EXPLANATORY MEMORANDUM TO

THE BREAKS FOR CARERS OF DISABLED CHILDREN REGULATIONS 2010

2010 No. [XXXX]

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

2. Purpose of the instrument

2.1 The purpose of the Breaks for Carers of Disabled Children Regulations 2010 ("the 2010 Regulations") is to prescribe how local authorities should carry out their duty to provide a short breaks service to carers of disabled children. The 2010 Regulations prescribe the matters to which local authorities must have regard when performing their duty, the range of breaks which must form part of an overall service, and the way in which local parents must be informed of that service.

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

3.1 None.

4. Legislative Context

4.1 Paragraph 6(1)(c) of Schedule 2 to the Children Act 1989 (inserted by section 25 of the Children and Young Persons Act 2008), requires local authorities to provide services to assist individuals who provide care for disabled children to continue to do so, or to do so more effectively, by giving them breaks from caring.

4.2 Paragraph 6(2) requires local authorities to perform this duty in accordance with regulations made under that paragraph. The 2010 Regulations, therefore, are the first regulations to be made exercising the power conferred by paragraph 6(2) of Schedule 2 to the Children Act 1989 and prescribe the manner in which local authorities must perform their duty at paragraph 6(1)(c).

5. Territorial Extent and Application

5.1 This instrument applies to all of England.

6. European Convention on Human Rights

Sarah Teather MP has made the following statement regarding Human Rights:

In my view the provisions of the Breaks for Carers of Disabled Children

Regulations 2010 are compatible with the Convention rights.

7. Policy background

7.1 The policy objective underpinning the 2010 Regulations is to ensure that local authorities recognise the provision of short breaks services as an essential service to be offered to carers of disabled children. It follows a significant three year investment to build short break services, which itself followed a number of parliamentary debates in 2007 highlighting short breaks as being a key element of the support provided by a local authority to people who care for disabled children.

7.2 The 2010 Regulations, therefore, prescribe that, in exercising their duty under paragraph 6(1)(c) of Schedule 2 to the Children Act 1989, local authorities must have regard to the needs of different types of carers in the area. They provide also that a range of types of break should be offered by local authorities and when they should be provided, and prescribe how carers should be informed of their local service by the local authority.

7.3 The intention of regulation 3 is to ensure that breaks are not just offered as an emergency intervention, but as part of the general support provided by a local authority that should be available to eligible families with caring responsibilities for a disabled child, so that they are able to continue to provide care or to manage their responsibilities effectively.

7.4 Regulation 4 sets out the range of breaks that should be offered and when such breaks should be available. The intention of regulation 4 is that carers should be able to access breaks which are appropriate and convenient for their individual circumstances. The independent evaluation of short breaks services has shown that inflexible breaks, which are offered at times which are not helpful to a family, or at an inconvenient location, provide no real respite for carers.

7.5 Regulation 5 requires local authorities to publish information, for carers to access, about the range of services offered in their locality, and the local authority's eligibility criteria for accessing them. This regulation is central to ensuring that there is transparency in local areas about the breaks that are available, and the way in which they can be accessed. The transparency of information to carers is designed to ensure that in areas where an appropriate range of breaks was not being offered, carers would have access to enough information to be able to challenge the local authority appropriately.

7.6 Regulation 5 has been amended since the draft which was consulted on, as a necessary consequence of changes to other legislation. It was originally intended that the 2010 Regulations would require local authorities to publish a sufficiency assessment of short breaks services and that sufficiency assessment would have formed part of a wider Children and Young People's Plan. However, the Children's Trust Board (Children and Young People's Plan) (England) Regulations 2010, which required the Children's Trust Board

to prepare and publish a Children and Young People's Plan, are due to be revoked with effect from 31st October 2010 (subject to parliamentary agreement).

7.7 The purpose of publishing an assessment of short breaks sufficiency was to ensure that services were matched to the needs of local parents. In order to maintain the link between parents' needs and the provision of services locally, regulation 5 will now require local authorities to publish information for parents about the services available and any eligibility criteria which apply. The statement would ensure that parents are able to challenge local authorities which are not providing an appropriate range of short breaks, or which are illegally limiting access to them. At the same time, local authorities would not be subject to the same level of prescription about how they designed a service and the information published in line with the Government's agenda to reduce bureaucracy.

7.8 It is estimated that there are about 700,000 disabled children in England, of which about 150,000 currently access a short breaks service. The 2010 Regulations do not provide carers with an entitlement to a service, but are intended to ensure that those who are most in need are able to access the support they need. Local authorities will still have the flexibility to provide a service which reflects the funding available to them.

7.9 There has been significant investment in services since 2007 as part of a Government programme to improve disabled children's services. That investment had been supported by ring-fenced funding, and by an independent 'field force' – an organisation which provides day to day support to service managers in local authorities to help them improve their delivery of breaks. The field force will no longer be in place from April 2011 when the 2010 Regulations come into force. It is the services that have grown as a result of investment which the 2010 Regulations seek to maintain.

7.10 There is an active lobby for disabled children and their families and a high level of public interest in this matter. There was a very positive response to the amendment to paragraph 6 of Schedule 2 to the Children Act 1989 during the passage of the Children and Young Persons Bill, and there has been a positive response to the consultation of the 2010 Regulations in that respondents were content with the draft regulations.

8. Consultation outcome

8.1 A draft of the 2010 Regulations and draft statutory guidance were consulted on under the previous Government for 12 weeks between January and March 2010. Local authorities, sector specific voluntary organisations and parents of disabled children were encouraged to respond, and the Department ran four consultation events – three for local authorities and a fourth for parents of disabled children.

8.2 58 responses to the consultation were received: 27 of those were from local authorities, 16 from voluntary sector organisations and 9 from parents

and carers of disabled children.

8.3 Most of the responses to the consultation questions were positive, 51% respondents agreeing with the type and range of services set out and the way in which local authorities should identify local demand for short breaks in order to design the service, and for publication of information the Children and Young People's Plan. A number of respondents also expressed their desire to see a greater role for PCTs in the design and delivery of short breaks services.

8.4 A number of responses were given in relation to the detail of statutory guidance. Since the consultation, it has been agreed that the Department will issue practice guidance rather than statutory guidance. Practice guidance will include the main points on the draft statutory guidance, but will have a greater focus on practical examples. The guidance's non-statutory status would enable it to be updated more easily to include emerging new good practice. In particular, we would be able to update guidance to reflect the new context provided by the forthcoming Green Paper on children with special educational needs and disabilities. It was also felt that issuing further statutory guidance was too prescriptive given this Government's intent to increase local autonomy, and reduce the bureaucratic burden.

8.5 Since consultation, the regulatory requirements have also been amended. 51% of respondents agreed with the requirement to assess short breaks services as part of the Children and Young People's Plan process. Following the revocation (subject to parliamentary agreement) of the Children's Trust Board (Children and Young People's Plan) (England) Regulations 2010, and the desire to reduce bureaucracy, the requirement to assess services has been replaced in the final draft of the 2010 Regulations and replaced with the requirement to publish a statement to carers about services available.

9. Guidance

8.6 The guidance which will now accompany these Regulations will be non-statutory practice guidance which will be issued as soon as possible and which will give local authorities practical guidance about how to deliver a high quality service which meets the needs of carers. The guidance can be updated easily, in order to keep the practice recorded fresh and relevant and so as to incorporate any new messages which come from the Green Paper which could further contextualise the delivery of short breaks services.

10. Impact

10.1 The impact on business, charities or voluntary bodies is broadly positive. The voluntary sector currently delivers about 40% of short breaks services; this instrument will not require local authorities to change their commissioning practice.

10.2 The impact on the public sector is limited. Local authorities have been

building up services over the last three years, and will be in a position now to meet the obligations set out in the 2010 Regulations. The intention is that local authorities should maintain the current level of service.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The 2010 Regulations do not apply to small business.

12. Monitoring & review

12.1 The National Development Team for Inclusion (NDTi) have conducted a baseline study about the impact of short breaks services. The team will review the impact of short breaks services after 2 years, and report its findings in summer 2011.

13. Contact

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