

**EXPLANATORY MEMORANDUM TO
THE SPECIAL EDUCATIONAL NEEDS (PERSONAL BUDGETS) REGULATIONS**

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Purpose of the instrument**

2.1 The purpose of this instrument is to provide a framework for the use of personal budgets for children and young people with special educational needs who have an Education Health and Care plan (EHC plan) or for whom a draft EHC plan is prepared. They set out the criteria and detailed provision for the use of personal budgets, including direct payments for special educational provision.

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

3.1 None

- 4. Legislative Context**

4.1 This instrument is made under section 49 of the Children and Families Act 2014 ('the 2014 Act') and sets out the framework for personal budgets, including the procedures for the handling by the local authority of requests for direct payments. Under section 135(6)(a) of the 2015 Act, the first regulations made using the powers in section 49 are subject to affirmative resolution. Subsequent regulations will be laid under the negative resolution procedure. The regulations will come into force on 1 September 2014.

- 5. Territorial Extent and Application**

5.1 This instrument applies to England.

- 6. European Convention on Human Rights**

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

In my view the provisions of the Special Educational Needs (Personal Budgets) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 Part 3 of the 2014 Act sets out a package of reforms for the support of children and young people with special educational needs and disabilities. The reforms, first proposed in the 2011 Green Paper: *Support and Aspiration a new approach to special education needs*ⁱ, will implement a new approach to SEN and disability which seeks to join up provision for special educational needs and disabilities across education, health and social care from birth to 25. Help will be offered at the earliest possible point, with children and young people with SEN and disabilities and their parents or carers fully involved in decisions about their support and what they want to achieve. This should lead to better outcomes and more efficient ways of working.

7.2 The policy intention underpinning the introduction of the offer of a personal budget from September 2014 is to give parents and young people with an EHC plan direct choice and control over the services they receive and allowing them to tailor provision to meet their own unique needs. In addition by September 2014, the Department for Education expects to see:

- New arrangements for joint commissioning across education, health and social care;
- A transparent ‘local offer’ of services from birth to 25, developed in partnership with parents and young people;
- A more streamlined assessment process, co-ordinated across education, health and care, with a single EHC Plan for those with more complex needs (replacing the current system of Statements and Learning Difficulties Assessments).

7.3 There has been considerable public interest in the reforms with approximately 2500 responses to the initial consultation on the Green Paper and over 700 responses to the most recent consultation (see 8 below). The reforms have been thoroughly tested by a pathfinder programme, established in September 2011, that is running in 31 local authority areas. Their work has included testing of direct payments for SEN provision under the Special Educational Needs (Direct Payments)(Pilot Scheme) Order 2012 and the Special Educational Needs (Direct Payments)(Pilot Scheme)(Extension and Amendment Order) 2014.

8. Consultation outcome

8.1 The Department held a formal public consultation that ran from 4 October 2013 to 9 December 2013 covering draft regulations, the SEN Code of Practice and transitional arrangements to be made under Part 3 of the 2014 Act. The consultation was part of a process that started many months before the formal consultation. For example, the Department for Education, working with the Department of Health, consulted extensively throughout the drafting process with a wide range of stakeholder groups, including parents and carers and children and young people, and also published a policy statement,

on personal budget regulations to support consideration of the legislation during the House of Commons Committee stage of the then Bill, in March 2013.

8.2 The formal response to the consultation will be [published](#) to accompany the laying of the Code of Practice before Parliament. However, in summary, the response will explain that there was a relatively low response rate (under 50% in almost all cases) to the questions on regulations compared to response on the Code of Practice. This is likely to have been as a result both of the technical nature of the questions and that the issues are more easily addressed in the questions on the Code of Practice. Of the respondents that did respond to this section, 60% were of the view that the draft Regulations on Personal Budgets were too complicated. The most common issue raised was a request for further guidance to be produced.

8.3 The Department has consequently made changes and restructured the regulations to address the concerns raised, and will ensure that the SEN Code of Practice will provide guidance on personal budgets.

9. Guidance

9.1 The Secretary of State will issue a Code of Practice on SEN in relation to the exercise of functions under Part 3, as required by section 77 of the 2014 Act. The Code of Practice must be laid before each House of Parliament and approved by a resolution of each House. In addition, practical information for parents, young people, commissioners and providers has been commissioned via the Department for Education's Voluntary and Community Sector (VCS) grant programme and will be available in the summerⁱⁱ.

10. Impact

10.1 Any impact on business, charities or voluntary bodies will be in terms of their role as providers of services to children and young people with SEN and disabilities. Personal budgets allow budget holders to make purchases from a variety of service providers including from the local authority, independent or third sector providers. It does not affect providers' ability to provide services but may mean that service users choose alternative options.

10.2 An Impact Assessment, produced in March 2013 to support the introduction of the 2014 Act into Parliament, is attached to this memorandum. In accordance with the new burdens arrangements, the Department is undertaking a further assessment of the impact of Part 3 of the 2014 Act, and associated regulations and guidance, and will fully fund the assessed burden on local authorities.

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 When the relevant provisions of Part 3 of the 2014 Act come into force on 1st September 2014 personal budgets will become available, for a child's parent or a young person with an EHC plan. Regulations will require local authorities to set out in their local offer, a policy for personal budgets. This will provide publicly available information on the availability of personal budgets in September 2014 and their scope. It will give a year-on-year picture of how personal budgets evolve over time through increased joint commissioning.

12.2 The Department for Education is monitoring implementation of the reforms through regular surveys of local authority readiness. It is also considering how best to monitor from September the quality of local offers (including content on personal budgets) and the assessment and planning processes. The Department has appointed Champion authorities from the pathfinders who tested the reforms. They will work alongside the Department's VCS delivery partners, to provide targeted support including, on an individual basis where necessary, to local authorities until March 2015.

12.3 The Department's voluntary and community sector grant programme is also funding the development of a Personalised Outcomes Evaluation Tool (POET) for children and young people. This tool builds on an existing POET being rolled out nationally, with Government support, for adult social care and seeks to develop a measurement system that can be used nationally to determine the effectiveness of EHC plans and personal budgets. A report on the first year of the pilot of the POET, including families' and practitioners' views on how EHC plans and personal budgets have impacted on outcomes for children and their families, will be published in April 2014 with a further report available at the end of the two-year pilot in March 2015.

12.4 Under section 79, the Secretary of State for Education and the Lord Chancellor will be carrying out a review of how effectively disagreements about the exercise of functions under the SEN part of the Act are being resolved. It is anticipated that a report of the review will be published by September 2017 at the latest.

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.

ⁱ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198141/Support_and_Aspiration_Green-Paper-SEN.pdf

ⁱⁱ <http://kids.ritdns.com/learning-and-resources>