

Direct Payments Policy

Slough Adult Social Care

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Written by	Policy Lead
Ratified	ASC Divisional Leadership Team
Outcome	<p>The Direct Payments Policy ensures that Slough Borough Council Adult Social Care is compliant with all relevant legislation and case law.</p> <p>The policy aims to ensure that the delivery of Direct Payments supports local people to live independently, have control over their lives, be as well as possible for as long as possible and feel safe. It also provides effective procedural guidance for staff to enable them to apply the policy and accompanying guidance appropriately.</p>

Equality and Diversity Statement

Slough Borough Council Adult Social Care aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that no-one is placed at a disadvantage over others.

Throughout the development of the policies and processes cited in this document, we have:

- Given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who have shared a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it.
- Given regard to the need to reduce inequalities between people in access to, and outcomes from, social care services and in securing that services are provided in an integrated way where this might reduce health inequalities.

Members of staff, volunteers or members of the public may request assistance with this policy if they have particular needs, including the need for communications support. If the member of staff has language difficulties and difficulty in understanding this policy, the use of an interpreter will be considered.

Direct Payments Policy

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Direct Payments Policy

1. Purpose

This policy applies when Slough Borough Council (we / the Council) intends to:

- meet unmet eligible needs under the Care Act 2014 (the Care Act) **or**
- discharge its after-care duties under s117 Mental Health Act 1983 (the MHA).

For more information about meeting needs under the Care Act and about s117 MHA after-care, please see our:

- Assessment, Care and Support Planning and Review Policy
- Carers policy
- S117 MHA aftercare policy

2. Key Legislation

This policy is based on the following legislation and guidance:

- The Care Act 2014, in particular, sections 31 - 33, and 75 (7)
- The Mental Health Act 1983 section 117 (2C)
- The Care and Support (Direct Payments) Regulations 2014 Care and Support statutory guidance, in particular, chapter 12.

Local authority duties to achieve best value derive from:

- The Local Government Act 1999 - section 3

Other legislation relevant to this policy includes but is not limited to:

- GDPR as enacted in the Data Protection Act 2018
- The Equality Act 2010
- The Human Rights Act 1998
- The Mental Capacity Act 2005 (MCA)
- The Mental Capacity (Amendment) Act 2019.

3. Definitions

Adult with Capacity: An adult who has the mental capacity to make decisions about direct payments

Adult without Capacity: An adult who does not have the mental capacity to make decisions about direct payments. The Council will assume that people are able to make their own decisions about direct payments until we have established that they cannot. We will follow our Mental Capacity Act policy where capacity is in doubt.

Authorised Person: Someone who is authorised under the MCA to make personal welfare decisions about an adult without capacity, i.e., someone who:

- Holds a lasting power of attorney (health and welfare) given to them by the adult before they lost capacity, or
- Was appointed as a deputy for the adult by the Court of Protection under section 16 of the MCA.

Where the person making the request for direct payments on behalf of an adult without capacity is not authorised to make personal welfare decisions as described above, the Council and any person who is authorised to make personal welfare decisions must agree that the person making the request is a suitable person to act as the authorised person.

Carer: A carer is someone of any age who provides practical or emotional support to / looks after a family member, partner or friend who needs help because of frailty, physical or mental illness, or disability. This does not usually include people who are paid, employed or volunteer to act as carers.

The term 'carer' in this policy means an adult caring for another adult.

Close Family Member: Someone who is the adult's:

- Parent or parent-in-law
- Son or daughter
- Son-in-law/daughter-in-law
- Stepson or stepdaughter
- Brother or sister
- Aunt or uncle
- Grandparent, or
- The spouse/partner of any of the people listed and living in the same household as the adult.

DBS: Screening through Disclosure and Barring Services. This checks criminal history and identifies people barred from working with children and vulnerable adults

Financial Assessment: Means tested charges apply in most cases when the Council meets unmet eligible needs for care and support under the Care Act. Where the Council intends to charge for meeting needs, our Financial Assessment and Benefits (FAB) Team carry out a financial assessment (a means test) to decide whether the person can afford to pay all, part or none of the cost of their care and support. Charges do not apply when the Council is:

- providing after-care services under S117 MHA
- meeting the unmet eligible needs of carers under the Care Act

Managed Account: Managed accounts are used in limited circumstances, for example where an adult / authorised person is unable to competently manage the Direct Payment themselves. Direct payments are made to a commissioned service

which manages the funds on their behalf. The direct payments recipient remains responsible for how direct payments are used. For example, if direct payments are used to employ staff, the direct payments recipient is the employer, even though the commissioned service may carry out employment activities on a day-to-day basis. Adults who are able to provide consent may also elect to use a managed account.

MCA: Mental Capacity Act 2005

MHA: Mental Health Act 1983

Minor Adaptations: An adaptation is defined as minor when the total cost including supply and fitting is less than £1000.

4. Policy Statement

This policy sets out the conditions that apply to direct payments and applies to:

- adults (including carers) assessed as having unmet eligible needs under the Care Act where the Council intends to fund part or all of the cost of meeting those needs
- adults entitled to after-care services where the Council is discharging its duties under s117 of the Mental Health Act 1983
- Adult Social Care staff
- any individual or organisation to whom the Council has delegated its duties for support planning and review under the Care Act or its S117 after-care duties.

When the Council is going to contribute towards the cost of meeting needs under the Care Act or pay for S117 after-care arrangements, people who would like to arrange some or all of their own support may apply to the Council for direct payments. Direct payments are not yet available for long-term residential care.

Most people apply for direct payments when they agree their plan for support / aftercare with the Council, but they can apply at any other time. They may also opt out of direct payment arrangements at any time by notifying the Council if they change their mind about having direct payments.

Supporting choice and involvement

We will explain about direct payments at the planning stage so that people may apply for one if they would like to arrange some or all of their own support / aftercare. See our Assessment, Care and Support Planning and Review Policy.

We will actively support people to be involved in planning their support / after-care. We will make reasonable adjustments in line with our duties under the Equality Act 2010 and the Care Act to overcome barriers to involvement. Please see also our:

- Accessible Information policy
- Advocacy policy.

We will assume that adults are able to make their own decisions about direct payments. Where this is not the case, we will follow our Mental Capacity Act policy.

5. Procedure Applying for direct payments

Conditions - adults with capacity / nominated person

The Council will provide direct payments when it is satisfied that:

- the adult has capacity to request direct payments and where applicable any nominated person agrees to receive direct payments, **and**
- the Care and Support (Direct Payments) Regulations 2014 do not prohibit needs from being met through direct payments **and**
- the adult or any nominated person can manage direct payments either independently or with support, **and**
- making direct payments to the adult / nominated person is an appropriate way of meeting needs.

Adults with capacity may **nominate** someone else (often a family member or friend) to manage direct payments on their behalf.

The Council must agree to the arrangement **where the relevant conditions are met including** as the **nominated person** is in a position of trust, is responsible and accountable for how direct payments are used and will be held liable for any misuse of payments.

Conditions - authorised person for an adult who lacks capacity

Requests for direct payments for an adult who lacks capacity to request them must be made by an authorised person. This means someone

- who is authorised under the MCA to make personal welfare decisions for an adult without capacity because they:
 - hold a registered lasting power of attorney (health and welfare) given by the adult before the adult lost capacity, or
 - are a deputy appointed by the Court of Protection

or
- that the Council (and anyone authorised under the MCA to make personal welfare decisions for the adult) agrees is a suitable person to be the authorised person to manage direct payments.

The Council will consider all the relevant circumstances on a case-by-case basis when determining who is a suitable person to be the authorised person to manage direct payments.

The Council will provide direct payments when it is satisfied that:

- where the person making the request for direct payments is authorised under the MCA to make personal welfare decisions for the adult, any person who is so authorised supports the request, **and**

- the Care and Support (Direct Payments) Regulations 2014 do not prohibit needs from being met through direct payments **and**
- the authorised person will act in the adult's best interest in arranging care and support with direct payments, **and**
- the authorised person can manage direct payments either independently or with support, **and**
- making direct payments to the authorised person is an appropriate way of meeting needs.

When assessing whether making direct payments to the authorised person is an appropriate way of meeting needs, the Council will:

- Consult and consider the views of anyone:
 - named by the adult as someone to be consulted about whether direct payments should be made to the authorised person
 - engaged in caring for the adult or interested in their welfare, ○ authorised under the MCA to make decisions about the adult's needs for care and support.
- Consider:
 - the adult's past and present wishes and feelings, particularly any relevant written statement made by the adult before they lost capacity
 - the beliefs and values that would be likely to influence the adult's decision if they had capacity and
 - other relevant factors the adult would be likely to consider if they were able to do so.

An authorised person acting on behalf of an adult who lacks capacity:

- must notify the Council if they believe that the adult has regained capacity.
- is in a position of trust, is responsible and accountable for how direct payments are used and will be held liable for any misuse of direct payments.

Where an adult is unable to consent to direct payments and no appropriate Authorised Person is identified, no direct payments can be made.

Declining an application

The Council will decline any application for direct payments where the conditions set out are not met in full.

When the Council declines an application for direct payments, we will explain in writing:

- which condition(s) was not met
- the reason the Council considers the condition(s) to be unmet
- what the person may need to do to obtain a positive decision
- how to appeal the decision through the Council's complaints process
- continue planning with the adult to ensure that their needs are met / aftercare services provided without the use of direct payments.

When a direct payment is agreed

Direct payments agreements

When a direct payment is agreed, the person who is going to manage the direct payment must enter into a written agreement with the Council.

The Council will provide a copy of the signed agreement to signatories.

Direct payment accounts

The Council will set up a Prepayment card account for the person responsible for managing direct payments. Alternatively, a new bank account could be opened solely for the direct payments to be paid into. The person responsible for managing direct payments will give the council full and correct details of their chosen methods account.

Other options may be available to enable the adult to have a direct payment if the adult/nominated person/authorised person as relevant is unable to manage a Prepayment card account. For example, in some circumstances, the Council may make direct payments conditional on having a managed account.

One-off direct payments do not require a separate account and can be paid directly into an adult's or carer's existing account.

Client Contributions

Means tested client contributions (charge) apply in almost all cases where the Council is meeting an adult's needs for care and support under the Care Act. Where a charge applies, we will ask the adult to have a financial assessment (a means test). This determines the amount (if any) they must pay towards the full cost of their care and support.

Where the financial assessment determines that the adult must pay some or all of the cost of their care and support:

- the adult, nominated or authorised person must pay the assessed amount into the Direct payment Account weekly or monthly
- the Council will add its contribution where relevant. Any contribution from the Council starts once any relevant assessed amount has been fully used. Excess funds which accumulate in the account remain the property of the Council.

The Council will pay the **full** amount agreed in the support plan into the Direct Payment Account each month for:

- S117 after-care arrangements / carer support. Charges do not apply to after-care arrangements or to support directly provided to carers. Where an adult has consented to receive services in order to meet / reduce their carer's needs, charging and financial assessment will apply to the adult
- any adult assessed as not having to contribute towards the full cost of their care and support.

The Council:

- will pay its share of the cost of meeting needs / providing after-care services as agreed in the plan into the Direct Payment Account monthly in advance.
- may make an initial or one-off payment to the account, for example for agreed set up costs, or to meet a specific eligible need that arises during the year or is an eligible annual one-off carer's payment.

The person responsible for managing direct payments uses the funds in the Direct Payment account to arrange the care / after-care agreed in the plan and must meet all costs within the amount agreed.

Getting help to manage direct payments

Anyone (including any nominated or authorised person) who agrees to be responsible for managing direct payments must be capable of managing direct payments either independently or with help.

People managing a direct payment may purchase assistance, for example record keeping, payroll and other employment related services or a managed account.

In some circumstances, the Council may make direct payments conditional upon having a managed account.

Conditions that apply to the use of direct payments

The Council may:

- make direct payments subject to additional specific conditions
- discontinue and / or recover direct payments where the Council has reason to believe that direct payments may have been misspent or accumulated without good reason.

Direct payments **must** be used only as agreed in the direct payments agreement and **must** be used to pay for:

- support to meet needs or for after-care services as agreed in the adult's plan
- services which are safe, legal, adequately safeguard and promote the adult's welfare and wellbeing and are value for money. This does not mean choosing the cheapest option but the one which delivers the outcomes desired at best value for public money.

Direct payments **must not** be used to purchase:

- any service directly provided by the Council
- services, equipment and / or minor adaptations which are the responsibility of other public bodies
- Any expenditure/activity that isn't in your support plan

- Employing someone who lives in the same household (unless there are exceptional reasons which have been agreed)
- Long term Residential care or Nursing Care Services
- Any activity that is illegal
- Services that can be obtained free of charge (e.g. dentistry, eye care, health care)
- Any activity that puts you or others at risk of serious harm
- Expenditure on drugs, tobacco or alcohol
- Clothing and jewellery
- Food/heating/lighting/general household or living expenses
- Rent or housing costs
- Any form of building works
- Aids and adaptations which should be funded from other sources
- General Bank charges
- Mobile phone charges
- Payments to purchase and/or maintain ordinary household items, unless this is explicitly specified in your Support Plan, and meets an agreed need, (e.g. an individual budget would not normally be used to help someone pay to repair their central heating boiler or shower, or to buy carpets)
- Gifts
- Cash Withdrawals (unless agreed in your support plan)
- Gambling
- Purchasing Food and Drink
- Transport Costs.

This is not a full list and the adult or their nominated or authorised person should contact the council if they are not sure what the money can be spent on.

The direct payment should only be spent on what has been agreed in the adult's support plan. If the money is used for anything else, the council may require the money spent to be paid it back into the Direct Payment account.

However, direct payments **may** be used to pay for:

- short breaks in a care home provided that in any 12-month period direct payments are not used to pay for:

- more than 4 consecutive weeks of care in a care home or two periods of less than 4 weeks care in a care home which are less than 4 weeks apart and when added together exceed 4 weeks of care in total
- non-residential services for someone who lives in a care home, for example to try out independent living before moving out of the care home or so that the adult can take part in daytime activities.

Care and support while staying outside of the UK

If you need care whilst you are abroad, you can take your regular carer or PA, but you must pay for their travel expenses and accommodation and not use the direct payment funds.

You can contact a care agency in the country you are travelling to. You will need to find out if the country has a system for regulating social care equivalent to the CQC in England, and ensure the provider fully complies with this. If you consider using a PA in the country you are travelling to, you must ensure you comply with that country's laws regarding employing a PA. If you normally employ a PA in the UK, you must also provide them with sufficient notice for their annual leave requirement during this time and ASC would encourage you to refer to your contract of employment before doing so.

Direct payments while abroad will generally not be paid for more than four weeks in any one calendar year, however there may be exceptional circumstances where this could be extended. This will be considered on a case by case basis by the relevant social care team and approved by the People and Practice Panel.

It is the individual's responsibility to advise the council of going abroad. Failure to return home on the expected date will generally result in the suspension and possible termination of the direct payment, requiring a reassessment of need. Any overpaid direct payment funds will also generally be reclaimed from you.

Except in exceptional circumstances and only as expressly authorised in writing by the Council, direct payments **must not** be used to pay the adult's spouse / partner or a close family member who lives in the same household as the adult to:

meet the adult's needs or

- provide administrative or management support or services in managing the direct payment

Except in exceptional circumstances and only as expressly authorised in writing by the Council, an authorised or nominated person **must not** use direct payments to pay themselves to provide services to the person with care and support needs.

Carer direct payments **must not** be used to purchase care and support for the person with care and support needs. They **must** be used only to meet the carer's own unmet eligible needs.

Using direct payments to employ staff

Legal responsibilities as employers

Direct payments may be used to employ staff, to engage self-employed personal assistants or to pay an agency to provide services. People using direct payments to employ staff become employers and as such have legal responsibilities. An outline of responsibilities can be found at:

[Disability Tax Guide](#) and [Employing Staff](#)

Where direct payments will be used to employ staff, the Council will:

- advise the person responsible for managing direct payments that there are legal responsibilities involved in becoming an employer and explain how to maintain good employment practices

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- urge the person to seek advice about:
 - employer legal responsibilities, including being responsible for all employment related costs, such as workplace pensions, redundancy
 - compulsory employers' liability insurance
- provide a list of direct payment support service providers which can provide information, advice and support.

Disclosure and Barring Services (DBS) checks

The Council **strongly recommends** that DBS checks are carried out for all personal assistants even when the person managing direct payments is not obliged to do so.

Council duty to protect public funds

The Council has a duty to protect the public funds that it administers.

Surplus funds & Debt recovery

Where a Direct Payment Bank Account is held and it is necessary to reclaim unspent (surplus) funds, the DP recipient will have no more than 21 days in which to return the funds and settle the account. Failure to do this will result in SBC's Debt Recovery Policy being activated and the recovery of monies initiated.

Where Prepayment Cards are held, any refunds due to the Council will be deducted from any balance on the card account and where necessary any shortfall will result in initiating the debt recovery procedures to recover the debt to the Council.

The Council will continue to meet needs for care and support if an adult fails to pay the assessed amount (where relevant) into the Direct payment account but the Council:

- will follow its usual debt recovery procedures to recover the debt to the Council
- may suspend or end direct payments either permanently or temporarily.

Fraud and misuse of public funds

Suspected concerns about fraud, including fraud committed against other public bodies, will be reported to the Council's Internal Audit Investigation Team for investigation which may lead to:

information sharing between the Council and other bodies responsible for

auditing or administering public funds such as H.M. Revenue and Customs and the Department for Work and Pensions, and / or

- criminal prosecution.

Monitoring and reviewing direct payments

The Council will keep direct payments under review to ensure that they are being used as intended, that conditions are met and that public funds are being used effectively.

We will inform anyone entering into a direct payment agreement with the Council about monitoring and review requirements including what records they must retain and what information they will be required to produce.

We will review how direct payments are being used within the first six months of the agreement and then at intervals of no more than 12 months.

The Council will also review direct payments at any time when it considers that:

- there has been a change in capacity, or
- any of the conditions is no longer met, or
- direct payments have not been used as intended, or have been persistently underspent, or
- the adult's safety and welfare have been compromised, or
- there has been any change which may adversely affect the effectiveness and intention of the support / after - care arrangements.

Direct Payment financial reviews will be appropriate and proportionate to the relevant circumstances. The review may:

be a 'light touch' review of the Direct Payment Account after which the Council will write to the person managing direct payments to confirm that the account has been reviewed and to raise any identified concerns.

- be more detailed and involve all relevant parties. The Council will confirm the outcome of the review in writing.

When an adult is receiving direct payments to meet both social care and health needs, the Council will make every effort to coordinate processes to try to reduce administrative and compliance requirements.

Discontinuing Direct Payments

People managing direct payments, either for themselves or on someone else's behalf, may discontinue direct payments at any time by giving 4 weeks written notice to the Council. Depending on the circumstances, the Council may agree to vary this notice period.

The Council will provide notice before discontinuing direct payments, except in exceptional circumstances when direct payments may be discontinued without notice.

The Council will end direct payments where it is satisfied that:

- the person no longer requires the support or after-care services for which direct payments are made
- the person becomes excluded from having direct payments - please see **Appendix 2**
- any of the conditions set out regarding adults with capacity or adults who lack capacity, are no longer met

- direct payments are not safeguarding or promoting the person's welfare.

The Council may suspend or end direct payments either permanently or temporarily if:

the adult does not require assistance because their condition has improved and / or they do not need the services that direct payments were intended to secure

- any condition attached by the Council is unmet or the Council has reason to believe that direct payments have been used for purposes other than as specified in the adult's plan
- the adult fails to pay the assessed amount (where relevant) into the direct payments account
- given all the circumstances, the Council considers it appropriate to end direct payments.

The Council may suspend a Prepayment card account while investigations are undertaken if it appears that the account has been accessed without the consent of the person managing direct payments or that unusual transactions have occurred.

Requiring repayment

The Council will require full or partial repayment of direct payments if any condition attached by the Council is unmet or the Council has reason to believe that direct payments have not been used as agreed in the adult's plan.

The Council may require repayment of any unspent direct payment if they are not required for the purposes agreed in the adult's plan.

The Council will require repayment of funds accumulated in the dedicated bank account or Prepayment card account which are in excess of 4-8 weeks or more of Council contributions (unless there is a prior agreement to hold funds for a specific

use to meet identified unmet needs) and where there is no reasonable explanation for the surplus.

Direct Payments do not form part of an estate if someone dies while receiving them. The money always belongs to the Council and remains public funds.

Concerns and complaints

As a first step, the Council encourages anyone who is dissatisfied with Adult Social Care services or with an Adult Social Care decision to:

- discuss their concerns with the staff member they are dealing with or
- ask to speak to the staff member's manager instead.

The Council will try to resolve concerns quickly or explain why this is not possible.

If the concern is not resolved, or if preferred, people may use the Adult Social Care or Council's complaint's procedure, to make a complaint.

6. IAS Guidelines

Please refer to the IAS guidelines for detail on the Adult Social Care Department's relevant online recording processes.

Appendix 1: Equality Impact Assessment

(When considering the following questions you must consider if there is an equality impact upon the following characteristic groups; Race (including Gypsy and Traveller), Disability (egg, hearing loop, signage, wheelchair access etc.), General (men and women), Transgender (gender identity and reassignment), Lesbian, gay and bisexual, Age (this includes older people, children and young adults – people of all groups), faith groups/belief or no belief, pregnant women or women who are breast feeding, people who are married or in civil partnerships)

		Yes/No	
1.	Does this policy affect one group less or more favourably than another on the basis of:-		
	Age	No	
	Disability	No	
	Gender reassignment	No	
	Marriage or civil partnership	No	
	Pregnancy and maternity	No	
	Race	No	
	Religion or beliefs	No	
	Sex	No	
	Sexual orientation	No	
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	No	
4.	Is the impact of the policy likely to be negative?	No	
5.	If so, can the impact be avoided?	N/A	
6.	What alternatives are there to achieving the policy/guidance without the impact?	N/A	

7.	Can we reduce the impact by taking different action?	N/A	
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Appendix 2 - People excluded from having direct payments

Direct payments may not be used to meet the needs of people who are:

- (a) **subject to a drug rehabilitation requirement**, as defined by section 209 (drug rehabilitation requirement) of the Criminal Justice Act 2003 (“the 2003 Act”), specified in a community order (as defined by section 177 (community orders) of that Act, or a suspended sentence order (as defined by section 189(c) of that Act);
- (b) **subject to an alcohol treatment requirement**, as defined by section 212 of the Criminal Justice Act 2003, specified in a community order (as defined by section 177 of that Act), or a suspended sentence order (as defined by section 189 of that Act);
- (c) **released from prison on licence—**

- (i) under Chapter 6 of Part 12 (sentencing: release, licenses and recall) of the 2003 Act or Chapter 2 of Part 2 (effect of custodial sentences: life sentences) of the Crime (Sentences) Act 1997 (“the 1997 Act”), subject to a non-standard licence **condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour**; or
 - (ii) **subject to a drug testing requirement under** section 64 (as amended by the Offender Rehabilitation Act 2014) (release on licence etc.: drug testing) **or a drug appointment requirement** under section 64A (release on licence etc.: drug appointment) of the Criminal Justice and Courts Services Act 2000;
- (d) required to comply with a **drug testing or a drug appointment requirement** specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act;
- (e) **required to submit to treatment for their drug or alcohol dependency** by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- (f) **subject to a drug treatment and testing order** imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (g) **required to submit to treatment for their drug or alcohol dependency** by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995 or **subject to a drug treatment and testing order** within the meaning of section 234B of that Act; or
- (h) released on licence under section 22 or section 26 of the Prisons (Scotland) Act 1989 (release on licence etc.) or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and subject to a condition that they **submit to treatment for their drug or alcohol dependency**.

