EXPLANATORY MEMORANDUM TO

THE CONTRACTING OUT (LOCAL AUTHORITIES SOCIAL SERVICES FUNCTIONS) (ENGLAND) ORDER 2011

2011 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) Order 2011 is 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 (article 3) and right to control pilot schemes (article 4).

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 and have been used by many government departments. For example, under legislation relating to social security benefits, housing and council tax. This Order permits specified social services functions to be contracted out to third parties by councils participating in two government funded pilot programmes.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

Paul Burstow has made the following statement regarding Human Rights:

In my view, the provisions of the Contracting Out (Local Authorities Social Services Functions) (England) Order 2011 are compatible with the Convention rights.

7. Policy background

7.1 The introduction of the instrument follows 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 the 'Big Society', bringing the people who access services and staff closer. The pilots will 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 will receive funding from the Department of Health to help them set up and develop the SWPs.

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

7.4 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.

7.5 The Right is 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 will have a right to be told how much money they are eligible to receive for their support. They will be able to choose, in consultation with the public authority delivering the funding stream, how that money is used to meet agreed outcomes. They will be able to choose different degrees of control over their support.

7.6 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.

8. Consultation outcome

8.1 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. The draft Order was well received, with helpful comments resulting in some amendments to the original draft.

9. Guidance

9.1 No guidance will be issued in relation to the Order, but ODI have issued general guidance to trailblazers about testing the Right to Control. Councils piloting SWPs will also receive project advice and support.

10. Impact

10.1 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

13.1 John Crook at the Department of Health Tel: 0207 972 4086 or email: john.crook@dh.gsi.gov.uk can answer any queries regarding the instrument.