EXPLANATORY MEMORANDUM TO

THE DISABLED PEOPLE'S RIGHT TO CONTROL (PILOT SCHEME) (ENGLAND) REGULATIONS 2010

2010 No. 2862

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument establishes pilot schemes in specific locations within England to enable disabled people over 18 to exercise greater choice and control over certain services available to them, known as the 'Right to Control'.

2.2 The regulations set out which services are included in the pilot and the duration of the pilot schemes which will run for up to two years, although in some circumstances the provisions of the regulations will continue to apply after that period.

2.3 It also imposes duties upon the responsible authorities including informing disabled people of the Right to Control, developing a support plan and providing services in accordance with that plan. In addition, it allows for these authorities to share information in relation to the services involved and makes modifications to the legislation governing disabled facilities grants to ensure that disabled occupants are given more control in relation to those grants.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 These regulations confer a new legal right for disabled people in Right to Control pilot areas to have choice and control over the publicly funded services they receive. They are being made under enabling powers contained in the Welfare Reform Act 2009.

4.2 There are six funded services included within the Right to Control, and they are administered by different authorities. The main part of the Right to Control regulations only cover three of these services 'the qualifying services[1]', as the other three already have their own legal frameworks. However amendments are made to the legislation governing disabled facilities grants in Schedule 2.

4.3 In addition, modifications will be made to the Trust Deed which governs the Independent Living Fund.

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[1] 'Qualifying Services' Work Choice, Access to Work and non-statutory housing-related support (known as Supporting People)

4.4 During the Second Reading of the Welfare Reform Act 2009 in the Lords, Baroness Campbell raised her concern over the then exclusion of Adult Community Care from that Act, stating that that "unless social care is included in the Bill, disabled people will not be able to exercise their right to control over all social care services". [Hansard reference: 29 April 2009: Column 275][2]. This was agreed and the Right to Control is now also aligned with Adult Community Care, which became the sixth funded service. Directions will be issued to local authorities by the Department of Health to enable this.

4.5 If, following evaluation of the pilot scheme, a decision is made to roll out the Right to Control more widely, new legislation will be required to achieve this. This new legislation will take into account any changes found to be necessary during the pilot.

5. Territorial Extent and Application

This instrument applies to England only

6. European Convention on Human Rights

The Minister for Disabled People, Maria Miller MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Disabled People's Right to Control (Pilot Scheme) (England) Regulations 2010 are compatible with the Convention rights."

7. Policy background
What is being done and why

7.1 'Putting People First: A shared vision and commitment to the transformation of adult social care[3]' published in December 2007 pledged to ensure that all public bodies would work together towards a society that enables individuals to have choice and control over their lives.

7.2 The Right to Control has been developed in partnership with disabled people, their organisations and other stakeholders, in line with the principles of co-production. An earlier consultation was undertaken to ensure that disabled people could have input into developing the Right to maximise the benefits and reduce the barriers to delivering choice and control. This is available at http://www.officefordisability.gov.uk/docs/wor/rtc/rtc-gov-s.pdf

7.3 The pilot schemes will commence on 13th December 2010 for the majority of the sites. The exceptions are the two consortium sites[4], where several pilot areas will be working together to deliver the Right and therefore require more time to ensure

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[2] http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90429-0010.htm#09042957000017

[3] http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_081118

[4] Sheffield and Barnsley pilot scheme and Greater Manchester pilot scheme (comprising of Bury, Manchester, Oldham, Stockport and Trafford)

correct procedures are in place. These will commence in two further stages on the 1st March and the 1st April 2011.

7.4 These regulations provide that relevant authorities participating in the pilot scheme have a number of obligations in order to promote the Right to Control. These include informing the disabled person of what the Right to Control is; details of the other Right to Control publicly funded services; the likely value of any service they receive and the development of a support plan, which must include the outcomes to be achieved.

7.5 A framework for the provision of direct payments is set out within the regulations. In certain circumstances, a disabled person may chose to receive a cash payment, with which they can purchase services themselves, to meet one or more of the agreed outcomes from their support plan. These mirror The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009[5] to ensure consistency in the way services are delivered.

7.6 Although there is provision to make direct payments this is limited in certain circumstances, for example where it imposes an unreasonable financial burden on the authority or where it is not reasonably practicable to do so. A direct payment would not be available to people who are subject to certain drug- or alcohol- related sentences or orders (listed in Schedule 1) or to someone on their behalf. This is again to ensure that the Right to Control regulations are currently kept in line with other direct payment legislation during the period of the pilot, but this decision could be reconsidered if the Right to Control was rolled out more widely. For those disabled people who lack capacity to consent to the making of direct payments, the payments may be made to a 'suitable person' on the disabled person's behalf.

7.7 The ability to simplify procedures for the disabled person across all six publicly funded services is an important requirement for the Right to Control to be delivered efficiently and effectively. These regulations will allow relevant authorities to disclose relevant information to each other for certain specified purposes such as determining eligibility for Right to Control services, monitoring direct payments and developing support plans.

Consolidation

7.8 These are the first regulations to be produced in relation to the delivery of the Right to Control. They therefore do not amend any other statutory instrument.

8. Consultation outcome

8.1 This instrument was originally prepared in consultation with disability organisations, including the National Centre for Independent Living and RADAR, and the Department of Health. This was then put forward to the public for comment in the consultation document Making Choice and Control a Reality for Disabled People: Consultation on the Right to Control Trailblazer Regulations from 25 February 2010 to 26 May 2010.

[5] http://www.opsi.gov.uk/si/si2009/uksi_20091887_en_1

8.2 34 responses were received in total including from several disability organisations and some individuals, and all seven main pilot areas, where the consortium sites provided a joint response. Overall the feedback was supportive of what the draft regulations were intended to achieve, although concerns were raised mainly due to the complexity of the regulations, and additional clarity was requested. This complexity is due to the drawing together of the six separate publicly funded services for Right to Control, of which three already have existing legal frameworks, rather than being able to provide single legislation that covers all the services.

8.3 These concerns will be addressed mainly through the provision of statutory guidance rather than through amendment of the regulations, to allow for fuller explanations and more flexibility in the way each pilot area administers the Right to Control.

8.4 As a result of the responses received, the following were the main amendments made to these regulations:

8.4.1 providing greater clarification on the procedures required in providing direct payments,

8.4.2 ensuring that direct payments should be repaid if it is shown that the cash payment has not been spent in accordance with the support plan; that a condition on which payment has been made has not been complied with or that an overpayment has been made. Any amount repaid will be recovered as a debt in accordance with the current relevant authority's procedures,

8.4.3 providing that only three of the non-metropolitan districts within the County of Essex will be participating in the Right to Control in relation to disabled facilities grants,

8.4.4 ensuring that a property owner (as well as the applicant) is required to approve the section of a disabled person's support plan which relates to the works to be carried out to their property and the contractor to be used when the disabled person exercises the Right over a Disabled Facilities Grant,

8.4.5 providing that a disabled person , or suitable person, receiving a direct payment must also approve the support plan, and

8.4.6 providing consistency across the publicly funded services within the Right to Control, for example requiring the disabled person's consent to a direct payment, and the regulations now allow for the delegation of some functions such as support planning to third parties.

9. Guidance

9.1 Statutory Guidance will be produced to support the delivery of the Right to Control, providing responsible authorities with greater detail about how the regulations apply and ensuring a consistent approach across the pilot areas. Due to the complexity of bringing together the different publicly funded services this guidance will be important in providing the clarity the pilot areas will require for delivery. This guidance will be widely available to the public as well as the relevant authorities, and will be published on the Office for Disability Issues website http://www.officefordisability.gov.uk/working/right-to-control.php

9.2 Non-statutory guidance has also been provided to help ensure that best practice is recorded, shared and utilised across the pilot areas. This is in the form of a best practice guide and is also available on the Office for Disability Issues website at http://www.officefordisability.gov.uk/docs/wor/rtc/rtc-good-practice.pdf.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies

10.2 The impact on the public sector is negligible

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 During the duration of the pilot, information will be collated to ensure the impact of the Right to Control has been fully understood. A comprehensive evaluation will be conducted by an independent research organisation who will consider the impact not only on disabled people and the relevant authorities taking part, but also carers; service providers and advocacy and brokerage services.

12.2 Information collected from pilot areas will be compared with information provided from similar but non-pilot areas to compare experiences and find out whether the disabled people who took part felt they had more choice and control over the funding they received. It will also capture any concerns from those who felt they had not been supported sufficiently.

12.3 The evaluation will last for the full duration of the pilot, and once the period has ended, a full evaluation report will be published to ensure that the lessons learnt are publicly available, and the evidence will be used to inform any decision to offer the Right to Control more widely.

13. Contact

Lynda Sumner at the Office for Disability Issues Tel: 020 7449 5317 or email: lynda.sumner@dwp.gsi.gov.uk can answer any queries regarding the instrument.