

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Direct payments

Section 32 – Adults without capacity to request direct payments

212. This section sets out provisions in relation to adults who lack the capacity to request the local authority to meet some or all of their needs by making a direct payment. The section provides for the local authority to meet the needs of the adult by making direct payments to the authorised person.
213. *Subsection (1)* makes clear that a direct payment may not be made unless the local authority is required to contribute towards the costs of meeting the adult’s needs and an authorised person requests the local authority to meet some or all of the adult’s needs by making a direct payment to the authorised person.
214. By *subsection (2)* the local authority must make payments to an authorised person (defined in *subsection (4)*), subject to any regulations specified under section 33 and provided that the five conditions (set out in *subsections (5) to (9)*) are all met.
215. *Subsection (4)* sets out who is an “authorised person” for these purposes. An authorised person is either: someone who is authorised under the Mental Capacity Act 2005 to make decisions about the adult’s needs for care and support; or a person who the local authority and a person who is so authorised agree is a suitable person to receive the direct payments or; if there is no person authorised under the Mental Capacity Act to make decisions about the adult’s needs for care and support, a person who the local authority considers is a suitable person to whom to make the payment.
216. *Subsections (5) to (8)* set out the conditions which must be met. They include that the local authority: is not prohibited by regulations from making direct payments to the authorised person: is satisfied that the authorised person will use the direct payment in the best interests of the adult to meet their care and support needs; is satisfied that the authorised person is able to manage the direct payment by themselves, or with whatever help they may have available to them; and, is satisfied that making a direct payment to the authorised person is an appropriate way of meeting the adult’s needs for care and support.