



Disabled Children's Service –  
Social Care

# **Direct Payments Policy**

# Contents

|   |    |
|---|----|
| Disabled Children’s Service – Social Care.....          | 1  |
| Direct Payments Policy .....                            | 1  |
| About this document .....                               | 3  |
| Purpose and aim of the Policy .....                     | 3  |
| Scope.....  | 3  |
| Explaining Personal Budgets and Direct Payments .....   | 4  |
| Explaining Direct Payments .....                        | 5  |
| Eligibility .....                                       | 6  |
| Definition of Disability.....                           | 7  |
| Determining the use and value of a Direct Payment ..... | 7  |
| Accessing Direct Payments .....                         | 9  |
| Using Direct Payments .....                             | 10 |
| Short Breaks Explained .....                            | 10 |
| Limitations on use of Direct Payments.....              | 11 |
| When a Direct Payment cannot be provided.....           | 12 |
| Use of Funds .....                                      | 13 |
| Support available to Families.....                      | 14 |
| Safeguarding .....                                      | 14 |
| Employing Family Members.....                           | 15 |
| Review of and Ending a Direct Payment.....              | 17 |
| Appeals Process .....                                   | 17 |
| Complaints.....   | 18 |
| Transition to Adulthood.....                            | 18 |

# About this document

This document is the Disabled Children's Service Direct Payments policy for Devon County Council.

The aim of this document is to explain the approach taken by Devon County Council to the arrangements for direct payments in Children's Social Care.

The document takes account of the wider context of personal budgets across education and health, and direct payment arrangements in Adult Services.

## Purpose and aim of the Policy

This Policy is intended to achieve transparent, consistent practice and approaches for disabled children, young people and families accessing direct payments and ensure that Devon County Council meets its statutory obligations in relation to legislation and guidance. It will provide families, young people, and professionals with clarity about the resources that are available to meet an individual child or young person's needs and the opportunity to have more control over how that support is provided.

This policy covers direct payment support for social care for eligible children and young people who are aged up to 18.

## Scope

This Policy covers direct payment support for social care for eligible children and young people who are aged up to the age of 18.

In making direct payments under section 17A of the Children Act 1989, Devon County Council is subject to the general duty to safeguard and promote the welfare of children in need (Part 3, Children Act 1989) and to promote their upbringing by and within their families when making these payments in exactly the same way as when providing direct services.

Following an assessment, it may be identified that a direct payment is the appropriate and agreed way in which the identified needs of the child, young person and their family can be supported and met. Parents or the young

person themselves can request that the identified support is provided as a direct payment or personal budget.

In addition, from October 2014 children and young people eligible for NHS continuing care acquired a right to have a personal health budget. There will be occasions when this is delivered as a direct payment, which may be paid through Devon County Council's direct payment arrangements.

This policy does not include young people over the age of 18 years old who have eligibility for adult social care support following a Care Act assessment.

This document should be read in conjunction with the [Short Breaks Statement](#).

# Explaining Personal Budgets and Direct Payments

A personal budget is defined as the total amount of resource provided by Devon County Council (DCC) to meet the needs of a child or young person and support them in achieving good outcomes.

Direct Payments are one way of delivering some or all of this agreed funding in which children, young people and their families can direct their own support

Personal budgets can be made for special educational needs (SEN), health care and/or social care provision Each of these have frameworks to support arrangements. [More information about short breaks and direct payments](#) is available on the SEND Local Offer website.

A social care personal budget can be organised through the following options:

1. An arrangement – where Devon County Council holds the funds and arranges services
2. Third party arrangements – where the funding is paid to a person or organisation who acts on behalf of the parent/carer or young person;
3. Direct payment – where the parent/carer or young person arranges services themselves;
4. A combination of the above.

# Explaining Direct Payments

To be eligible for a direct payment, an individual must be assessed under the Children Act 1989 as needing a service. Direct payments are financial resources made available directly to either:

- Persons with parental responsibility for a disabled child (as defined by the Children Act 1989);
- Disabled young people aged 16-18 years, following assessment of their needs and mental capacity;
- A nominated third party.

The resource helps meet the additional assessed needs of disabled children and young people and their families. It is an alternative to arranged help provided by Devon County Council, over and above the help that is accessible within the community.

Parents or carers of disabled children may choose to have a direct payment to buy their own help or support where there is an assessed need under the Children Act 1989. Young people over 16 can also have direct payments under the Children Act 1989 or Chronically Sick and Disabled Person's Act 1970. The payment is at the rate at which the Council could provide similar services directly or through a third party provider.

Direct payments allow parents and young people greater flexibility, independence, and control, to employ their own support workers at times convenient to them and in the way they wish, to provide an individual service to meet their assessed needs and outcomes.

A person choosing to accept a direct payment assumes the responsibility for organising and managing the child or young person's care and support needs in line with the agreed social care plan. This sits alongside ordinary parental responsibilities and does not replace the support provided by a family or what you would normally spend on your children, for example paying for food, clothes, toys, transport, and holidays.

A young person or parent can request direct payments as the way in which support is provided to meet assessed needs.

A young person or parent does not have to accept direct payments; if they wish they can choose to receive services that are provided or arranged directly by Devon County Council.

Devon County Council must be satisfied in making a direct payment that the child or young person's welfare will be safeguarded and promoted by the means of a direct payment.

## Eligibility

The decision about whether a direct payment is appropriate will be made by Devon County Council through our assessment processes. If a decision is made that a direct payment is inappropriate, the reasons for this will be clearly recorded and shared with the young person and/or parent/carer.

Direct payments may be provided for a child or young person:

- Normally resident in Devon (not placed) between 0 and 18 years of age;
- Assessed as having a disability which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities and/or;
- Where suitable short break provision cannot be accessed within their community, through natural support networks, community-based services and/or early help in order to provide a short-break.

If, following assessment, a child or young person is deemed eligible we will talk to you about different ways of accessing support. A direct payment is one approach to pay for services supporting your child or young person's additional needs. Additional needs are those considered to be above the level of support accessible through:

- Parental responsibility and family resources, networks and targeted government support;
- Advice and support provided by Disabled Children's Service or through the range of services and support accessible as part of Devon's graduated response including Education, Health and Care Plans;
- Accessible services, clubs and groups within the community which are commissioned, or grant funded by Devon County Council;
- Early Help support with or without additional targeted services;

Social care plans are provided in partnership with education and health services in Devon.

Social care plans take account of the entitlements available for all families. For example, all 3 and 4-year-olds in England are entitled to 570 hours of free early education a year regardless of family income or circumstances. This is also available for some 2-year-olds, for example, if your 2-year-old has an Education, Health and Care Plan or receives disability living allowance, they may be eligible. The entitlement for working parents of 3 and 4-year-olds is an

additional 570 hours, including childminders. Children in primary and secondary education are entitled to access 25 hours of education per week equating to 950 hours per year regardless of family income or circumstances. Those over 16 years of age on a post 16 study programme designed to be full-time with are entitled to a minimum of 540 planned hours per academic year.

If your child has unmet health needs, please talk to a Health Practitioner about continuing health care support.

## Definition of Disability

The definition of disabled children and young people is set out in the 'Equality Act 2010' and is defined as a child or young person who has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

This would include:

- Sensory Impairments
- Learning disabilities
- Communication difficulties
- Physical impairment
- Chronic or life limiting condition
- Complex health care needs.

There is support available from Children's Services and other organisations for children and young people with additional needs resulting from abuse or trauma for example, but who do not have a disability or where a disability is not the primary need.

## Determining the use and value of a Direct Payment

Direct payments enable the provision of additional support in a manner that will help the child or young person achieve the outcomes recorded in their social care plan.

Direct Payments are considered where an individual's needs cannot be met through the range of support and services which are accessible to them through a universal community provision or targeted support and/or are insufficient to meet their identified social care needs.

[More information about universal community provision](#) can be found on the Devon Local Offer

Direct payments provided by Disabled Children's Service are not designed to meet every identified need for a child, but rather those which are unmet social care needs above the level of support which is reasonably accessible to the child/young person and family.

The amount of support offered reflects the assessed social care need. These vary for each individual. The assessment involves the use of an age-related decision support framework which enables a consistent approach to the provision of support.

For children whose needs can be met through universal community provision, DCC will signpost to appropriate resource and will not provide any additional support through direct payments.

Where assessment concludes that there is a level of need over and above what can be met by the community offer, the assessor will determine the appropriate number of hours for which support is required. The value of the direct payment will then equate to an agreed personal support rate multiplied by the number of hours required. This will be at the rate that Devon County Council could provide similar services directly or through a third-party provider.

Direct payments are made using public funds in order to meet the needs set out in the social care plan. It is Devon County Council's responsibility to ensure the funds are used in accordance with meeting assessed needs. Parents and carers are entrusted to fulfil statutory duties through accessing these funds and agree to those obligations by accepting a direct payment. These are set out in the Direct Payment agreement which a recipient is required to agree and sign prior to a direct payment being provided.

Some children and young people receive support through direct payments provided by Disabled Children's Service on behalf of Devon 0-25 team or Devon NHS Integrated Care Board. These payments must be used in line with the specified planning identified by the responsible service area. Disabled Children's Service cannot give consent to vary or for flexible use for personal budgets or direct payments assessed by health or education.



# Accessing Direct Payments

Direct payments will be made through a local authority provided safe and secure account. This will be credited with funds from Devon County Council at the agreed frequency. A recipient will be issued with an account when an additional need has been assessed and agreed through the Devon County Council process and when they have signed the Direct Payment Agreement.

Devon County Council understand that every child, young person and family is different. Therefore, direct payments may be provided as:

- A single one-off Direct Payment to meet an assessed need which is not enduring or is temporarily increased.
- A single one-off Direct Payment which can be used for occasional or fluctuating use. This might be used for support during holidays.
- A recurring Direct Payment. Recipients are able to accumulate a maximum amount as detailed within the direct payment agreement to cover periods when resource need is higher resulting in higher spend e.g., school holidays.

Recipients are able to accumulate a maximum amount as detailed within the direct payment

Where a family wish to purchase additional support or services above the costs of the identified assessed needs then they are able to “top up” the direct payment funds at their own discretion.

It is important that any family who is assessed as able to access direct payments receives information from the outset to enable them to understand all the responsibilities involved, such as administering the payments, arranging the services needed and the responsibilities of being an employer for enabling services. Direct Payment Advisors provide such information as well as support with recruitment and employment of enablers.

Direct Payments do not affect benefit entitlement for the recipient.

The social care plan will usually be provided for a year before being reviewed. The frequency can vary dependant on the needs of the family. During this review we will discuss with you whether a direct payment is the appropriate ongoing option if a new social care plan is to be arranged.

# Using Direct Payments

Direct payments must be used lawfully to meet the child's assessed needs as set out in their social care plan and to support them to achieve outcomes as agreed between the recipient and Devon County Council. This will be in line with the Direct Payment Agreement form signed by the recipient and will be tailored to each child or young person.

Direct payments are used to meet assessed individual and parent carer needs and the way in which this can happen is flexible. The primary reason for a direct payment is to provide the child or young person with an enabler which allows for them to access activities that develop skills and independence away from the primary carer thus providing a short break for both carer and child as well as access to developmental, sociable, and fun activities for the child or young person.

Access to a short break is most often through using the direct payment to pay for an enabler to provide the support required to enable the child or young person to access a short break.

A parent/carer or young person agreeing to receive a direct payment for the purchase of employed enabling services undertakes to make all arrangements to become the legal employer of any such enabler and to make all payments in accordance with the requirements of HMRC and employment law. Devon County Council will provide some support to direct payment recipients as well as signposting recipients of direct payments to a third party to support them to meet these legal requirements.

## Short Breaks Explained

A short break is an activity for children and young people that allows them independence from their regular parent/carer, is stimulating and developmental. This may mean from a couple of hours away from each other to overnight stays. Short breaks help to meet parent/carers needs and can offer children and young people with disabilities the opportunity to have fun and take part in play and leisure experiences in both universal and specialist settings that contribute to their personal and social development away from their parents.

A short break may include parents or regular carers and may provide additional support through the provision of an enabler to ensure that the needs of the whole family are met, and activities are fun.

If a parent, carer, or young person receive direct payments from the Disabled Children's Service, Devon NHS Integrated Care Board or Devon 0-25 Team

these cannot be used for the provision of overnight support outside of the child or young person's home without a shared agreement between the Devon NHS Integrated Care Board or Devon 0-25 and Disabled Children's Service.

A Short Break can offer choice to children and young people with disabilities and their families - making activities and opportunities accessible which they may not otherwise have considered. This can support and enable children and young people with disabilities to access community-based provisions.

Some direct payments or services are provided as a specific additional level of support above the identified needs. In most cases this need arises from the current circumstances of the family and will be clearly specified within the social care plan. These services are usually short term additional support.

## Limitations on use of Direct Payments

Direct payments are provided to meet the needs as assessed by Devon County Council as detailed within the child or young person's social care plan. Any item, service or activity which does not clearly meet these needs would not be acceptable and would be a misuse of funds. Devon County Council will ask for the money to be repaid if the money has not been used as described in the social care plan. Also purchases which could not reasonably be in the best interests of the child or young person are prohibited and this includes anything that is illegal or that would endanger the child, young person or any other person. Explicitly disallowed are:

- To pay a family member living with the child or young person, except as agreed in **exceptional** circumstances, and at national minimum wage;
- Replacement care which should be provided under parental responsibility or within the family;
- Everyday living expenses and the usual costs of childhood, including family holidays or purchasing items or subscription online;
- Equipment, other than that specifically identified at assessment;
- As a substitute for Disabled Facilities Grants;
- Services that the NHS is required to provide (nursing care, physiotherapy, dressings, medication, operations, support while in hospital or transport to access appointments or equipment/ resources, dental treatment or prescriptions)
- Therapeutic services, support or assessment- e.g. speech and language or mental health therapy or assessment;

- Purchase of Education e.g., private schooling or home tuition fees as the direct payment assessed need is social care;
- Treatments, such as medication, that the NHS would not normally fund because they are not shown to be cost effective;
- Purchasing services directly from Devon County Council or their partner agencies;
- Residential care (except if used for agreed short breaks detailed within the individual social care plan);
- Payments made for enabling that are outside of tax, NI and pension provision commonly referred to a “cash in hand”;
- Household or vehicle expenses, clothing, groceries, petrol, utilities, garden equipment, furniture, household repairs or alterations, warranties or upkeep of any equipment;
- Purchase of pets or the ongoing costs associated with keeping pets;
- Transport to access short breaks where this can be provided locally in a manner which we assess can meet the identified needs;
- Mobile phone contracts, streaming subscriptions or DVDs/computer games which are considered the usual cost of parenting;
- Alcohol, cigarettes, repayment of debts, any form of gambling or goods or services that are obtained unlawfully or which are illegal (e.g., drugs);
- For overnight care where a single placement lasts more than 17 consecutive days and/ or the total overnight short breaks exceed 75 nights or is provided in more than one setting.

## When a Direct Payment cannot be provided

There are a number of situations when it is not possible, legal or advisable to provide a direct payment. These are listed below. When this is the case, access to a direct payment is available through the provision of a managed account which means that a third party is instructed to access and manage the funds on your behalf.

Direct payments cannot be provided in the following circumstances:

- Directly to disabled children who are under the age of 16. Payments can only be made on their behalf to their parents.
- Disabled Children’s Service cannot provide direct payments to those who do not have assessed eligible needs. Assistance will be provided through professional consultation, advice, and information to support early help planning as well as through providing details of appropriate services, support and activities.

- If there are safeguarding considerations that have the potential to negatively impact on the child or young person, or where there are identified risks based on an assessment of the parent's or carer's ability to effectively manage the budget to the benefit of the child or young person then the option of direct payments may be deemed to be unsuitable in preference to Council-managed services. This includes consideration of drug and or alcohol dependencies.
- Carers of disabled children, who do not have parental responsibility for that child, where the payment is made in respect of services for that child.
- To foster parents or other paid carers when Devon County Council is a child's corporate parent;
- Where Devon County Council considers the proposed recipient is not competent to manage the funds and organise the support.

## Use of Funds

When we undertake a review or reassess a child or young person's needs, we will consider the way that any direct payment support provided has been used. This will include reviewing past expenditure and, in some instances, talking to the parent or young person. Also, we review the level of funds available to you at any time to ensure the recipient has access to necessary funding in order to access the identified support.

This action will not change the review or the assessment of a child or young person's needs.

Misuse of funds occurs when the direct payment is used for purchases other than those specified in the child's social care plan, or as set out in the direct payment agreement. This will be considered a misuse and Devon County Council will seek to recover the misspent amount from the parent/carer immediately. This may include the requirement to make a referral to internal audit, debt recovery or include the issue of proceedings in the county court.

Misuse could result in a review of the child's eligibility for a direct payment. Devon County Council will aim to resolve the issue working with those involved. The Council may decide to withdraw direct payment and offer alternative service or to make the direct payment to another individual.

# Support available to Families

The Direct Payment Advisors can help with:

- Understanding the differences between employing someone directly, self-employed and using an agency;
- Job descriptions, advertising, liaising with care agencies and recruiting staff;
- Advice on rates of pay, national minimum wage;
- Identifying risks to the family or employee;
- Support in all aspects of employment law including paying wages, tax, pension, national insurance liabilities, holidays, sick pay and buying employers liability insurance;
- Contingency arrangements;
- Disclosure and barring service checks;
- Self-employed status checks.

## Safeguarding

Safeguarding is an integral component of direct payments, assessment and the support planning process and subsequent review.

Devon County Council will follow up any positive DBS reports, where a concern has been raised. We will complete a risk assessment and will advise families whether the person they intend to employ has been deemed suitable. Direct payments will not be made to parents if the person they intend to employ has been deemed to be unsuitable.

Devon County Council strongly recommends that all enablers employed to provide support, paid from direct payment funds, should undertake an enhanced Disclosure and Barring Service check before they commence their employment as an enabler and before they can be paid as a personal assistant from direct payment funds.

Devon County Council expect an enhanced Disclosure and Barring Service check to be conducted where it is intended for an enabler to be employed in a household where there are children and young people under 18 years. Enablers should not be employed until the Disclosure and Barring Service check is completed, and the Council has received notification of the check from the Bureau. This is set out in the direct payment agreement.

If it has been agreed by the allocated worker that a child or young person can spend time at the home of the enabler, and that time is 'frequent or substantial' all other household members aged 18 and over, who resides with the enabler must be enhanced DBS checked.

Where there is a positive disclosure, Devon County Council will consider the findings and it may be decided that the information does not have a bearing on a person's suitability, or they may find that the person is not suitable to be employed in the role of an enabler. The Council will make the arrangements and will meet the cost of the initial enhanced Disclosure and Barring Service checks where enablers are employed by the young person or parent / carer, and for their household members, where agreement has been given.

In some cases, families choose to engage with a self-employed personal assistant. In these circumstances, it is the responsibility of the self-employed enabler to arrange to have an up to date enhanced DBS check, and for the self-employed worker to meet the cost of that DBS check.

The self-employed worker should agree to provide evidence to Devon County Council of their original DBS check. The information provided by the Disclosure and Barring Service will not be disclosed to anyone other than the person concerned and those making a decision.

# Employing Family Members

Section 17A of the 1989 Act, gave councils a duty to offer direct payments where there was an assessed need for a disabled child or young person. Devon County Council recognises that in exceptional circumstances the employment of relatives is in the best interests of children.

Devon County Council are subject to the duty to safeguard and promote the welfare of children and young people, and to promote their upbringing by their families when making these payments, in exactly the same way as when providing direct services. Direct payments are not intended to replace existing support networks within families and communities.

A direct payment cannot usually be used to employ someone that lives in the same household as the child or young person receiving a direct payment. However, there may be exceptional circumstances to meet the child or young person's unique needs, where this may be agreed. There is discretion for the Council to agree that relatives can support a child or young person, to assist with tasks specific in the child's social care plan, which are over and above or specific to the particular needs of a child or young person, as it relates to their disability. Such tasks or activities would not include what relatives would

usually do for their family members as part of ordinary, supportive family relationships.

For example, it would be usual and ordinary for a grandparent to spend time with their grandchild, taking them to the park, beach, shopping, etc. It would not be ordinary for a grandparent to provide intensive personal care for a child or young person outside of what would be expected in line with a similar child or young person's development. As children mature, consideration will be given to the continuing suitability of an enabler, to meet the child or young person's changing needs, to protect their dignity, and in particular how intimate care needs are to be met.

In some circumstances there may be no other option that would be appropriate in order to meet the social care need. This may include where there is a particular cultural context to help a child with meeting personal care or where this is specifically requested by a young person over 16 years of age. This may therefore be agreed as the most appropriate plan at a specific time.

A social care representative will discuss within assessment, review and planning discussions, the match between children and young people with family members providing support funded by direct payments. This is to ensure that a child's or young person's changing needs, including intimate care needs, can be met whilst protecting their dignity.

Any agreement for a relative to be employed as an enabler, and paid with direct payment funds, will be dependent upon the individual needs of the child or young person, and the specific requirements of the carer, with skills to meet those needs and activities set out in the child's social care plan. Each case will be determined individually. If a relative is in receipt of Carers Allowance for the disabled child or young person, they cannot also be paid as an enabler

These arrangements are in place to ensure that a disabled child or young person's identified needs can continue to be met and the support is suitable.

The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 states that a Council must stop making direct payments if it is not satisfied that the person's needs can be met by using direct payments or if the direct payments are not safeguarding or promoting the child's welfare where the payments relate to services under section 17A of the 1989 Act.



# Review of and Ending a Direct Payment

All children and young people who are in receipt of a direct payment will be monitored and the use of the direct payment and impact on the child or young person will be reviewed annually by the social care team. This review could lead to a change in the amount of support assessed as being necessary.

As children mature, consideration will be given to the continuing suitability of support, to meet the child or young person's changing needs, to protect their dignity, and in particular how intimate care needs are to be met.

A decision to discontinue a direct payment can be made by either by Devon County Council or the direct payment recipient. The normal notice period for termination in either direction is a minimum of four weeks unless the urgency of the decision cannot be delayed.

## Appeals Process

If you do not agree with the level of support that is assessed for you or your child or young person you are able to ask for more information and discuss needs with us for further consideration.

The following process is intended to promote a positive approach to listening to families, ensuring all views are considered and seeking to work through disagreements. Council staff will follow these guidelines to make decisions about eligibility and support plans.

This process does not affect the right of the family to use the complaints procedure at any time or at the end of the process as set out below.

### Resolving disagreements

- The family may ask for information relating to how decisions were made in respect of the support assessed as being necessary and proportionate to the identified need and how this relates to the social care plan.  
They may request a conversation with the assessing worker if they do not feel that the assessment of review is not a true reflection of the child or young person's social care needs resulting from their disability.
- If this is the case, we will work with the family to understand the area's they feel are incorrect and seek to understand why. Where it is evident

that DCC has made a mistake, we will correct this without delay and apologise.

- If we cannot resolve the disagreement the allocated worker will escalate to the team, area or locality manager who will respond and provide these details to the family. We will respond in writing but will always offer a conversation for a further discussion.
- Where the area of disagreement is not about fair access to support, the family will be encouraged to identify support within the current plan. The council can re-evaluate their position best after a support plan has been completed and implemented.
- If the family remains unhappy the Area Manager will be asked to review the relevant decision. In most cases a discussion will be offered with the Area Manager who will consider their point of view and what would make the most difference to them, as a family.

## Complaints

If the family feel the issue is not resolved by the Appeals process, they are able to utilise Devon County Council's [Feedback and Complaints procedure](#).

## Transition to Adulthood

We understand that as children grow and move towards adulthood it is important to support them to develop choice and control including over their finances.

A young disabled person of 16 or 17 may wish to take control of their direct payment where it is managed by a parent, as part of their preparation for adulthood. This could include taking control of just part of the payment and increasing this gradually over time. We understand that some young people upon reaching 16, may lack the mental capacity to consent to the support they receive or a direct payment. Where this is the case for a young person it may be appropriate for the person with parental responsibility to act as a Nominee to continue receiving the direct payment in the role of a Suitable Person. Further help and advice in making these decisions is available from [Dosh – Financial Advocacy](#). Dosh supports people with a learning disability to be able to manage their money. This is an organisation that supports people with a learning disability to manage their money, or from your case worker at Devon County Council.

Direct payments can be made to an individual who has parental responsibility for a disabled child until the child reaches 18.

As a young person reaches 18 recipients of direct payments under Children's Services arrangements will be reassessed as part of their preparation for adulthood to determine their future level of direct payment as a young adult. This will include application of the Council's Charging Policy for Disabled Adults. Young people will need to engage with all processes in preparation for their transition to adult service arrangements. We will seek consent at 14-16 years of age to refer to adult services. The young person will need to consent to an assessment under the Care Act if they have capacity to do so. This assessment will identify their eligible social care needs as a young adult.

For education the EHCP may be agreed up to the age of 25 and where direct payments are agreed for education provision within the EHCP beyond the age of 18 these will remain payable through this policy, in partnership with Adult Services.

# Document details

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## Alternative formats

If you would like this information in another format or language, please contact Jonathan Mitchell by emailing [jonathan.x.mitchell@devon.gov.uk](mailto:jonathan.x.mitchell@devon.gov.uk)