*Draft Regulations laid before Parliament under section 135(6) of the Children and Families Act 2014, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2014 No. 0000

# EDUCATION, ENGLAND

## The Special Educational Needs (Personal Budgets) Regulations 2014

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| *Made - - - -* | *2014* |
| *Coming into force - -* | *1st September 2014* |

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 49(3) and (4) of the Children and Families Act 2014(**1**).

In accordance with section 135(6)(a) of that Act, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

### Citation and commencement

**1.** These Regulations may be cited as the Special Educational Needs (Personal Budgets) Regulations 2014 and come into force on 1st September 2014.

### Interpretation

**2.** In these Regulations—

"the 2005 Act" means the Mental Capacity Act 2005(**2**);

"the 2014 Act" means the Children and Families Act 2014;

"agreed provision" means the goods or services specified in the local authority's notice under regulation 8(2)(b);

"nominee" means a person nominated in accordance with regulation 5(1)(c);

"recipient" means a person to whom direct payments are, or are proposed to be, made under regulation 5(2).

(**1**) 2014 c.6.
(**2**) 2005 c.9.

**Information, advice and support**

**3.** Where a local authority maintains an EHC plan or is securing the preparation of an EHC plan for a child or young person, it must make arrangements for the provision to the child's parent or young person of the following information—

(a) the provision for which a personal budget may be available;

(b) details of organisations that provide advice and assistance in connection with personal budgets; and

(c) the conditions which must be met before direct payments may be made.

**Request for a personal budget including direct payments**

**4.**—(1) A child's parent or a young person may make a request to a local authority for a personal budget, including a request for direct payments, at any time during the period in which—

(a) the draft EHC plan is being prepared in accordance with section 38 of the 2014 Act; or

(b) the EHC plan is being reviewed or re-assessed under section 44 of the 2014 Act.

(2) Where a request for direct payments has been made, a local authority must consider that request.

**Persons to whom direct payments may be made**

**5.**—(1) A local authority may make direct payments, as appropriate, to—

(a) the child's parent;

(b) the young person; or

(c) a person nominated in writing by the child's parent or the young person to receive direct payments on their behalf.

(2) Direct payments may only be made to an intended recipient if the person—

(a) appears to the local authority to be capable of managing direct payments without assistance or with such assistance as may be available to them;

(b) where the recipient is an individual, is over compulsory school age;

(c) does not lack capacity within the meaning of the 2005 Act to consent to the making of direct payments to them or to secure the agreed provision with any direct payment; and

(d) is not a person described in the Schedule.

(3) Where a nominee has been appointed in accordance with paragraph (1)(c), if the child's parent or young person notifies the local authority in writing that they wish to withdraw or change their nomination, the local authority must stop making direct payments to the nominee as soon as reasonably practicable and, where applicable, consider whether to make direct payments to the alternative nominee.

**Decision to make direct payments**

**6.**—(1) A local authority may only make direct payments where a request has been made for direct payments to be made and the authority is satisfied that—

(a) the recipient will use them to secure the agreed provision in an appropriate way;

(b) where the recipient is the child's parent or a nominee, that person will act in the best interests of the child or the young person when securing the proposed agreed provision;

(c) the direct payments will not have an adverse impact on other services which the local authority provides or arranges for children and young people with an EHC plan which the authority maintains; and

(d) securing the proposed agreed provision by direct payments is an efficient use of the authority's resources.

(2) A local authority may only make direct payments in respect of the special educational provision specified in an EHC plan, and may not make direct payments for the purpose of funding a place at a school or post-16 institution.

**Decisions not to make direct payments**

**7.** Where a local authority decides not to make direct payments it must—

(a) inform in writing the child's parent or the young person of—

(i) its decision;

(ii) the reasons for its decision; and

(iii) the right to request a review of the decision;

(b) where requested to do so, review its decision and in carrying out the review consider any representations made by the child's parent or the young person; and

(c) inform in writing the child's parent or the young person of the outcome of the review , giving reasons.

**Conditions for direct payments**

**8.**—(1) A local authority may not make direct payments unless the requirements set out in paragraphs (2) to (4) have been satisfied.

(2) The local authority must provide written notice to the recipient, specifying the following—

(a) the name of the child or young person in respect of whom direct payments are to be made;

(b) the goods or services which are to be secured by direct payments;

(c) the proposed amount of direct payments;

(d) any conditions on how direct payments may be spent;

(e) the dates for payments into the bank account approved by the local authority.

(3) Upon receipt of a notice under paragraph (2), the recipient must notify the local authority in writing that they agree to—

(a) receive the direct payments;

(b) use the direct payments only to secure the agreed provision;

(c) comply with any conditions specified in the notice under paragraph (2)(d);

(d) notify the local authority of any changes in circumstances which might affect the need for the agreed provision;

(e) use the bank account approved by the local authority solely for the purposes of one or more of the following—

(i) these direct payments;

(ii) direct payments made pursuant to the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009(**3**);

(**3**) S.I. 2009/1887.

(iii) direct payments made pursuant to the National Health Service (Direct Payment) Regulations 2013(**4**);

(f) ensure that the bank account approved by the local authority is only accessible by the recipient or any other person approved in writing by the local authority; and

(g) keep a record of money paid in and withdrawn from the bank account approved by the local authority and, on request, or at intervals specified by the local authority, provide the local authority with information or evidence relating to—

(i) the account; and

(ii) the agreed provision.

(4) Where the recipient is a nominee—

(a) the child's parent or young person must provide written consent to the local authority to direct payments being used to secure the agreed provision; and

(b) the nominee must provide written confirmation to the local authority that he or she is responsible as a principal for all contractual arrangements entered into for the benefit of the child or young person and secured by means of direct payments.

**Permission of school etc**

**9.**—(1) A local authority may not make direct payments in respect of any goods or services which are to be used or provided in a school(**5**) or post-16 institution without the written consent of the head teacher, principal or the person occupying an equivalent position.

(2) A local authority may not make direct payments in respect of any goods or services which are to be used or provided on premises where relevant early years education is provided without the written consent of the provider of the relevant early years education.

**The amount of direct payments**

**10.**—(1) The local authority must ensure that the amount of direct payments is sufficient to secure the agreed provision.

(2) The local authority may increase or reduce the amount of direct payments provided that the authority is satisfied that the new amount is sufficient to secure the agreed provision.

(3) The local authority may reduce the amount of direct payments where—

(a) payments remain unused; and

(b) the local authority considers that it is reasonable to offset unused direct payments against the outstanding amount to be paid.

**Monitoring and review of direct payments**

**11.**—(1) The local authority must monitor the use of direct payments by the recipient.

(2) The local authority must review the making and use of direct payments—

(a) at least once within the first three months of direct payments being made; and

(b) when conducting a review or a re-assessment of an EHC plan under section 44 of the 2014 Act.

(3) When carrying out a review, a local authority must consider whether—

(a) it should continue to secure the agreed provision by means of direct payments;

(**4**) S.I. 2013/1617.
(**5**) School is defined in section 4 of the Education Act 1996 c.56 which is applied by section 83(7) of the 2014 Act.

(b) the direct payments have been used effectively;

(c) the amount of direct payments continues to be sufficient to secure the agreed provision;

(d) it is still satisfied as to the matters set out in regulation 6; and

(e) the recipient has complied with the conditions set out in regulation 8(3).

(4) A recipient may make a request for the local authority to review the making and use of direct payments and the local authority—

(a) must then consider whether to carry out a review; and

(b) if it decides to carry out a review, must consider the matters set out in paragraph (3).

(5) Following a review the local authority may —

(a) substitute the person receiving direct payments with a nominee, the child's parent or the young person, as appropriate, where regulation 8 has been complied with in respect of that person;

(b) increase, maintain or reduce the amount of direct payments;

(c) require the recipient to comply with either or both of the following conditions—

(i) the person must not secure a service from a particular person,

(ii) the person must provide such information as the local authority considers necessary;

(d) stop making direct payments.

**Reducing the amount of direct payments**

**12.**—(1) Where a local authority decides to reduce the amount of direct payments it must provide reasonable notice to the recipient, and must set out in the notice the reasons for its decision.

(2) The local authority must reconsider its decision, where requested to do so by the recipient.

(3) When conducting its reconsideration, the local authority must consider the representations made by the recipient (and where the recipient is a nominee, any representations made by the child's parent or the young person) and must then provide written reasons to the recipient (and to the child's parent or young person, where the recipient is a nominee) of its decision following the reconsideration.

(4) A local authority may not be required to undertake more than one reconsideration of a decision made under paragraph (1).

(5) The local authority may reduce direct payments following reasonable notice despite the fact that a request for reconsideration has been made under paragraph (2).

**Repayment and recovery of direct payments**

**13.**—(1) A local authority may require the recipient to repay part or all of the direct payments, where—

(a) the circumstances of the child or young person have changed in a manner which has an impact on the appropriateness of the agreed provision;

(b) all or part of the direct payments have not been used to secure the agreed provision;

(c) theft, fraud or another offence may have occurred in connection with the direct payments;

(d) the child or young person has died.

(2) The local authority may only seek repayment of any portion of the direct payments that has not already been spent on the agreed provision.