a power. West Sussex County Council and ADASS suggested that a power should apply only to some people who come under the 1983 Act and that a duty should apply to everyone else.

Department of Health Response

We are greatly encouraged to see such a high level of support for proposals to include people under mental health legislation within the direct payments scheme and found the responses very helpful in considering the most appropriate way to do so.

We concluded that the arguments for giving councils a duty rather than a power were strong. It is particularly important to minimise the risk of arbitrary decision-making that could potentially put people affected by the provisions in question at a disadvantage. We will therefore amend the regulations so that in the majority of cases local councils have a duty to offer direct payments to people under mental health legislation. An important exception is in the case of people who are conditionally discharged, where local authorities will have a power to make direct payments as proposed in the consultation.

Another exception is where mental health law obliges a person to receive a particular service. In this instance, the regulations will replace the duty with a power in respect of that specific service. The duty will remain in place, however, for any other services which are not the subject of a specific condition. We concluded that this approach should also apply to people who come under criminal justice provisions solely in relation to a mental health condition or treatment requirement. We believe that shifting the emphasis to specific services rather than people affected by the provisions in question should provide for wider access. However, we will retain the current exclusions for people subject to those criminal justice provisions in respect of drug and/or alcohol problems.

2) Consultation prior to appointment of a suitable person

Regulation 8(2)(a) seeks to ensure that the local authority consults with those family members and friends who are currently involved in providing care for the person lacking capacity before they are satisfied that it is appropriate for a direct payment to be made. Is the scope of the regulation suitable to cover all those who you believe should be consulted without being too broad? If not what changes would you propose?

Ninety-one per cent of respondents provided a response to this question.

Given the open-ended nature of this question, a considerable proportion (41%) thought that the scope of Regulation 8 was suitable to cover all those who should be consulted without being too broad. Over half of respondents (55%) thought that changes could be made to better ensure that local authorities consult effectively before making a direct payment to a suitable person.

Many respondents believed that while it was important to obtain the views of family and friends, local authorities should also look to consult beyond just this group.

Other people cited as appropriate consultees included anyone else involved in the provision of care for the person lacking capacity including health and social care professionals, anyone given lasting or enduring power of attorney by the person before they lost capacity, relatives not currently involved in the provision of care, voluntary sector organisations and independent advocates. The Disabilities Trust for example suggested that its own expertise in acquired brain injury rehabilitation could assist decision-making relating to direct payments and people in this group. The National Autistic Society suggested that where capacity is difficult to assess, local authorities should consider seeking the advice of professionals with experience in caring for people with that particular condition.

A view held by 13% of respondents was that the regulations did not provide for consultation of the person lacking capacity themselves, either by means of an advance statement of wishes and preferences or by some other means of ascertaining their own views. Kent Adult Social Services for example emphasised that under the Mental Capacity Act, the loss of mental capacity is specific to a particular decision and that while a person may not be able to consent to the making of a direct payment, they may well be able to understand and express a preference as to who they want to organise their care.

Further to this point, nearly a quarter of respondents (23%) linked this regulation to the principles of the Mental Capacity Act and in particular, the need to ensure that the best interests of the person lacking capacity are put first. Eight respondents including local authorities, charities and representative bodies suggested that Regulation 8 might mirror the list of consultees set out in section 4 of the Mental Capacity Act. ADASS noted that this would mean that any or all of the people listed in Regulation 11(2) would still be consulted – if it was deemed to be appropriate in accordance with the Mental Capacity Act list. Solicitors for the Elderly also raised the point that if the direct payment regulations are not consistent with the Mental Capacity Act in this respect, then local authorities might have to consult two separate groups of people, as a consequence of their duties under the Act.

More generally, respondents highlighted that decisions about who local councils should consult must be made on a case-by-case basis according to individual circumstances. There were comments made about the need for local authorities to have ways of dealing with potential conflicts of interest or disputes among family members. ADASS and Mencap highlighted the need to support “unbefriended” people lacking capacity, to ensure that they do not miss out on the benefits of direct payments just because no one raises the issue on their behalf.

Department of Health Response

The responses to this question were very helpful in distilling the process for consultation before direct payments are made to a suitable person. In light of comments made, we have decided to amend Regulation 8 to reflect the list of consultees as set out in the Mental Capacity Act. This will broaden the scope of the regulation beyond friends and relatives and will also require local councils to make a conscious assessment about who should be involved in consultation. Furthermore, it puts the onus on local authorities to consider, as far as is reasonably practicable, the views of the person lacking capacity, whether by direct or indirect communication, or through a previous indication of their wishes, either written or oral. This will further ensure that the best interests of the person lacking capacity are protected.

We will emphasise in guidance the need to consider consulting other people not specified in this list, including professionals or organisations who have not had direct contact with the person concerned, but who may be able to offer particular advice and expertise. We will also discuss the role of local authorities in dealing with potential disputes involving those concerned with the care of the person lacking capacity, as well as the principles of best interest by which all concerned should be guided. The importance of advocacy, as emphasised by a number of respondents particularly for those people who do not have family or friends to represent them, will also be highlighted in the guidance for local authorities.

3) Conditions imposed upon the suitable person

Regulation 12 sets out a number of conditions that the local authority must impose on the suitable person before making a direct payment to them. These conditions seek to ensure that the suitable person is able to manage the direct payment and meet the needs of the person lacking capacity. Would you like to see further conditions imposed on the suitable person before a direct payment is made? If so, what would they be?

Ninety-one per cent of respondents provided a response to this question.

Once again, given the open-ended nature of this question, a considerable number (36%) indicated that they did not see a need for further conditions to be placed on the suitable person beyond the scope of the regulation. Sixty-two per cent of respondents on the other hand said that they would like to see additional conditions imposed.

Out of the respondents who wanted to see further conditions, 54% wanted obligations regarding criminal records bureau (CRB) checks to be extended. (This makes up a third of the people who responded to the question overall.) Given the importance of achieving the right balance between the provision of sufficient flexibility for service users and carers on the one hand and ensuring adequate safeguarding measures to protect the person lacking capacity on the other, it is not

surprising that a whole range of proposals were put forward in response to this question. As one respondent put it,

“Conditions are needed to manage risk but they also have the potential to discourage perfectly suitable people.”

Comments were made both about the condition placed on a local authority to obtain a CRB check in respect of the suitable person (Regulation 8) and about the condition placed on a suitable person to obtain a CRB check in respect of those they employ to provide services to the person lacking capacity (Regulation 12).

A few respondents believed that the local authority should be required to carry out CRB checks on everyone who agrees to act as a suitable person, whether or not the suitable person is related to the person lacking capacity or previously involved in the provision of their care. Some, such as Age Concern England, suggested that only someone acting as a suitable person for a relative should be exempt from having to undergo a CRB check. Sense also argued that the term “friend” was too vague, leaving the person lacking capacity at greater risk if vetting of people outside the family did not occur.

On the other hand there were also respondents who voiced support for retaining the regulations in their current form, exempting family members and friends involved in the provision of care, with the proviso that the local authority can make checks on any suitable person where it sees fit.

There was also a considerable variety of opinion regarding the extent to which suitable persons should be obliged to obtain checks for people they employ to provide services for the person lacking capacity. At one end of the scale, several respondents argued that all suitable persons, regardless of their relationship to the person lacking capacity, should be required to obtain CRB checks for employees. Those arguing for this option suggested that third parties should not be allowed to make decisions relating to risk on behalf of someone else. At the other end of the scale, Touchstone for example were concerned that any mandatory provisions with regards to CRB checks would be overly-restrictive and that the issue of safeguarding should instead be addressed by additional measures such as risk assessment.

Respondents also set out a number of other conditions which they believed should be placed upon a suitable person. Most common was the requirement that the suitable person should have to demonstrate an understanding of the principles of the Mental Capacity Act or to act in accordance with its Code of Practice.

Some respondents also believed there should be a specific requirement to involve the person lacking capacity in decision-making, as far as is reasonably possible. Many respondents also suggested that the appointed suitable person should have a demonstrable awareness of their responsibilities as an employer and for ensuring the safeguarding of a vulnerable adult.

Department of Health Response

We recognise that risk management is central to the extension of direct payments to people who may be more vulnerable to abuse and less able to report it. For this reason we have set out within the regulations specific and robust conditions which a local authority must ensure can be met by the suitable person to whom it is making direct payments. The requirement put forward by several respondents that a suitable person should act within the best interests of the person lacking capacity, as established in the Mental Capacity Act, is a particularly important one. We believe that this is already addressed in the regulations, both in Regulation 8 which requires the local council to be satisfied that the suitable person will act in this way, and in Regulation 12, which places the requirement on the suitable person themselves to act in the best interests of the person on whose behalf they receive the direct payment.

After very careful consideration of all comments regarding CRB checks, we have decided not to make amendments to the regulations. The regulations as they stand recognise the unique position of adults lacking capacity, which is why CRB checks will be mandatory for a suitable person not personally known by the individual lacking capacity. However, we believe that the scope of mandatory checks should be proportionate to the risks presented. Direct payments are about giving individuals more choice and control over their lives. We do not wish to impose requirements that will prove burdensome and intrusive to family members or friends caring for loved ones. Neither do we wish to risk criminalising people who have agreed to take on the responsibility of direct payments for others when they fail to obtain checks on people they employ.

Many respondents commented that additional safeguarding measures should be put in place to ensure that adults lacking capacity are protected. We agree that comprehensive support planning, risk assessment and regular review are key and that direct payment recipients should be informed of their right to obtain CRB checks should they wish. As expressed by the East Sussex County Council Direct Payments Strategy Group:

"Greater flexibility... should not be negated by unnecessary regulation and checking but covered by sensible monitoring and review based upon careful risk management procedures."

We will emphasise in guidance the importance of setting up effective mechanisms to enable people to make supported decisions built on appropriate safeguarding arrangements. Guidance to service users including suitable persons should also aim to help everyone receiving direct payments understand and carry out their duties as responsible employers. This includes identifying when and in what circumstances they should consider carrying out checks on their employees.

We want to ensure that both local authorities and suitable persons are suitably aware of the need to have in place arrangements to protect the best interests of adults lacking capacity. In this respect, we believe that the guidance that we issue to local authorities will be key. We have therefore decided to defer the regulations coming into effect until October 2009, instead of this spring as originally planned. This will enable us to use the outcomes from the *No Secrets* consultation to inform these aspects of the direct payments guidance. It will also ensure that the direct payment regulations are consistently aligned with regulations arising from the Safeguarding Vulnerable Groups Act 2006, which provide for new vetting and barring checks. These will also come into force later this year.

4) Circumstances in which the local authority should conduct reviews

Regulation 16 (c) sets out the circumstances in which the local authority must review the making of direct payments including where they are notified of certain matters. Are there other examples of circumstances in which reviews should be conducted that should be included in this regulation? If so, what would they be?

Ninety-one per cent of respondents provided a response to this question.

Of those who responded, 31% thought that Regulation 16 set out sufficient circumstances in which a local authority should review the making of direct payments to people lacking capacity. On the other hand, 68% of respondents said that there should be further circumstances that trigger review.

Of the group who felt that further circumstances should be included, about a third suggested that reviews should be conducted to assess potential changes in circumstances or needs of the service recipient (30%). The Alzheimer's Society for example highlighted how people often live with dementia for a number of years, meaning that their care needs will change over time. In addition, a fifth of this respondent group believed that local authorities should have a duty to conduct a review whenever notified of a change in the circumstances or ability to manage of the suitable person. Help the Aged put it like this:

“There should also be regular and frequent reviews to meet the suitable person and the DP recipient together to review both the management of the Direct Payment, as well as whether the care needs of the individual are being met.”

Some respondents argued that regulations and guidance should be clear about the need to conduct reviews for people whose capacity to make decisions may be subject to fluctuation. Counsel and Care commented that:

“It is important that local authorities and the suitable person both recognise and report instances where the person formerly lacking capacity now has gained or regained it... There must be flexibility in the regulations to allow for a review of the making of direct payments where appropriate in such circumstances.”

ADASS, Help the Aged and the Children's Society also supported this view and called for this issue to be clarified in guidance.

Several respondents were concerned that the regulation should be more robust around making sure that the suitable person was fulfilling their role appropriately. Respond, Voice UK, the Ann Craft Trust and Mencap for example recommended that review should take place if there is reason to believe that misconduct on the part of the suitable person is taking place, financial or otherwise.

Once again, there were several suggestions that a reference to the principle of best interests articulated in the Mental Capacity Act should be inserted into the regulation. The NHS Counter Fraud and Security Management Service noted that:

“Monitoring should include checks to verify that the person is still suitable to receive a direct payment on behalf of the service user, and that the direct payment has been used to provide care for the service user. Through regular monitoring, inappropriate use of direct payments can be identified early on.”

A fifth of respondents who supported the inclusion of further requirements for review were concerned by the timing of reviews (21%). The regulation as drafted for consultation stipulates that a review should take place at least once in the first year of a direct payment initially being made, and at appropriate intervals thereafter. Several respondents believed that the initial period set for review was too long. Other time periods suggested ranged from six weeks to six months.

There were also calls for greater clarification of how often review should take place after the first review. Several respondents including a social care professional from Sunderland City Council, East Sussex County Council Direct Payments Strategy Group and the Commission for Social Care Inspection suggested that review should take place at least annually.

Department of Health response

The responses to this question affirmed our belief that regular review is key to ensuring that direct payments really work for people lacking capacity, both in terms of meeting their social care needs and making sure that they are adequately protected from potential abuse. It is for this reason that the new regulations make specific provision for review for adults lacking capacity, whereas to date, review for people with capacity to consent has been covered in direct payments guidance but not regulations.

The suggestion that reviews should be conducted as a consequence of a change of needs or circumstances, either for the service recipient or the suitable person, is a valid one and one that we would certainly emphasise in practice guidance.

Many respondents were pleased to see provision made in Regulation 16 for fluctuating capacity. We recognise that there are specific issues for people whose capacity to make decisions is not constant and we will ensure that this matter is covered in sufficient detail in guidance. We will also amend the regulation to the effect that where someone with capacity has been receiving a direct payment, a local authority will have a duty to carry out a review when notified that that person may have lost the requisite capacity to continue to manage the direct payment.

We understand concerns about making sure that the suitable person is fulfilling their role in a way that serves the best interests of the person lacking capacity. The regulations already place a duty on the local authority to ensure that certain conditions are met, as well as a duty on the suitable person to meet these conditions. However, as a further check, we see no reason for not specifically linking these conditions with the duty of a local authority to conduct a review. For this reason we will amend Regulation 16 to the effect that a local council will have to carry out a review whenever notified that there are reasonable grounds to believe that:

- the suitable person is not capable of managing a direct payment; or
- the suitable person is not acting in the best interests of the person lacking capacity; or
- for any reason it is not appropriate for the direct payment to be made to the suitable person.

We also welcome the helpful debate on the frequency of reviews. We want to achieve the right balance so that local authorities have sufficient flexibility in which to operate according to the circumstances of an individual case, but that direct payment recipients can also expect a minimum requirement by which local authorities must abide.

For this reason we will retain the reference to “appropriate intervals” but add a stipulation into Regulation 16 that reviews must take place at least annually.

We agreed with the suggestion made by one social care professional from Surrey County Council that we should be consistent with the Fair Access to Care Services guidance which states that there should be an initial review within the first three months and thereafter at least annually. We will mirror this position in our guidance to local authorities but the regulations themselves will not change from an initial period of one year. In ordinary circumstances we would not expect a council to wait a year before conducting an initial review, but we need to be sufficiently flexible to avoid situations where for some particular reason a council is unable to conduct a review any sooner and therefore cannot avoid breaking the law. We will emphasise in guidance the need for local authorities to exercise judgement according to the circumstances of each individual case and set up appropriate arrangements for review which are proportionate to the level of risk involved.

5) Other comments

Respondents were invited to make any other comments on the regulations.

The following suggestions (in addition to many others which it has not been possible to detail here) will inform the practice guidance accompanying the new regulations:

- There should be adequate support for people taking on the additional responsibility of acting as suitable person. Carers should not be unduly influenced to take up this role where they do not wish to.
- There should be continuing emphasis on the role of people given enduring power of attorney. Although the Mental Capacity Act meant that no more enduring powers could be given, many people will still have registered EPAs and should be consulted about care for the person lacking capacity.
- There should be comprehensive guidance for local authorities with regards to the process for appointing a suitable person. There could be greater clarity about the respective roles of suitable persons, representatives and surrogates.
- Guidance should cover how organisations might take up the role of suitable person.
- Guidance should pay particular attention to the transition from children's services to adult services in the context of direct payments.
- Guidance should stress the importance of access to advocacy, particularly for people lacking capacity who do not have friends or family around them.

Conclusion

We are grateful to everyone who took the time to respond to the consultation. Overall, the responses received demonstrate widespread support for the Government's proposals to extend direct payments to previously excluded groups.

Respondents were overwhelmingly supportive of our proposal to remove exclusions placed upon people subject to mental health legislation. Halton Borough Council and North West Association of Directors of Adults Social Services Mental Health Subgroup for example sent the following comment:

"We welcome the consultation on the proposal to extend Direct Payments to people with mental health needs; like you, we believe that this goes a further step towards reducing the stigma and discrimination that people experience."

We believe that the amendments to the mental health aspects of the draft regulations in the light of this consultation will achieve an effective balance. On the one hand they are aimed at ensuring that wherever possible people who are affected by mental health legislation will have the same opportunity to benefit from direct payments as other user groups. On the other hand, they will equally allow councils sufficient flexibility to ensure that, where conditions are imposed under the Mental Health Act 1983, they are not rendered less effective through the making of direct payments.

We also believe that the final regulations will achieve a suitable balance between the need to provide flexibility for suitable persons to carry out their role in the spirit of increased choice and control, and the need to ensure that the best interests of the person lacking capacity are protected at all times.

As Kent Adult Social Services put it:

"There remains a balance to be negotiated in a case by case basis between increasing the choice and control of people and their families with the equally important safeguarding responsibilities of the authority toward the most vulnerable people in society."

In this context many respondents were keen to emphasise the importance of the principles set out in the Mental Capacity Act and its Code of Practice.

It is in recognition of the need to manage risk appropriately that we have deferred implementation of the direct payment regulations until such time that the guidance can be informed by the outcome of the consultation on *No Secrets*.

We also wish to place these regulations within the wider context of safeguarding legislation by keeping them consistent with regulations arising from the Safeguarding Vulnerable Groups Act, due to be implemented later this year. As noted by the Alzheimer's Society, it is vital to link approaches to safeguarding with the personalisation agenda and thus ensure an effective cross-sector approach to risk and empowerment. We expect to lay the revised direct payment regulations before Parliament this spring and subject to Parliamentary approval, they will come into force from October 2009.

Annex A – List of respondents

Respondents who indicated that they were happy for their information to be shared included:

- 1) Tom Hendrie, Adult and Cultural Services Directorate, Cumbria County Council
- 2) Abbey Care
- 3) Carers Action Group, Leicester City Learning Disability Partnership Board
- 4) Disabilities Trust
- 5) Age Concern Cheshire
- 6) Mersey Care NHS Trust
- 7) Direct Payments Strategy Group, East Sussex County Council
- 8) Touchstone
- 9) Community Services, Shropshire Council
- 10) Darlington Borough Council – Adult Social Care
- 11) Dimensions
- 12) South Staffordshire and Shropshire Healthcare NHS Foundation Trust
- 13) In Control
- 14) Solicitors for the Elderly
- 15) West Sussex County Council
- 16) Ann Askew, Disability Services, Dudley Metropolitan Borough Council
- 17) Julie Corbett
- 18) Lindsay Smith, Halton Borough Council and North West Association of Directors of Adults Social Services Mental Health Subgroup
- 19) Barnsley Metropolitan Borough Council
- 20) Counsel and Care
- 21) Walsingham
- 22) Lynne Hodge, Staffordshire County Council
- 23) Marian Harrington, Westminster Council Adults Services Department
- 24) Middlesbrough Council
- 25) Sunderland Carers' Centre
- 26) Community Services Directorate, Coventry City Council
- 27) Respond
- 28) Voice UK
- 29) Age Concern England
- 30) Ms M J Miller, Swindon Borough Council
- 31) London Borough of Barking & Dagenham
- 32) The Ann Craft Trust
- 33) Supporting People in Suffolk
- 34) Andy Butler, Surrey County Council
- 35) Sense
- 36) Warwickshire County Council
- 37) Alison Henderson, Wakefield Metropolitan District Council

- 38) James Varlow, Northamptonshire County Council
- 39) Bradford Metropolitan District Council
- 40) Kent Adult Social Services
- 41) Bracknell Forest Council (Adult Social Care)
- 42) Mencap
- 43) South Gloucestershire Council Community Care and Housing Department
- 44) British Psychological Society
- 45) BSL
- 46) Dr. P. J. Welbank
- 47) Norfolk Direct Payments Operations Group
- 48) Philip Snowball, Sunderland City Council
- 49) Sue Crawforth, Cheshire County Council
- 50) Carol Reding, Lincolnshire County Council
- 51) Savitri Hensman
- 52) RESCARE, The Society for Children and Adults with Learning Disabilities and their Families
- 53) Children's Rights Alliance for England (CRAE)
- 54) Ridgeway Partnership (Oxfordshire Learning Disability)
- 55) Shaw Trust
- 56) Council for Disabled Children
- 57) The Children's Society
- 58) NHS Counter Fraud and Security Management Service
- 59) Mental Health Foundation
- 60) Oaklea Care Ltd
- 61) National Autistic Society
- 62) Alzheimer's Society
- 63) CIPFA
- 64) General Social Care Council
- 65) London Direct Payments Forum
- 66) Swansea Local Authority
- 67) Help the Aged
- 68) Essex County Council
- 69) London Borough Of Brent
- 70) Board of Community Health Councils in Wales
- 71) North Yorkshire County Council
- 72) HCIL (Herefordshire Centre for Independent Living)
- 73) Westminster Disability Network
- 74) Commission for Social Care Inspection (CSCI)
- 75) Association of Directors of Adult Social Services (ADASS)
- 76) Royal College of Psychiatrists
- 77) Low Incomes Tax Reform Group
- 78) The Law Society

Annex B: Numerical analysis of individual consultation questions

Q1. Regulation 7 provides a power for local authorities to make direct payments to these groups, but does not require them to. Do you agree that people subject to mental health legislation should no longer be barred from receiving direct payments?

Answer	Agree	Disagree	Unknown
Percentage	97%	1%	2%

If so, do you agree that giving local authorities the power to make direct payments, rather than imposing a duty as applies to other groups, is the right approach?

Answer	Agree	Agree in part	Disagree	Unknown
Percentage	62%	3%	29%	6%

Q2. Regulation 8(2)(a) seeks to ensure that the local authority consults with those family members and friends who are currently involved in providing care for the person lacking capacity before they are satisfied that it is appropriate for a direct payment to be made. Is the scope of the regulation suitable to cover all those who you believe should be consulted without being too broad?

Answer	Yes it is suitable	No it is not suitable	Unknown
Percentage	41%	55%	3%

Q.3. Regulation 12 sets out a number of conditions that the local authority must impose on the suitable person before making a direct payment to them. These conditions seek to ensure that the suitable person is able to manage the direct payment and meet the needs of the person lacking capacity. Would you like to see further conditions imposed on the suitable person before a direct payment is made?

Answer	No, conditions are sufficient	Yes, further conditions required	Unknown
Percentage	36%	62%	2%

Q.4. Regulation 16(c) sets out the circumstances in which the local authority must review the making of direct payments including where they are notified of certain matters. Are there other examples of circumstances in which reviews should be conducted that should be included in this regulation?

Answer	No, regulation is sufficient	Yes, further circumstances required	Unknown
Percentage	31%	68%	1%