NIPEC
Northern Ireland Practice & Education Council

Department of Health
An Roinn Sláinte
Männystrie O Poustie
www.health-ni.gov.uk

A REVIEW OF

Delegation in Practice

Enabling People to Live Well 'Closer to Home'

ANNEX 4

Overview of Delegation and HSC Direct Payment Schemes Across Other Jurisdictions

Contents

1.0 Introduction

Background

The overarching report: **A Review of Delegation in Practice: Enabling People to Live Well 'Closer to Home',** incorporates learning from a number of Annex reports incorporated within the document. This document is Annex 4 and provides an **Overview of Delegation and HSC Direct Payment Schemes Across Other Jurisdictions.**

The Direct Payments Scheme provides an enhanced service support and care option. This enables families and carers to access additional vital support to provide care for individuals with additional, multiple or complex needs safely in their own home. It is available for all ages and may be in addition to the statutory provision or independent sector provision of care provided by their local HSC Trust community services.

For many, this scheme enables the delivery of personalised care arrangements by personal assistants, who are directly employed and who contract for a service or personal relationship by families or carers. For families this helps, empowering people to make decisions about their own care whilst maintaining the family unit in their own homes. There may a be a risk to independent living if the service is not provided. Direct Payments Scheme are increasingly being used as a way of offering support to and promoting the independence of children, young people, their families and adults with health and social care needs giving greater control and flexibility.

2.0 Local Context

With delegation of healthcare interventions taking place across many professional groupings and across third party agencies. It is important to gain a greater understanding of the delegation of healthcare and the challenges this may be presenting under the Direct Payments Scheme. The *Carers and Direct Payments Act* (NI) 2002[1] outlines HSC Trusts provision of direct payments, in lieu of services. The

[1] *Carers and Direct Payments Act (NI) 2002*. Belfast. Available at: Carers and Direct Payments Act (Northern Ireland) 2002

Act provides a legal definition and recognition of carers, and places duties on HSC Trusts, with a duty to provide a carers assessment of their own needs and also to offer support directly for carers.

Northern Ireland (NI) health policy is devolved to local Assembly, there has been no revision of this legislation to date. It specifies a distinction between 'health care' and 'social care', with direct payments only being available for the provision of social care tasks;

'that the person being cared for is someone for whom it may provide social care.' (Carers and Direct Payment (NI), 2002 1. (1)(b))

This classification of health care or social care in practice, has raised some issues around ambiguity and variance in adoption for the use of healthcare interventions. As a result, increased concerns are being expressed regarding appropriate use of this legislation, including a view that a review of current legislation is necessary. It is anticipated that legal clarification and guidance will be sought. A scoping exercise carried out as part of this review by the Northern Ireland Practice and Education Council (NIPEC) outlines healthcare interventions that were reported to be carried out across the Northern Ireland HSC Trusts (NIPEC, 2025) [2]. (Annex 1: Scoping of Delegated Healthcare Interventions).

In addition, recent concerns have been raised by regulated professionals in relation to delegation of healthcare interventions to personal assistants employed under direct payments. In particular, the delegation of complex tasks by registered nurses and the associated implications for the delivery of safe and effective care, consistent with professional regulation requirements. Registered Nurses are guided by professional and regulatory frameworks, such as; the Nursing & Midwifery Council *The Code; professional standards of practice and behaviour for nurses, midwives and nursing associates (*NMC, 2018) [3], *Deciding to Delegate: A Decision Support Framework for*

[2] Northern Ireland Practice and Education Council (NIPEC), (2025) *Scoping of HSC Trusts Delegated Healthcare and Nursing Tasks under Direct Payments.* Belfast: NIPEC
[3] Nursing and Midwifery Council [NMC] (2018) *The Code: professional standards of practice and behaviour for nurses, midwives and nursing associates.* London

Nursing and Midwifery (NIPEC, 2022) [4] and the Royal College of Nursing (RCN) *Accountability and Delegation guide* (RCN, 2023) [5] along with all other existing local HSC Trust operational policies and governance arrangements.

Concerns have also been raised by families and carers who are in receipt of direct payments, with a perception that vital care is being withheld or when care is deemed not available under the Direct Payments Scheme. For some, this is resulting in increased personal anguish and impacting negatively on their family life. Hence, there is a desire to gain greater clarity around current legislation. Families have also expressed challenges within the system, especially around periods of transitioning between services and when their identified needs change (Up Close, 2024) [6].

Within the Direct Payments Scheme, there are stipulations for individuals who are employed in delivery of care as personal assistants to receive the necessary training, in accordance with departmental policy. When an intervention is being considered for delegation the HSC Trust or provider organisation remains responsible for the person's overall management and has a duty of care requiring, that a reasonable standard of care is exercised when providing support (or omitting to provide support) that could foreseeably harm others. Duty of care, also includes respecting the person's wishes and protecting and respecting their rights.

According to regulatory bodies there is a need to ensure assessment of skills and competency when undertaking interventions, for safe and effective care. The NMC sets out [7] expectations, that people on the NMC register:

- 'Only delegate tasks and duties that are within the other persons scope of competence, making sure they fully understand the instructions.
- Make sure that everyone they delegate tasks to are adequately supervised and supported so they can provide safe and compassionate care.

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[4] Northern Ireland Practice & Education Council for Nursing and Midwifery (2019) *Deciding to delegate: A Decision Support Framework for Nursing and Midwifery*. Belfast: NIPEC

[5] Royal College of Nursing (RCN) (2023) *Accountability and Delegation guide.* London: RCN

[6] *Examines why families are calling for reform of a crucial care option (2024)* Up Close. ITV 12th November 2024. Available at: ITVX

[7] Nursing and Midwifery Council (NMC), (2008*)) Delegation and accountability: Supplementary information to The Code.* London: NMC

- Confirm that the outcome of any task delegated to someone else meets the required standard'. (NMC, P3)

The Health and Care Professions Council (HCPC)[8] also sets out, you must;

- Only delegate work to someone who has the knowledge, skills and experience needed to carry it out safely and effectively.
- Continue to provide appropriate supervision and support to those you delegate to'. (HCPC, 4.1 and 4.2)

There is a responsibility to mitigate and manage potential risks when using Direct Payments Scheme, guided by both professional codes, as well as monitoring and review arrangements within local HSC Trusts. In NIPEC's previous scoping activity a range of Local HSC Trusts assurance mechanisms were identified and in place, to be acted upon in accordance with local policy guidelines and review procedures. As these are locally led, a variation of approaches and practices across the HSC Trusts have resulted. Consequently, there was an expressed need to standardise and strengthen these further, as outlined in the scoping exercise and through reports from users of the system.

It is essential to strengthen this understanding with existing employer arrangements around personal assistants. As well as, local governance arrangements in a more connected way for all those involved.

The Chief Nursing Officer (CNO) for NI has requested NIPEC to undertake a review and capture what is happening across other jurisdictions.

3.0 Across Other Jurisdictions

The United Kingdom (UK) is made up of 4 countries; England, Wales, Scotland and NI. Each country has local health and social care legislation requirements, policies and provision criteria for care. This legislation has been updated across the UK:

[8] Health and Social Care Professionals (HCPC), (2024)

- In England, The Health and Social Care Act (2022)[9] as part of the integrated care board introduced measures which aim to provide greater joined up working for those who rely on multiple different services; NHS England (2022)[10] *Guidance on direct payments for healthcare* and (NHS England, 2023) *Guidance on direct payments to personal assistants.* These are intended to support integrated care boards (ICBs) to apply direct payments for healthcare regulations;

- The Social Services and Well-being (Wales) Act (2014) along with a number of additional supporting frameworks; (NLIAH, 2010)[11]; (Welsh Government, 2014[12]; 2016[13] and 2024[14]); The Health and Social Care (Wales) Act 2025 introduces NHS Continuing Healthcare through direct payments;

- The Act amends the NHS (Wales) Act 2006 to allow Welsh Ministers or Local Health Boards to make direct payments in place of NHS-provided services;

- This is specifically aimed at adults eligible for NHS Continuing Healthcare (CHC), who previously could not receive direct payments under the 2006 Act; and

- Scotland Self-directed Support (Direct Payments) (Scotland) Regulations (2014)[15] and accompany the Social Care (Self-directed Support) (Scotland) Act 2013. These refer to supporting an approach led by personal outcomes and not by historical models of service provision.

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[9] HM Government, 2022. *The Health and Care Act 2022.* Available at: Health and Care Act 2022
[10] NHS England (2022) *Guidance on direct payments for healthcare: Understanding the regulations.* London
[11] National Leadership and Innovation Agency for Healthcare (NLIAH) (2010) *All Wales delegation Guidelines Wales.* Commissioned by National Leadership and Innovation Agency for Healthcare. Cardiff
[12] *Social Services and Well-being (Wales) Act 2014 Part 4 Code of practice (Wales) (201). Cardiff*
[13] Welsh Government (2016) *Third Party Delegation: The required governance framework.* Cardiff
[14] *Well-being of Wales: 2024 Act* (Wales) (2024). Cardiff
[15] Scottish Government (2013) *Self-directed Support (Direct Payments) (Scotland) Regulations 2014*. Edinburgh

There is also a greater focus on Carers and especially young carers with legislation updates across the UK:

- *The Care Act 2014*[16] and *Children and Families Act 2014*[17] in England;
- The *Social Services & Well-being (Wales) Act 2024*[18]*;* and
- The *Carers (Scotland) Act 2016*[19].

Within the last eleven years approximately, all three of these jurisdictions have new laws in place. The revised legislation aims to strengthen delegation processes, safeguarding and obligations with a stronger focus on young carers.

England

NHS England (2014) *Guidance on Direct Payments for Healthcare: Understanding the regulation* outlines direct payments can be made to, or in respect of, anyone who is eligible for NHS care [under the National Health Service Act 2006] and any other enactment relevant to a Clinical Commissioning Groups or the Board. This includes aftercare services under section 117 of the Mental Health Act 1983 against a set eligibility criteria.

The Direct Payments Scheme is available to people who have been assessed by their local authority and deemed as needing care and support. Decisions about providing direct payments for personal and healthcare tasks are based around need, rather than being based around a particular medical condition or severity of condition. It can be spent on a range of things, to meet their personalised care and support plan, to meet their health needs, their wellbeing needs, desired outcomes and only when these are appropriately delegated on case by case basis (NHS England, 2023)[20].

In such cases the healthcare professional will need to be satisfied that the task is suitable for delegation, specify this in the care plan and ensure that the personal assistant is provided with the appropriate training and development, assessment of

[16] *The Care Act 2014*. London
[17] *Children and Families Act* 2014 (UK). London
[18] *Social Services and Well-being (Wales) Act 2014 Part 4 Code of practice.* Cardiff
[19] *Carers (Scotland) Act 2016*. Edinburgh
[20] NHS England (2023) *Delegation of healthcare tasks to personal assistants.* London

competence. This needs to form part of the risk assessment and care planning process, with the outcome clearly recorded in the individualised care plan. The person receiving the direct payment must only use this as agreed within the personalised care and support plan in line with direct payments for healthcare guidance. This has been revised to support the direct payments for healthcare regulations (NHS England 2022).

The National Framework for NHS Continuing Healthcare[21] outlines and distinguishes;

*"*Whilst there is not a legal definition of a **health care need** (in the context of NHS continuing healthcare), in general terms it can be said that such a need is one related to the treatment, control or prevention of a disease, illness, injury or disability, and the care or aftercare of a person with these needs (whether or not the tasks involved have to be carried out by a health professional). In general terms (not a legal definition) it can be said that a **social care need** is one that is focused on providing assistance with activities of daily living, maintaining independence, social interaction, enabling the individual to play a fuller part in society, protecting them in vulnerable situations, helping them to manage complex relationships and (in some circumstances) accessing a care home or other supported accommodation." *(DOHSC, 2022, p.20)*

There is a national policy direction through the Department of Health and Social Care (DHSC) 2022[22] guidance for England, especially in relation to the Health and Care Act 2022 which emphasises, that the responsibility lies in ensuring appropriate training and competence before delegation occurs. This highlights the importance of safe skill development over the healthcare task itself. There is a clear policy drive to standardise delegated roles and training, to support workforce capacity building in the delivery of safe, effective care.

In NI, there is no formal equivalent framework as yet. As such; this legislation differs to England, delegation is guided by a reliance on professional clinical judgement,

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[21] DOHSC (2022, p.200.) *National Framework for NHS Continuing Healthcare and NHS funded Nursing Care, pg. 20.* Available at: National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - July 2022 (Revised) - corrected May 2023

[22] Department of Health and Social Care (DHSC), (2022) *Developing a new framework for delegated healthcare interventions.* Available at: Gov.uk [Department of Health and Social Care]

professional codes, guidance documents and by local HSC Trust policies. Consequently, this can result in more local variation and fewer standardised training programmes or approaches across the system.

Wales

In Wales, The Social Services and Well-being (Wales) Act 2014 came into force, (April 2016). The Act repeals the majority of previous community care legislation and intends to transform the way that social services are delivered through a new framework in Wales for people needing care and support. This introduces national rules for deciding who is eligible for care with different kinds of circumstances for adults, children and carers. Where a care and support intervention can address the identified assessment of needs or enhance the resources to achieve their outcomes, as guided by the supplementary Code of Practice which accompanies the Act[23] . The four key principles are: giving individuals voice and control, increasing preventative services to minimise escalation of critical need, supporting people to meet their own wellbeing need and providing co-production approach.

Third Party Delegation; The governance framework (Welsh Health Circular, 2016)[24] outlines guidance to support the delegation of healthcare tasks of NHS health professionals to non-NHS health and social care support staff. The aim is to co-produce care arrangements with the individual in an integrated way across providers and complex organisational boundaries, whilst maintaining good governance support. This also strengthens accountability arrangements and provides a shared decision-making approach to meeting the needs of individuals and their families in a sustainable way. The delegator remains responsible for the overall management of care and is accountable for their decision to delegate. However, the delegator is not accountable for the decisions subsequently taken by the delegatee.

All Wales Guidelines for Delegation (2016)[25] provides a clear structured national delegation guidance approach. As such, should be considered alongside legislation, regulatory and governance frameworks which underpin safe and effective care. This

[23] *Social Services and Well-being (Wales) Act 2014 Part 4 Code of practice.* Cardiff
[24] Welsh Government (2016) *Third Party Delegation: The required governance framework.* Cardiff
[25] *All Wales Guidelines for Delegation* (2016). Cardiff

outlines a staged assessment process of deciding to delegate. The first stage includes an assessment of the task to be delegated and the individual performing the task. The second stage comprises of the action and review of performance of the task. The registered professional clinically records around the decision to delegate to a specific task, including; the capacity to consent, who will best meet the needs of the individual, obtain consent, risk assessment, if there is a third-party arrangement, the use of contracts, funding and direct payments. There is a focus in nurse-led delegation with structured training. It recognises the support staff delegated roles in delivering care and the framework promotes clarity and confidence for staff undertaking delegated tasks. Regulation is provided by the Healthcare Inspectorate Wales (HIW).

This legislation promotes greater consistency of approach across Health Boards. Wales have extended this further and have stipulated national delegation processes are expected to be recorded and auditable. This differs to NI, in that documentation processes can be informal, with less consistency of documentation practices.

New Changes in 2025: Direct Payments in NHS Continuing Healthcare (CHC) The Health and Social Care (Wales) Act 2025 introduces a major reform: Amendments to the NHS (Wales) Act 2006 now enable Welsh Ministers or Local Health Boards to offer direct payments to adults eligible for NHS Continuing Healthcare (CHC).

The change aims to improve choice, independence and continuity, especially for people relying on trusted personal assistants (PAs).

Scotland

There is no formal national legislation, but delegation is supported by national guidance from NHS Education for Scotland (NES). This includes various tools, training packages and professional development resources. NES provides national clarity on good practice. There is a strong emphasis on values based and person-centred care in delegation decisions. Training is delivered locally, with support by NES, although the uptake can be variable. Board led models can also result in variation, despite the existing national advisory supports. Regulation is provided by Healthcare Improvement Scotland (HIS).

There are various laws and pieces of guidance that govern how someone can access a direct payment through Self-directed Support, in order to employ personal assistants. The main law is called the Social Care (Self-directed Support) (Scotland) Act 2013. This is the law that sets out how Self-directed Support works and how someone can access a direct payment (also known as an SDS Option 1) to employ personal assistants.

There is another law called the Self-directed Support (Direct Payments) (Scotland) Regulations 2014. This sets out the rules around:

- The calculation and payment of direct payments under Option 1;
- When it's possible for a Local Authority to stop a direct payment;
- The employment of family members;
- When someone is not eligible for a direct payment; and
- When the Local Authority don't have to offer the choice of a direct payment to someone.

As well as these laws, the Scottish Government have published Statutory Guidance (Scottish Government, 2022)[26]. This is not law, but is written to help Local Authorities (councils) to understand how they should manage Self-directed Support and direct payments. The Scottish Government (2014)[27] issued a guidance handbook to employers of PAs.

In Scotland*, The Carers (Scotland) Act 2016* commenced, April 2018 with a stronger focus on young carers. Assessments and Carer Support is provided by local councils, undertaking Adult Carer Support plans and Young Carer Statements.

There are a number of options:

- **Option 1**- Direct carer provision may be through **direct payments**, with a sum of money paid by the local council to people assessed as needing services, who would like to arrange and pay for their own care and support services

[26] Scottish Government (2022) *Self-directed Support Scotland.* Edinburgh
[27] Scottish Government (2014) *Personal Assistant Employers Handbook What you need to know.* Edinburgh

directly instead of receiving them from the local council. The intention to provide greater choice, independence and flexibility for those who uses services;

- **Option 2** - An **individual service fund,** providing greater choice and control over what services and support they receive;
- **Option 3** - **Arranged services**. Choose to have the council arrange and manage support for the person you care for**;** and
- **Option 4** - A blend of options is provided to best suit their needs and support for carers '**resource allocation system'** (RAS) to calculate disabled persons budget. An indicative budget is created and a support plan is drawn from.

Scotland supports safe delegation through education in practice, values-based principles, NHS Board leadership. NI relies on individual HSC Trust policies, with less consistent practices and fewer national training programmes and support tools. Although, this is currently being revised and developed in line with best practices.

5.0 Key Messages

In consideration of the reviewed documentation across the four countries, both England or Wales make a broad reference to health care, optimising personal well-being outcomes and social care. Both Scotland and NI refer specifically to Direct Payments Schemes and delegation of social care.

In England, there is an overarching high-level principle, of providing personalised health care need or social care need, based on an assessment of needs and care planned for on an individual, on a case by case basis. The overall emphasis is on training, knowledge and competencies around delivering care rather than the specific tasks themselves. Amendments to the NHS (Wales) Act 2006 now enable Welsh Ministers or Local Health Boards to offer direct payments to adults eligible for NHS Continuing Healthcare (CHC). Wales continues with a broad classification focusing on an assessment of needs or to enhance the resources to achieve their personal outcomes, with an emphasis on increasing preventative services to minimise

escalation of critical need and supporting people to meet their own well-being using a co-production approach with families and carers.

There are distinctions in the legislation and equally aspects of similarity across all jurisdictions. For example; all jurisdictions recognise and have identified areas of increased complexity of needs, for instance, transitioning from Children's services to Adult services. As well as the needs of young carers. Revised legislation across England, Wales and Scotland aims to support this seamless transition. All four jurisdictions given additional reference to the needs of carers and families. These have been strengthened by revised legislation in England, Wales, and Scotland.

All jurisdictions refer to various delegation guidance frameworks, tools, documents or assessment matrix to support the decision to delegate in practice. There is an increased emphasis on training, knowledge and competency and the recording of the decision to delegation, monitoring and ongoing review. In conjunction with, relevant professional and regulatory requirements adhering to the NMC Code (2018) and local; governance, policy arrangements to manage individual assessment of need, mitigation and the management of risks. A range of training and learning resources are available locally to all staff aiming to support enabling safe and effective delegation.

However, it is clear that a multifaceted approach is essential and despite best practice guidelines across, challenges remain with consistency of operational delivery and equity of access, despite best efforts. In addition, newly graduated nurses (NGN) and transitioning from pre-registration nursing student to registrant experience suggests, a need for additional supports. A whole system approach with unified delivery through an agreed regional policy and standards are necessary. In particular, the importance of regional training for PAs and the implementation of best practices. Regionally agreed local nursing education programmes in NI are currently underway and being provided by the RCN, focusing on nursing levels of practice 8-9. The Clinical Education Centre (CEC) is further developing an education programme locally, focusing on nursing levels of practice 5-7. It is anticipated that standardisation of supplementary HSC additional resources will be developed, supported by NIPEC,

including a decision to delegate matrix, competency assessment and embedding training requirements at all levels.

In conclusion, all jurisdictions, shared challenges in relation to delegation of healthcare interventions under Direct Payments, including; inconsistent application, training variability, lack of recognition for support roles and ongoing accountability concerns being raised. This is further complicated by ongoing workforce pressures and service transformation.

NIPEC
Northern Ireland Practice & Education Council

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For further information, please contact

NIPEC
4th Floor James House
2-4 Cromac Avenue
Belfast
BT7 2JB

Tel: 0300 3000066
enquires@nipec.hscni.net

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