EXPLANATORY MEMORANDUM TO

THE CONTRACTING OUT (LOCAL AUTHORITIES SOCIAL SERVICES FUNCTIONS) (ENGLAND) (AMENDMENT) ORDER 2012

2012 No. [XXXX]

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

2. Purpose of the instrument

2.1 The purpose of The Contracting Out (Local Authorities Social Services Functions) (England) (Amendment) Order 2012 is to amend the Contracting Out (Local Authorities Social Services Functions) (England) Order 2011 ("2011 Order"). to allow local authorities to contract adult social services functions for the purposes of two types of pilot schemes - adult social work practice pilot schemes and right to control pilot schemes beyond the period permitted under the 2011 Order.

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

3.1 None.

4. Legislative Context

4.1 Orders made under section 70 of the Deregulation and Contracting Out Act 1994 allow the contracting out of local authority functions. The 2011 Order permits specified social services functions to be contracted out to third parties by local authorities participating in two government funded pilot programmes - adult social work practice pilot schemes and right to control pilot schemes.

4.2 The definition of adult social work practice pilot scheme in article 2 of the 2011 Order refers to an invitation of the Secretary of State for Health dated 24th November 2010. That invitation states that the programme of social work practice pilots will run for two years from the summer of 2011. The 2012 Order amends the definition to include a pilot scheme which is subsequently extended beyond the initial two year period, pursuant to a letter of the Secretary of State for Health dated 12th October 2012.

4.3 Article 4 of the 2011 Order (Contracting out: right to control pilot) permits a local authority to contract out the specified functions if it is included in the Schedule to the Community Care Services: Disabled People's Choice and Control (Pilot Scheme) (England) Directions 2010. Those Directions cease to have effect on 13th December 2012. The 2012 Order amends article 4(2) so that the reference to those Directions is replaced by a reference to Directions of the same name dated 2012, which will cease to have effect on 13th December 2013.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

The Minister of State for Care Services made the following statement regarding Human Rights:

In my view, the provisions of the Contracting Out (Local Authorities Social Services Functions) (England) (Amendment) Order 2012 are compatible with the Convention rights.

7. Policy background

7.1 The introduction of the 2011 Order followed representations from local authorities to allow delegation of statutory functions to third parties in line with government policy to allow users of community care services greater choice and control in meeting their care needs. The Government is fully committed to improving the experiences and outcomes for people in vulnerable circumstances and empowering social workers to do their jobs effectively, while reducing bureaucracy.

7.2 The Social Work Practices (SWP) pilot programme supports the Government's wider agenda of building personalisation as the pilots give local authorities a unique opportunity to test the potential benefits of various SWP models and to adopt innovative approaches to delivering services for adults and their carers. The pilots have received funding from the Department of Health to help them set up and develop the SWPs.

7.3 SWPs discharge functions of the local authority in providing adult social care services and are responsible for providing the support to people to achieve better experiences and better outcomes. They have responsibility for undertaking delegated social work functions, managing day-to-day support, co-ordinating and monitoring service provision. The local authority maintains its strategic and corporate responsibilities and manages the contract and partnership with the SWP.

7.4 Following discussions with the Social Care Institute for Excellence who manage the sites on behalf of the Department of Health, and after considering feedback from the sites themselves, Department of Health ministers have agreed, subject to Parliamentary approval, to extend the period for which the existing SWPs may run. This extension would address two core issues – to allow the pilot sites that went live later than expected the opportunity to contribute more fully to the independent evaluation. Due to the late start, many sites have not been able to provide full evidence to the independent evaluation programme – this extension will enable them to do so. It will also mean that no pilot schemes will have to end before the evaluation has reported (Winter 2013) and the Department has considered it's response (early 2014) The Department of Health does not wish to lose the good progress the SWP sites have made thus far, due to the gap between the pilots finishing and the evaluation reporting – an issue that unfortunately was overlooked at the time the original Order was laid.

7.5 This proposed extension will therefore allow the sites, subject to the terms of their contracts with the relevant local authorities to continue to provide their services until the independent evaluation has been produced and the Department is in a position to formally consider next steps. We propose the extension to be until 31 March 2014.

7.6 The Right to Control gives disabled adults greater choice and control over certain state support they receive to go about their daily lives. The supporting legislation is in the Welfare Reform Act 2009. The Right is based on the principle that disabled people are the experts in their own lives and they can decide what support they need and how it should be delivered.

7.7 The Right to Control pilots are being tested in seven trailblazing local authorities in England. The Trailblazers, funded by the Office for Disability Issues (ODI), will evaluate the best ways to implement the Right and will be used to inform decisions about whether and how to roll out the Right more widely. Disabled people accessing the Right to Control have a right to be told how much money they are eligible to receive for their support. They are able to choose, in consultation with the public authority delivering the funding stream, how that money is used to meet agreed outcomes. In addition, they are also able to choose different degrees of control over their support.

7.8 Trailblazers asked if, as part of the pilot programme, they could test the delegation of their statutory duty to review social care assessments to third parties such as user led organisations.

7.9 DWP officials have received Ministerial approval to extend the Right to Control pilots, subject to Parliamentary approval of legislation, for a period of 12 months in order to gain more evidence of the benefits during the pilot programme and therefore wish to continue to test the delegation of the above mentioned statutory duty to review.

8. Consultation outcome

8.1 For the original Order, the Association of Directors of Adult Social Services and the Local Government Association were consulted in accordance with section 70(3) of the Deregulation and Contracting Out Act 1994. The councils involved in the pilot programmes and members of the SWP Steering Group which includes representatives of the councils, social workers and service users and carers, have also been consulted.

8.2 For this Order, the Directors or Adult Social Services in each of the pilot sites have been consulted, along with representatives of the SWP steering group as above. The proposal to extend the Order has been well received and the Department of Health has written to Directors or Adult Social Services in each of the pilot sites to confirm the intention to amend the Order, subject to Parliamentary approval.

8.3 The Right to Control pilot extension has been subjected to public consultation. During this consultation, no adverse views were received on extending the pilot programme by a further 12 months.

9. Guidance

9. No guidance has been issued in relation to the 2011 Order and none will be issued in relation to this Order.But ODI have issued general guidance to trailblazers about testing the Right to Control. Councils piloting SWPs have been receiving project advice and support throughout the pilot phase.

10. Impact

10. An impact assessment has not been prepared for this instrument as it relates solely to councils involved in pilot programmes. However, although there would appear to be no significant initial impact on private and voluntary sectors, councils will need to consider and monitor how the work of the developing SWPs might include, and impact on, private, voluntary and public services.

11. Regulating small business

11.1 The Order applies only to those councils and SWP pilots taking part in the pilot programmes and will have no bearing on the regulation of existing small businesses.

12. Monitoring and review

12.1 Councils involved in the pilot programmes will monitor and review the work both they and the contracted SWPs undertake. There will also be separate independent evaluations of both pilot programmes to draw out best practice and recommendations.

13. Contact

Kevin Kitching at the Department of Health Tel: 0207 972 4238 or email: Kevin.kitching@dh.gsi.gov.uk can answer any queries regarding the instrument.