EXPLANATORY MEMORANDUM TO
THE SPECIAL EDUCATIONAL NEEDS (DIRECT PAYMENTS) (PILOT SCHEME) (EXTENSION AND AMENDMENT) ORDER 2014

2014 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 this Order is to extend and amend the provisions of the pilot scheme for making direct payments, as set out in the Special Educational Needs (Direct Payments) (Pilot Scheme) 2012[1] ("the 2012 Order"). The amended pilot scheme will have effect on 29 January 2014. This Order extends the pilot scheme until and including 30 September 2015. A local authority will not have to consider a request for a direct payment which is made after 31 August 2014, nor will it need to provide advice or information concerning direct payments from after that date.

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

3.1 None

4. Legislative Context

4.1 The pilot scheme made under the 2012 Order is due to cease on 29 January 2014. This Order extends the period of that pilot scheme until 30 September 2015. This will allow a transition period for recipients of direct payments under the pilot scheme to transfer to the new system established by Part 3[2] of the Children and Families Bill, which it is anticipated will have been commenced in September 2014.

4.2 The pilot scheme is being amended to provide that local authorities will not consider requests for direct payments after 31 August 2014, when it is anticipated that those entering the special educational needs "system" will instead be entitled to request a direct payment under the Children and Families Bill.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

[1] S.I 2012/206
[2] [Personal budgets and direct payment] which is clause 49 of the Bill as amended in Grand Committee in the House of Lords

6.1 The Minister for Children and Families as made the following statement regarding Human Rights:

In my view the provisions of the Special Educational Needs (Pilot Scheme)(Extension and Amendment) Order are compatible with the Convention rights

7. Policy background

7.1 This Order will permit the on-going testing and use of direct payments and also allow for transition for families taking part in the pilot scheme to the new system set out in Part 3 the Children and Families Bill, which is expected to be commenced from September 2014.

8. Consultation outcome

8.1 There has been no formal consultation about the extension of the pilot scheme.

9. Guidance

9.1 Advice and support for local authorities involved in the pilot is available from the pathfinder support team, appointed by the Department for Education to support the testing of the SEN reform programme.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The use of direct payments under the pilot scheme has been included in the formal evaluation of the pathfinder programme. Reports are available on the Department for Education website. A further thematic evaluation report, on the use of personal budgets including direct payments, will be published in 2014.

12.2 The pilot scheme will effectively cease for new entrants after 31 August 2014 and cease completely after September 2015. The order making power is subject to a sunset

clause that has the effect that sections 532A to 532C of the 1996 Act are repealed at the end of four years from the date on which the Education Act 2011 received Royal Assent.

13. Contact

Andrew Baxter at the Department for Education Tel:020 7340 7454 or email: andrew.baxter@education.gsi.gov.uk can answer any queries regarding the instrument.