

Version 7.2  
September 2025



# **ARGYLL & BUTE HSCP**

## **OPTION 1 DIRECT PAYMENTS**

### **INFORMATION**

#### **Supported Person's Guidance**

# **Contents**

## **Introduction**

<b>1. Assessed Care Needs</b>	<b>4</b>
<b>2. How Direct Payment will be received</b>	<b>5</b>
<b>3. How a Direct Payment can be used</b>	<b>5</b>
<b>4. Responsibility of the Supported Person when employing a Personal Assistant</b>	<b>8</b>
<b>5. P.V.G</b>	<b>8</b>
<b>6. Payment to staff</b>	<b>9</b>
<b>7. Responsibility of the Supported Person when engaging an Agency</b>	<b>14</b>
<b>8. Detailed Terms of Agreement</b>	<b>14</b>
<b>9. Notes on the Maintenance of Financial information</b>	<b>15</b>
<b>10. Bank Account</b>	<b>16</b>
<b>11. Records to be maintained by the Supported Person</b>	<b>17</b>
<b>12. Suspension or Termination of a Direct Payment</b>	<b>19</b>
<b>13. Unspent Funds</b>	<b>20</b>

## **Appendix:**

Appendix 1: Glossary	21
Appendix 2: Use of Direct Payments	24
Appendix 3: Self Employed Carers Fact Sheet	29
Appendix 4: The Self-directed Support (Direct Payments) (Scotland) Regulations 2014	31
Appendix 5: Direct Payments Return Form & Notes	34



# ARGYLL & BUTE HSCP

## Introduction

### INTRODUCTION TO THE SOCIAL CARE (SELF DIRECTED SUPPORT) (SCOTLAND) ACT 2013

The Social Care (Self-directed Support) (Scotland) Act 2013, which came into force on 1 April 2014, makes legislative provisions relating to the arrangement of care and support (“community care services” and “children’s services”) in order to provide a range of options to individuals as to how they are to be provided with their support. For example:

- Option 1 – Direct Payment;
- Option 2 – Direct your own support;
- Option 3 – Services arranged for you by the Local Authority;
- Option 4 – Mixture of the three above.

This policy refers to option 1 – Direct Payment. This is a payment which is made to an individual which can buy support. They can do this on their own or get help from family, friends and support organisations.

The Self-directed Support (Direct payments) (Scotland) Regulations 2014 came into force on 1 April 2014. These regulations form the legal basis for this policy and are effective for all new direct payments from 1 April 2014.

Any direct payments arranged before the 1 April 2014 under the Community Care (Direct Payments) (Scotland) Amendment Regulations 2007 continue to

apply (as long as they previously met legal requirements) in respect of that payment despite their repeal in section 25 of the 2013 Act.

All existing direct payments will continue to be subject to review under Section 12A (1) (b) of the Social Work (Scotland) Act 1968.

### **What are Direct Payments?**

A Direct Payment is an amount of money paid by Argyll & Bute Health & Social Care Partnership (HSCP) to enable individuals who meet the eligibility criteria to source their own care and support. This is by means of employing a personal assistant or an agency.

This enables the Supported Person to make flexible arrangements that are more suitable for them and their care and support needs as discussed with their Allocated worker.



## DIRECT PAYMENTS SCHEME

**Note –the meanings for the words or terms used within this document can be found in the Appendix 1 - Glossary, on page 20.**

### 1. ASSESSED CARE NEEDS

With the agreement of the supported person, Argyll & Bute HSCP and in consultation with other relevant professionals (if required) and others involved in their care, an **assessment** will be carried out to identify their assessed **needs** and **outcomes** in accordance with the HSCP's **eligibility criteria**.

After an **assessment** has been completed, the allocated worker will discuss a way of meeting the assessed need and outcomes and will explain the 4 options available under Self Directed Support.

If an individual meets the **eligibility criteria**, they have a choice of 4 options on how their care and support is provided:

- Option 1 - Direct Payment
- Option 2 - Individual Service Fund
- Option 3 - Commissioned Service
- Option 4 - Combination of the other 3 options.

Argyll & Bute HSCP will carry out regular **reviews** of the supported person's care package to find out if there have been any changes. A review can also be requested at any time if the supported person thinks their care needs have changed, increased or decreased.

If a Direct Payment is in place and no longer meets the needs of the supported person the supported person or family member can discuss this with the allocated worker during the review, the allocated worker will then advise on alternative care options available. If the supported person wishes to terminate the Direct Payment please see section 12.

## **2. HOW WILL THE DIRECT PAYMENT BE RECEIVED**

A bank account will be required to be opened for the purpose of receiving the Direct Payment. If utilising a payroll service they may open the bank account on your behalf.

Payments will be made 4-weekly in advance into the account. The HSCP may require any excess funds in the account, at the end of each financial year, to be repaid to Argyll & Bute HSCP by cheque. Failure to pay within the 28 days may result in suspension of payments.

All bank statements, letters and cheque books for this account must be kept and it is expected that these are made available to Social Work Services for the purpose of monitoring the account. The account will be reviewed regularly at intervals designated by the HSCP. All financial information must be kept for a minimum of 7 years.

Within the Direct Payment account it will be permissible for a contingency fund to be built up to 2 months funds; this is to ensure that there will be enough funds to cover the periods when employed staff take paid annual leave or to cover staff absences due to sickness, if applicable.

All documentation relating to any expenditure of contingency funding must be made available to Argyll & Bute HSCP in the same way as other expenditure from the account.

If funds in the account total more than the 2 months' contingency allowed, the excess funds will require to be returned to Argyll & Bute HSCP by cheque.

Should the supported person be admitted to hospital or a residential/nursing care environment for more than a 4 week period Argyll & Bute HSCP may suspend the Direct Payment funds until such a time they are to be reinstated or alternative care arrangements are made.

## **3. HOW THE DIRECT PAYMENT CAN BE USED**

Direct Payments can be used to:

- Directly employ Personal Assistants;
- Engage an agency to provide support;

- Purchase short term respite (short breaks).
- Purchase children's services under Section 22(1) of the 1995 Act;
- Purchasing agreed equipment;

Currently there are three options available for purchasing care through Direct Payments:

A: Purchase of care from a respite or home care provider.

B: Acting as an employer of a Personal Assistant.

C: Combination of A and B

Direct Payments must be spent on meeting the supported persons assessed needs/outcomes as stated within their Direct Payment **support plan**. Argyll & Bute HSCP must be satisfied that what the supported person spends the direct payment funds on will meet their assessed needs/outcomes.

Argyll & Bute HSCP will consider all requests to purchase equipment on a case by case basis. Specialist expertise may be required to ensure that requests to purchased equipment is safe and appropriate. In addition, Argyll & Bute HSCP will clarify with the supported person of the direct payment where the responsibility lies for service, maintenance, repair and ownership for the requested equipment.

Direct Payments cannot be used to:

- Purchase permanent residential care, or, periods of respite beyond weeks in any 6 week period (this includes adults and children)
- Purchase the provisions of support by a family member other than in circumstances where the family member is permitted by Argyll & Bute HSCP to provide support.

*Further information can be found on Exceptional Circumstances where a family member may or may not be permitted to provide the care and support under "The Self-directed Support (Direct Payments) (Scotland) Regulations 2014*

*Regulation 8: Circumstances where family member may provide support*

*"Regulation 9: Exception to family members rule.*

- Purchase anything that breaches criminal law or civil law.

Direct Payment funds cannot be used to purchase items/equipment that would normally be provided from Argyll & Bute HSCP, the allocated worker can refer any requests for equipment to the Occupational Health Professionals. The HSCP will only consider funding for equipment that they do not provide.

For a quick guide to what can and cannot be purchased through the use of a Direct Payment Please see appendix 2 - Spending Your Direct Payment Personal Budget.

If Argyll & Bute HSCP becomes concerned about any inappropriate or unauthorised spending of the Direct Payment then they may consider discontinuing payments. In these circumstances the supported person would revert to direct service provision (Option 2, 3 or 4) from the HSCP.

## **Employment of Close Relatives**

Certain close relatives cannot ordinarily be employed to provide services. This general position remains important because of the very different relationships that a person would have with an employee and a family member and the conflicts of interest that can result from employing a close relative.

The list of close relatives to which this restriction applies is prescribed by the Scottish Government and can be found under; “family member” regulation (8) (4) of The Self-directed Support (Direct Payments) (Scotland) Regulations 2014. See appendix 4.

There is an exception to the above rule which can be found under; “Circumstances where family member may provide support” regulation (8) of The Self-directed Support (Direct Payments) (Scotland) Regulations 2014. See appendix 4.

Any request to employ a close relative requires to be discussed with the supported persons allocated worker.

#### **4. RESPONSIBILITIES OF THE SUPPORTED PERSON WHEN EMPLOYING A PERSONAL ASSISTANT**

##### **Asking for advice**

Argyll & Bute HSCP expects Direct Payment supported persons to adopt good practice in their role as an employer and that they will contact the allocated worker, HSCP's self-directed support officer or an independent support group if any difficulties with being an employer are encountered. An information pack to assist the supported person being an employer is available, although it is the supported person's responsibility.

#### **5. PROTECTION OF VULNERABLE GROUPS (PVG)**

Argyll & Bute HSCP strongly recommend Personal Assistant employers have the following arrangements in place:

- Protection of Vulnerable Groups (PVG) membership statement to be carried out on all Personal Assistants prior to their employment start date
- Employers Liability Insurance
- References taken up prior to the employment start date
- Staff induction and training (if required)
- Probationary periods of employment
- Holiday entitlement etc.
- Pension Scheme

Argyll & Bute HSCP should also make the supported person aware of the Disclosure Scotland helpline on 0870 609 6006 and Disclosure Scotland website [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)

##### **Tax and National Insurance**

Argyll & Bute HSCP recommends Personal Assistant payments should be made through a payroll service or equivalent. Financial accountability must be transparent at all times. If a Personal Assistant is employed, the supported person will have to ensure that any Tax and National Insurance payments are made. Payroll provision should evidence best value conditions.

## Insurance

As an employer, the supported person is obliged to take out Employer's Liability Insurance. The supported person must advise Personal Assistants this is in place and display the certificate for them to view. Personal Assistants may wish to arrange their own additional insurance cover.

## Contract of Employment

There are Conditions of Service which are intended as guidelines for the supported person when employing their own staff. Some of the Conditions of Service are legal requirements.

There are independent services that can advise with contractual agreements, the allocated worker or the HSCP's self-directed support officer can provide information on services available.

[Resources & Training – PA Network Scotland](#)

## 6. PAYMENT OF STAFF

### Hourly Rate

The full allowance for employing a Personal Assistant is £18.08 per hour, this is a Gross payment. This payment includes enough money to pay the personal assistants hourly/weekly/monthly wage (based on the National Living Wage Scotland), employer's national insurance contributions, PAYE for each personal assistant, payroll costs and a contingency amount.

**N.B. the above rate of £18.08 should not be paid to the Personal Assistant unless further personal monies are added from the supported person's own funds to meet the additional cost or there is no other contingencies that are required to come out of this rate. This is referred to as a Top Up.**

Any other employment benefit that may be agreed with the Personal Assistant must come out of the £18.08, unless the supported person is willing/able to contribute additional funds.

### Automatic Enrolment Pension Scheme

Argyll & Bute HSCP will consider additional funding for auto enrolment on an individual bases, not all personal assistants will meet the eligibility criteria for the Automatic Enrolment Pension Scheme.

An eligible jobholder is an employee who must be automatically enrolled and is:

An “eligible jobholder” is any worker who: is aged between 22 and state pension age; and has earnings above the earnings threshold (currently £192 per week or £833 per month for 2016/17). If you’re PA is an “eligible jobholder”, you must automatically enrol them in your pension scheme and you must also make “employer contributions” to the individual’s pension. The Personal Assistant can choose to “opt-out” of making contributions. Where they “opt-out”, the employer is not required to make any contributions.

For further information regarding Automatic Enrolment speak to the allocated worker, Argyll & Bute HSCP’s Self Directed Support Officer or you can access information through the Pension Regulator website [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

### **Contingency Amount – 4 weeks**

The contingency amount can be used to fund the following:

- Holiday cover – allowing the supported person to pay for cover while the Personal Assistant is on paid annual/public holiday leave.
- Protective clothing – e.g. if the Personal Assistant carries out tasks which require the use of protective gloves and aprons (if agreed in the Support Plan)

All of these costs must be entered in the financial return and receipts/invoices/pay slips provided.

### **Leave Entitlement**

Personal Assistants should receive 28 days (5.6 weeks) leave per annum (pro rata) including public holidays. Any application of the Public Holidays will be at the discretion of the employer.

There may be times when the supported person does not require assistance, e.g. holidays or hospital admission. Up to 4 weeks in any 12 month period may be considered and a retainer fee paid to Personal Assistants, at the supported person's discretion, if they are not required to carry out any tasks during this time. It may be necessary for Personal Assistants to take their holidays at the same time as the supported person. If this is the case, it is recommended that notice of the dates should be given to the Personal Assistant. It is recommended that an Independent advice agency is contacted for support on Contract of Employment.

### **Sickness/Maternity/Paternity/Adoption/Parental/Dependents Leave and Redundancy**

Statutory entitlements apply. It is up to the supported person, payroll, family or third party acting on behalf of the supported person to calculate and submit redundancy payment information to Argyll & Bute HSCP for consideration.

### **Job Description**

Argyll & Bute HSCP recommends personal assistants should receive a Job Description detailing the tasks specific to the needs of the supported person/employer. The Job Description may be subject to change from time-to-time. It is recommended that an Independent advice agency is contacted for support on Contract of Employment.

### **Disciplinary and Grievance Procedures**

These procedures should be outlined in the Contract of Employment.

### **Period of Notice**

An employee must give a minimum of 1 weeks' notice before leaving employment. The employer/supported person, except in the event of summary dismissal, must give at least 1 weeks' notice (or the statutory minimum notice, whichever is greater).

### **Training**

All personal assistants must undertake training appropriate to the tasks they are required to carry out, e.g. moving and handling procedures, more

information can be provided by the allocated worker. Argyll & Bute HSCP will assist with training for Personal Assistants where appropriate.

## **Driving**

If a Personal Assistant is asked to drive, as part of their duties, the employer must check that there are no driving convictions. This means asking to see the PA's driving licence.

If the Personal Assistant is driving the employer's vehicle, the employer must ensure that the appropriate insurance cover is in place. If the PA is driving their own vehicle, the employer must ensure that the employee has informed their insurance company that they will be using their car for the employer's business. Any mileage expenses incurred are the responsibility of the employer and are not covered by the Direct Payment.

N.B. If a PA commits a road traffic offence while driving for the employer, e.g. speeding, the employer may also be held responsible.

## **Health and Safety**

Employers of Personal Assistants must comply with any applicable Health and Safety legislation and ensure that the people who work for them are not put at risk of injury or infection.

**Infection control is not only for personal assistants but for the supported person. Protective clothing such as; gloves, masks and aprons must be provided where appropriate.**

This can also be achieved by creating a good working environment; using good working practices.

## **Emergencies**

If a supported person is unable to make alternative emergency arrangements i.e. no staff available to provide care, contact can be made with their allocated worker or Argyll and Bute HSCP customer services contact number 01546 605517.

Advice can also be given with regards to Argyll & Bute HSCPs Complaints Procedures, this information can also be found in the Information Pack.

## Self Employed Carers

It is recommended that personal assistants are employed by the supported person, however, if the supported person wishes to receive services from a self-employed carer, it is essential that the self-employed carer provides written confirmation from the HRMC (Her Majesty Revenue & Customs) or provide the supported person with their Unique Tax Reference Number and that the work they are agreeing to undertake e.g. care and support has been approved as self-employed. In addition, they are also responsible for the following:

- Providing the supported person with an agreement/contract detailing how much they are charging and how they will invoice for the work provided.
- Providing a written statement to the effect they will take responsibility for the paying of Tax and National Insurance.
- Funding their own training, including ensuring that they are trained to carry out the service they are offering.
- Providing a written statement that they have appropriate insurance indemnity cover.
- Undertaking and meeting the costs of a Protection of Vulnerable Group (PVG) check.

**It is the supported persons or the relevant person acting on the supported persons behalf to:**

- Ensuring the carers self-employed status relates to performing caring functions.
- Seeking evidence of appropriate training is undertaken.
- Receiving invoices with hours and rates appropriately.
- Have a written agreement/contract with a start and end date.
- Request proof of Tax & NI contributions being paid to HMRC

You should take professional advice from an independent professional, such as an Employment Lawyer or an Accountant.

Argyll & Bute HSCP advises **against** contracting with self-employed carers except in exceptional circumstances following discussions with your Allocated worker or Argyll & Bute HSCPs Self Directed Support Officer.

**For further guidance on Self Employed Carers see appendix 3.**

## **7. RESPONSIBILITIES OF THE SUPPORTED PERSON WHEN ENGAGING AN AGENCY**

Should the supported person decide to use an independent agency it is essential that the supported person notifies the allocated worker as the Direct Payment rate will differ from employing a Personal Assistant.

A service contract should be entered into between the supported person and the agency. It should include clear details of the agency's responsibility to provide the supported person with services at the contracted times.

If the agency is providing support with personal care or health care needs, they must be registered with Care Inspectorate.

If the supported person uses an agency, the agency is responsible for all employee responsibilities.

The HSCP must be advised of the cost of the service to be purchased from the chosen agency. The HSCP will inform the supported person how much of this cost it intends to meet. If the supported person chooses a more expensive provider, they may have to pay any surplus from their own funds.

If the supported person chooses to use an agency, payments made to the agency from the Direct Payment funds will not exceed the agency rate approved by the HSCP.

## **8. DETAILED TERMS OF AGREEMENT**

Direct Payments are available equally to new and existing service users, i.e. existing supported person may switch to Direct Payments.

The following groups of people are eligible to receive direct payments:

- Disabled adults assessed as requiring community care services, including housing support services
- Disabled 16 and 17 year olds assessed as requiring community care services, including housing support services
- Disabled people with parental responsibility to purchase the children's services their children have been assessed as needing

- Parents and people with parental responsibility for a child in need (under the age of 16) who has been assessed as requiring children's services
- Parents and people with parental responsibility for children whose health or development may be impaired or below a reasonable standard without services from the local authority
- Disabled adults and 16 and 17 year olds to purchase housing support services older people aged 65 years and over who are assessed as needing community care services due to infirmity or age
- Power of Attorneys or Guardians with relevant powers can receive self-directed support in the form of an Option 1 direct payment on behalf of people who are unable to give consent to arranging their own services.
- Community care supported persons who are accessing Free Personal and Nursing Care can arrange for the personal care element of the package to be received as a Direct Payment.

Once a supported person has been assessed as requiring care or support in the community and have chosen an Option 1 (Direct Payment) to direct their own care/support a Direct Payment Agreement will be sent out to them in writing.

This agreement explains what the supported person should expect from Argyll & Bute's HSCP and what Argyll & Bute's HSCP will commit to, included in this agreement is the allocated financial commitment.

In turn the supported person will be informed on what Argyll & Bute HSCP expect of them and their commitment to comply with the agreement.

For an example of the Direct Payments Agreement committing to the terms and conditions as indicated by Argyll & Bute HSCP ***please see Appendix 5.***

**NOTE: The agreement will be sent by email or by post to the supported person or the allocated person acting on behalf of the supported person. This agreement must be signed and returned to our finance department no later than 4 weeks after receipt, should our finance department not receive the signed Direct Payment agreement within the 4 week period this may affect the release of funding.**

## 9. NOTES ON THE MAINTENANCE OF FINANCIAL INFORMATION

Argyll & Bute HSCP operates a Direct Payments Scheme which means supported person can now receive payments instead of services for which they have been assessed, so that they can purchase their own services.

Argyll & Bute HSCP is accountable for public funds and must monitor direct payments made to the supported person to ensure they are spent appropriately and they represent cost effective use of resources.

With this in mind, direct payment supported persons are required to keep a range of financial documentation and provide the HSCP with financial information on their direct payments at designated intervals.

The purpose of this guidance is to inform the supported person of the financial information required and to provide guidance and instructions on how to fulfil these requirements.

**Failure to provide financial return information will result in the suspension or termination of the DP. See section 12 on termination of a Direct Payment.**

## 10. BANK ACCOUNT

Argyll & Bute HSCP requires the supported person or their representative to open a separate current account in their own name, specifically and solely for the direct payments funds, unless a top up payment for care and/or respite is required to be paid in to this account. If the direct payment supported person employs the services of a payroll organisation they may open the bank account on the direct payment supported person's behalf, please speak to your allocated worker, self-directed support officer or an alternative organisation that can assist you with this information.

Argyll & Bute's HSCP will make regular 4 weekly payments into the supported persons Direct Payment Account by credit transfer (BACS).

If the supported person receives a payment from the Independent Living Fund (ILF), that payment and the supported person's ILF contribution must

be paid in to a different bank account than the Direct Payment bank account as in accordance with your Direct Payments Agreement.

The supported person should arrange for any Residential Respite Charge or Short breaks to be paid into their Direct Payment Account.

The Direct Payment Account must only be used for direct payments income and expenditure and must not be used for any other purposes i.e. pension, attendance allowance or any other personal funds.

Payments from the Direct Payment Account to care providers or Personal Assistants may only be made by cheque, standing order or direct debit. It is important that cash payments are only used as a last resort and receipts **must** be provided. The reason that this is important is that both the supported person and Argyll & Bute's HSCP have to be accountable for public funds. It is more difficult for the supported person to control and keep account of cash payments than by any other means.

Personal Assistant payments should be made through a payroll service or equivalent e.g. accountant, payroll service. Financial accountability must be transparent at all times.

**Direct Payments supported persons cannot transfer funds from the Direct Payment account to their own personal accounts to pay personal assistants/carers, however, they can top up the Direct Payment account to pay the carer, this would include using the carer for additional hours or the carer charges a higher hourly rate than Argyll & Bute HSCP's approved rate.**

**Example: Argyll & Bute HSCP will pay £18.08 per hour, however, some carers may charge more than this rate, and it is the supported person's responsibility to pay the difference in the rate of pay.**

## **11. RECORDS TO BE MAINTAINED BY THE SUPPORTED PERSON**

For financial and monitoring purposes, the supported person or their representative must keep the following:

- Record of all income and expenditure on the Direct Payment bank account statements.

- Financial Return Form **Appendix 5**. All items of expenditure must be recorded separately on the form. For each separate payment made, the date of payment, the person/organisation to whom the payment is being made (payee), the nature of the payment, the cheque number and the total amount must be recorded.
- For each item of expenditure recorded there is an invoice or a receipt to support the payment made. Up-to-date information on User's Record of Expenditure, with invoices and receipts for payments made. Only authorised payments will be considered, if the supported person use the Direct Payment funds for anything other than agreed by the allocated worker and documented on the support plan the supported person will be required to return the unauthorised spent money to Argyll & Bute HSCP's finance department.
- Employment records (PAYE, National Insurance, Liability Insurance etc.) for all the carers/personal assistants employed or contracted by supported person must be kept. If you are using the services of a payroll organisation they may keep all records, it is the DP supported persons responsibility to check this with the payroll agency.
- Time sheets (or rotas) indicating the days and times carers have worked should be submitted when a financial review is requested.

All of these records, including monthly Bank Statements, must be available for inspection by Financial Officers of Argyll & Bute HSCP. The HSCP must be able to reconcile the supported person's record of income in the Direct Payment Account against all expenditure recorded on the User's Record of Expenditure.

Financial returns must be made at intervals designated by Argyll & Bute's HSCP. The direct payment supported person will be informed in writing when the financial return is required.

Failure to comply with the financial return requirements may result in suspension or termination of the direct payment, please see section 12.

***Please note that an invoice or receipt must be obtained for all payments made from the direct payment account.***

## **Financial Hardship**

Depending on the supported person's financial circumstances, they may have to pay a charge for care and support provided at home and residential respite services funded by the HSCP through Direct Payment. A financial assessment will be carried out and the supported person will be advised of any charge applicable before the first Direct Payment is made.

If the supported person believes they will have any difficulty paying this charge, this should be discussed with the allocated worker before any agreement is signed to accept a Direct Payment.

## **12. SUSPENDING OR TERMINATING A DIRECT PAYMENT**

If a supported person or their representative wishes to terminate their Direct Payment Argyll & Bute HSCP will require 4 weeks' notice of termination. The allocated worker will visit to review the current care requirements and discuss the termination if required.

Argyll & Bute HSCP can also suspend or terminate a Direct Payment if it is found there is misuse of funds or if the supported person/representative does not comply with the terms of the signed Direct Payment agreement, other examples can be found under "Circumstances where a direct payment may be terminated" regulation (6) of The Self-directed Support (Direct Payments) (Scotland) Regulations 2014. See appendix 4.

The following steps will be taken before Direct Payments are discontinued:

Allocated worker/Self Directed Support Officer will be notified by Argyll & Bute HSCP's finance team that more than one but no more than 3 period of monitoring paperwork (financial return paperwork) is outstanding or there has been unauthorised spends on the Direct Payment account.

- The self directed support officer will issue a letter to the supported person or representative requesting contact within 21 days regarding the required outstanding financial monitoring paperwork.

- If no response is received within the 21 days, a further letter will be issued advising of the consequences of termination of the direct payment, the supported person will then be advised to submit the paperwork within 7 days.
- If within the 7 days' notice period there is still no contact, Argyll & Bute HSCP's Local Area Manager/Locality Manager will write to the supported person advising when Direct Payments will be terminated, giving 4 weeks' notice. During this period the supported person must resolve any issues and demonstrate that they are willing or able to manage Direct Payments effectively. The decision to withdraw/terminate payments will be reviewed as a result and alternative services for care/support will be arranged.
- If Direct Payments are withdrawn/terminated, the finance team will issue a letter detailing the monies outstanding as per the last monitoring paperwork reconciled. The supported person or representative must then return all unspent funds or unauthorised spends to the finance team.

A copy of all correspondence will be sent to the allocated worker.

Please note the suspension or termination of a Direct Payment by Argyll & Bute HSCP must be arranged through agreement and alternative care arrangements **must** be put in place to ensure all legal requirements to provide care/support have been met.

### **13. UNSPENT FUNDS**

If the Direct Payment agreement is terminated either by the supported person or by Argyll & Bute HSCP or if the supported person is deceased all unspent funds must be returned to Argyll & Bute HSCP.

Should a supported person for any reason not use some or all of the allocated funds they should inform the allocated worker. If during the financial review there is excess funds in the Direct Payment account our finance officer will request funds to be returned, Argyll and Bute HSCP will allow 8 weeks of funds to remain in the account.

Argyll and Bute HSCP will take into account financial liabilities which remain outstanding, for example unpaid wages or severance for employed staff, outstanding payments to care agencies for services provided etc. The details of all outstanding liabilities/payments must be provided to the finance team to enable them to accurately assess the balance of funds to be recovered.

## Appendix 1 - Glossary

**Assessment** – An allocated worker from the Health & Social Care Partnership will visit you at home to establish a needs assessments. A needs assessment is for people who may require help because of a disability, ill health or old age. The assessment must look at a person's physical, mental and emotional needs, and can result in a decision to provide or arrange services for the person you look after.

**Agency** – an organisation or care provider

**Allocated worker** – a worker from the Health & Social Care Partnership i.e. a Social Worker or assistant Social Worker or a health professional; Occupational Therapist, Physio Therapist, Community Nurse etc.

**Contingency amount** – an amount of money to remain in your Direct Payment account for unforeseen circumstances; holiday pay for staff, emergency situations.

**Contingency plan** – a plan in place for emergency situations i.e. if your carer does not turn up for work, if your family member cannot care for you.

**Eligibility Criteria** - Local eligibility criteria indicates what level of need the Health & Social Care Partnership recognises a person as requiring services. These criteria's are applicable at the time of assessment. Review and re-assessment must be conducted regularly to ensure that care needs continue to be appropriately met as individual's needs change.

There are 4 criteria's within the Eligibility Criteria Framework:

*Critical Risk*: Indicates that there are major risks to an individual's independent living or health and well-being likely to call for the immediate or imminent provision of social care services (high priority).

*Substantial Risk*: Indicates that there are significant risks to an individual's independence or health and wellbeing likely to call for the immediate or imminent provision of social care services (high priority).

*Moderate Risk*: Indicates that there are some risks to an individual's independence or health and wellbeing. These may call for the provision of some social care services managed and prioritised on an ongoing basis or they may simply be manageable over the foreseeable future without service provision, with appropriate arrangements for review.

*Low Risk:* Indicates that there may be some quality of life issues, but low risks to an individual's independence or health and wellbeing with very limited, if any, requirement for the provision of social care services. There may be some need for alternative support or advice and appropriate arrangements for review over the foreseeable future or longer term.

**Needs** – level and type of care a person requires to enable them to remain at home safely, personal care, access residential or require nursing care.

**Outcomes** – what the supported person wants to achieve i.e. to remain at home, assistance with getting out of bed and getting dressed, being able to get out of your home, to socialise etc. You may have an outcome to achieve a goal in life.

**Personal Assistants-** a carer employed by the supported person that is in receipt of a Direct Payment.

**Representative** - The supported person or the third party who will manage the Direct Payment; Guardian or POA or a person that has been allocated by the supported person.

**Respite** – planned package of care for carers/family members who are providing regular and substantive care, to enable them time to rest from their caring duties/responsibilities. Respite is not for emergency placements to a residential care home or for medical rehabilitation.

**Review** – a review of a supported persons care needs/support is usually held every 6 months after the implementation of the care package, a review can be held when a person's needs have changed or can be requested from the supported person, family, POA/guardian when required. The allocated worker can visit at home or in a mutual quiet location to discuss the care package.

**Self Employed Carers** – a person who has registered themselves with Her Majesties Revenue and Customs as self-employed. A self-employed worker is responsible to pay their own PAYE contributions, tax and NI. Self Employed workers are not paid if they do not work i.e. if they are off sick, holiday or do not show for work. Please see further guidance appendix 3.

**Support plan** – A person centred plan which outlines how the direct payment will be managed, what the hours and funds will be used for and what has

been agreed for the supported persons needs and outcomes. Any contingency plans in place.

A support plan is the supported person's document that can be shared with who they want to share it with. Argyll & Bute HSCP will also have a copy for their records, the support plan may be required to change if the supported persons needs change.

**Supported person** – The person who requires care and/or support.

## Appendix 2



### Spending Your Direct Payment Personal Budget

Your personal budget can be used to meet your assessed outcomes. All care and support is completely individual and bespoke, so it is important to remember that every support plan is unique. What may be appropriate, approved and acceptable for one person, may not apply to the next person. Additionally, those outcomes that are most important for individuals often change over time as some outcomes are achieved and no longer relevant, some remain on-going and some evolve and develop to become new outcomes.

Your personal budget can only be spent on outcomes identified within your support plan. If unsure, speak to your Lead Professional/worker and/or an SDS Officer. This document is a guide to help rule out some types of spending and includes examples of what is allowable and what may be negotiable and considered.

**As illustrated below there are 3 areas to consider when deciding how to spend your personal budget:**

**GREEN** you can spend your budget on these areas.

**YELLOW** you may be able to spend your budget on these areas after conversation and negotiation with your practitioner and there may be a cap on the amount you can spend on these areas.

**RED** spending of your personal budget on these areas is not accepted or authorised.

## Spending Your Personal Budget

<p><b>YOU CAN SPEND YOUR PERSONAL BUDGET ON:</b></p>	<p>Meeting your assessed outcomes as identified in support plan.</p>	<p>Employing Personal Assistants</p>	<p>Contracting Self Employed Carers or Self Employed Personal Assistants (see Guidance re Self-employed carers to ensure the correct requirements are in place)</p>	<p>Purchasing support from an agency</p>	<p>Purchasing respite care from a provider</p>	<p>Paying for activities and services that meet identified outcomes and as an alternative to traditional respite and as agreed on support plan</p>	<p>Support to find employment or volunteering opportunities which has been agreed on the support plan</p>	<p>Support to attend employment; payroll services, liability insurance costs</p>	<p>Purchasing alternative therapies which has been agreed on the support plan</p>
--	--	--------------------------------------	---	--	--	--	---	--	---

<p><b>NEGOTIABLE WITH PRACTITIONER TO MEET A SPECIFIC OUTCOME - THERE MAY BE A CAP ON THE AMOUNT AVAILABLE TO SPEND. MUST BE APPROVED AS PART OF SUPPORT PLAN:</b></p>	<p>Employing someone who is a family member. There needs to be evidence that the family member has necessary skills, that no community alternative exists and where possible, that the supported person prefers this.  (This would</p>	<p>Support to Access Higher Education</p>	<p>Transport costs to enable access to activities as identified in the outcome focused assessment – other benefits and options has been explored and transport is required as necessary in order to meet an outcome.</p>	<p>Short breaks or holidays as an alternative to respite. This will be capped at cost for supported person for their support.</p>	<p>Eating out - only where this is agreed to be meeting an assessed outcome; respite, providing support when travel is required; health appointments.</p>	<p>Purchasing equipment e.g. i-pad, computer equipment notebooks, communication voice recognition software, touchscreen equipment or sports equipment if agreed to meet outcome.  <b>Specialist equipment such as voice</b></p>	<p>Specialist therapy – negotiable on individual basis and where NHS/HSCP provided therapy is not readily available and accessible.</p>	<p>Expenses; paid carers/ PAs/support workers (not informal or family members) may be paid where a carer is accompanying the supported person on an outing or activity and the expense incurred is directly linked to an</p>
--	--	---	--	---	---	---	---	--

	require approval from senior manager and be considered exceptional circumstances)					recognition software, touchscreen equipment where there is evidence that this meets a particular outcome and only if NHS/OT or funding via other sources has been exhausted first.	identified outcome for the person e.g. building life skills
--	---	--	--	--	--	--	---

<b>YOU CANNOT SPEND YOUR BUDGET ON:</b>	Anything that has not been identified, agreed and authorised by Argyll & Bute HSCP through the assessment and support planning process	Anything that is illegal	Client contributions for services including respite - which must be paid from personal funds. (applies to adults who have been financially assessed as requiring to making to contribution)	Employing someone who is a Welfare or Financial Guardian or has Power of Attorney in respect of who the budget is for.	Gambling; including scratch cards, bingo, cards, casinos and slot machines including online gambling	Equipment that can be provided directly by NHS or the Local Authority	Tobacco products, e-cigarettes or alcohol
---	--	--------------------------	---	--	--	---	---

<p><b>YOU CANNOT SPEND YOUR BUDGET ON:</b></p>	<p>Permanent residential care and support</p> <p>Any other chargeable day services i.e. day centre, lunch clubs</p>	<p>Paying off debts</p>	<p>Insurance; car, home, holiday, personal or household items</p> <p>The purchase of a vehicle; Motor bike, caravan/ motorhome, car etc.</p>	<p>Ongoing running/maintenance costs; where the personal budget has been used to purchase a piece of equipment or remodel a garden the running costs and maintenance are the responsibility of the supported person</p>	<p>Food; general grocery shopping and eating out (includes whilst on holiday or having short breaks) Includes supported person and carers. (Differs from above, where it may only be considered for certain personal outcomes and exceptions.)</p>	<p>Rewards/gifts/pocket money</p>	<p>Household expenditure; (examples: rent or mortgage payments, utility bills and groceries.)</p>
--	---	-------------------------	--	---	--	-----------------------------------	---

**Personal Budget Spends:**

There is a limit to how much can be spent on the following (this list is not exhaustive):

- Short breaks or holidays as an alternative to respite: The allocated worker is to consider type and cost of break or holiday and whether it is reasonable to achieve/meet identified outcomes and not excessive; consider - has the supported person made the choice of going on holiday? Food is not to be included in the cost;
- Activities; the priority is to be given to facilitating the supported person to access the activity. The activity may be an alternative to respite or day care.
- Expenses; paid carers/PA's/support workers (not informal or family members) can be paid where a carer is accompanying the supported person on an outing or activity and the expense incurred is directly linked to an identified outcome for the person e.g. building life skills.
- Computer hardware, cost to be agreed with allocated worker and senior management to meet outcome;
- Admin costs incurred when managing your personal budget capped at £50 per annum e.g. paper, postage, ink for printer. Where using the services of a payroll company this would not be applicable.

**Any Equipment that is purchased through a Direct Payment cannot be resold and remains the property of Argyll & Bute HSCP.**

## Appendix 3

### Self Employed Support Workers/Carers Fact Sheet

Argyll & Bute HSCP strongly recommends contracting with Personal Assistants (PA) that are employed directly by you. The tax and employment status of an employed Personal Assistant and a self-employed worker who charges for their time by the hour is different. As the employer it is your responsibility to determine the employment status of your worker.

Argyll & Bute Health & Social Care Partnership (HSCP) will not stipulate that you cannot use a self-employed carer if you choose Option 1 (Direct Payments). If you use a self-employed carer then that is absolutely your choice. However, we need to highlight that there are some risks you should be aware of if you use a self-employed carer. This fact sheet explains what these are and what steps you can take to minimise those risks.

- Self-employed support workers/carers are identified by the fact that they are in business for themselves.
- Self-employed carers work for themselves and must provide support to more than one supported person.
- Self-employed carers have far greater control over how and when to deliver support.
- Self-employed workers may work for you under a Service Agreement or Service Provision Contract, unfortunately there is no statutory definition of such an agreement.
- The self-employed carer will have a Unique Tax Reference (UTR) which will be allocated by HMRC. You must ask for a copy of the UTR and Liability insurance.
- There is a significant difference between the tax and employment status of a carer who is employed by you as a Personal Assistant (PA) and a carer who is self-employed.
- The supported person or 3rd party, acting on your behalf, should also ask for confirmation in writing, around what the arrangements will be, should the self-employed carer be unable to provide the care, due to sickness or leave.
- The biggest risk when you use a self-employed carer is that HM Revenue and Customs (HMRC) may later decide that the carer was in fact employed rather than self-employed. This can happen even if the checks set out have

been completed. If the carer has not paid tax or national insurance then HMRC can look to recover this from you as the person buying the services from the carer.

### **Definitions of employment:**

#### **You are employed if:**

- The person (employer) who provides you with work tells you when and how to do your job
- You are required to work regularly
- You are paid by the hour, week or month
- You work a set amount of hours
- You work exclusively for one person or business
- You work on your employer's premises and use their equipment
- You cannot send someone else to do your work or sub-contract

#### **You are self-employed if:**

- You can send someone else to do the work, and the replacement person reports to you
- You decide when or how to do the work
- You set the price for the work and hold the financial risk
- You place bids or give quotes for the work
- You send invoices for the work done
- You pay your own NIC's and tax
- You provide your own equipment and organise your own training
- You advertise your availability
- You work for a number of other people

If you require further assistance please contact your allocated worker or the Self Directed Support Officer.

## Appendix 4

### The Self-directed Support (Direct Payments) (Scotland) Regulations 2014

#### Regulation 6 — Circumstances where a direct payment may be terminated

- (1) A local authority may terminate a direct payment if—
  - (a) a direct payment user becomes ineligible to receive direct payments;
  - (b) the direct payment has been used (wholly or partly) for some purpose other than to secure the provision of the support to which it relates;
  - (c) the local authority considers on reasonable grounds that the direct payment user has breached the criminal law or a civil law obligation in relation to the support to which the direct payment relates; or
  - (d) the direct payment has been used (wholly or partly) to secure the provision of support by a family member other than in circumstances where the family member is permitted to provide support by regulation 8 (as read with regulation 9).
- (2) Before terminating a direct payment, the local authority must notify the direct payment user of—
  - (a) the reason why it has decided to terminate the direct payment; and
  - (b) the date with effect from which the direct payment will be terminated.
- (3) In determining the date with effect from which the direct payment will be terminated, the local authority must take into account—
  - (a) any contractual obligations entered into by the direct payment user; and
  - (b) the time that will be required to put in place alternative arrangements to provide the support to which the direct payment relates.
- (4) The local authority must give the notification required by paragraph (2) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

#### Regulation 8 — Circumstances where family member may provide support

- (1) A family member may only provide support to which a direct payment relates in the circumstances specified in paragraph (2).
- (2) The circumstances are—
  - (a) the family member, direct payment user and local authority agree to the family member providing the support;
  - (b) the family member is capable of providing the support; and
  - (c) any of the factors in paragraph (3) apply.
- (3) The factors are—
  - (a) there is a limited choice of service providers who could provide the support;

- (b) the direct payment user has specific communication needs which mean it will be difficult for another provider to provide the support;
- (c) the support is required at times at which the family member will be available to provide it and where other providers would not reasonably be so available;
- (d) the intimate nature of the support required by the direct payment user makes it preferable to the direct payment user that support is provided by a family member;
- (e) the direct payment user has religious or cultural beliefs which make the provision of support by a family member preferable to the direct payment user;
- (f) the direct payment user requires palliative care;
- (g) the direct payment user has an emergency or short-term necessity for care; or
- (h) there are other factors in place which make it appropriate, in the opinion of the local authority, for that family member to provide the support.
- (4) In this regulation—
  - “family member” means—
  - (a) the spouse or civil partner of the direct payment user;
  - (b) a person who lives with the direct payment user as if their spouse or civil partner;
  - (c) the direct payment user's—
    - (i) parent;
    - (ii) child;
    - (iii) brother or sister;
    - (iv) aunt or uncle;
    - (v) nephew or niece;
    - (vi) cousin;
    - (vii) grandparent;
    - (viii) grandchild;
  - (d) the spouse or civil partner of any person listed in sub-paragraph (c);
  - (e) a person who lives with any person listed in sub-paragraph (c) as if their spouse or civil partner.

**Regulation 9— Exception to family members rule**

- (1) Even if regulation 8(2) applies, a family member may not provide support to which a direct payment relates if—
  - (a) the local authority determines that either the family member or the direct payment user is under undue pressure to agree to the family member providing support; or

- (b) the family member is a guardian, continuing attorney or welfare attorney with power to make decisions as regards the support to be provided through the direct payment.
  
- (2) In “guardian”—
  - (a) means a guardian appointed under the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”); and
  - (b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during the adult's incapacity, if the guardianship is recognised under the law of Scotland;
- “continuing attorney”—
  - (a) means a continuing attorney within the meaning of section 15 (creation of continuing power of attorney) of the 2000 Act<sup>1</sup> ; and
  - (b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter's property or financial affairs and having continuing effect despite the granter's incapacity; and
- “welfare attorney”—
  - (a) means a welfare attorney within the meaning of section 16 (creation and exercise of welfare power of attorney) of the 2000 Act<sup>2</sup> ; and
  - (b) includes a person granted, under contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter's personal welfare and having effect during the granter's incapacity.





The information stated above is an accurate record of expenditure which I have incurred in relation to my agreed package for the above dates.

Signed.....

Date (if required).....

**For Finance Use, Checked and Input:**

## NOTES TO ASSIST THE DIRECT PAYMENT SUPPORTED PERSON IN THE COMPLETION OF THE FINANCIAL RETURN DOCUMENT

The aim of the financial return document is to ensure that you are receiving your payments on a regular basis, and that the terms of the Legal Agreement are being adhered to

The following instructions provide you with guidance on completing the Return. Each letter of the alphabet relates to a column or box on the face of the return which requires completion.

### Column A – Date

For each transaction, please enter the date on which income is received or payments made.

### Column B – Receipts In

Please enter all the income received from Argyll & Bute HSCP as agreed in the Legal Agreement, plus any income from other sources.

### Column C – Payments Out (Expenditure)

Please enter the amount of each payment made for your care for each particular week of service. These entries should include all items of expenditure, e.g. wages, sick pay, holiday pay, agency cover arrangements etc.

### Column D – Receipts attached

Please tick this column to indicate that all the relevant paperwork relating to each item of expenditure or income is attached.

### Column E – Details

This column is to allow you to provide brief explanations relating to any non-routine items of expenditure.

### Box F – Balance from Previous Return

This box is for recording the balance brought forward from the previous return. Please note this box should remain blank for the first return.

### Box G – Total income

Please enter the total income received in this period. This box should be the total of all income recorded in column B

### Box H – Total expenditure

Please enter the total expenditure in this period incurred. This box should be the total of all payments recorded in column C.

Box J – Balance at end of Period.

Please enter the closing balance on the bank statement as at the date shown on the return. The contents of this box should also equal Boxes F +G-H.

Please ensure that you have signed and dated the form at the declaration. If you are unable to do so, please have the form signed by a witness.

Once you have completed the return please return to Argyll & Bute HSCP with all receipts and bank statement/s. If you would like your records to be returned please tick the box at the foot of the return. If, however you would prefer that we retain them we shall be happy to do so.



### DIRECT PAYMENT AGREEMENT

*By signing below, you are completing a legally binding contract committing you to all the terms and conditions of this Agreement which comprises this and the rest of the application pack, including, the requirements for financial monitoring and the conditions set out in sub sections 1 to 9 of the Detailed Terms of Agreement on pages 13-21.*

*The constitution, validity, performance and all other matters arising out of, or in connection with, this Agreement shall be governed by the law of Scotland.*

*Whilst this Agreement is intended to reflect current legislation, in the case of a conflict between the terms of this Agreement and current legislation, the legislation shall prevail.*

1. I, .....(USER/REPRESENTATIVE'S NAME), understand that Argyll & Bute HSCP has agreed to make a Direct Payment to me to enable me to purchase services to meet my care needs/the care needs of .....(please delete as appropriate), as assessed by Social Work Services, outlined in the Care Summaries on Pages 2 and 3 of this application pack .
2. I understand that I am required to comply with the terms and conditions set out here and in this application pack
3. I agree to manage these payments and, if relevant, to meet my responsibilities as an employer.
4. I understand that I can receive assistance to manage the Direct Payment, but that I will retain overall control and responsibility for the Direct Payment and the maintenance of associated financial records.
5. I understand that the amount of money paid will be reviewed on a regular basis.
6. I understand that failing to comply with these conditions could result in the Direct Payment being withdrawn.

7. I understand that if I am unable for any reason to manage direct payments, then this agreement will come to an end.
8. I understand that Argyll & Bute HSCP have a duty to monitor the standard of service purchased by me and I agree to provide all information and assistance necessary for that purpose, including consenting to the release of information held by third parties.
9. I consent to Argyll & Bute HSCP disclosing to my employees or agency staff, including potential employees or agency staff, any information and data (including sensitive personal data) necessary for the proper and safe provision of my care needs.

Signed (User or Representative)

Signed	
Print Name	
Date	

..... Witness Signature  
 ..... Address  
 .....

If the supported person is unable to sign:

a) Verbal Consent Given      YES/NO

or

b) Consent Communicated by other means (Please Specify)

.....  
 .....  
 .....

If (a) or (b), then a witness is required (independent of Argyll & Bute HSCP):

Witness.....Designation.....Date.....

Signed (Argyll & Bute HSCP)

Signed	
Print Name	
Date	