

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (DIRECT PAYMENTS) (REPEAL OF**  
**PILOT SCHEMES LIMITATION) ORDER 2013**

2013 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 Government piloted personal health budgets between 2009 and 2012. During that time, individual pilot schemes (selected Primary Care Trusts) were given direct payment powers by the Secretary of State for Health which enabled them to give people direct payments for healthcare. The Government now wishes to enable direct payments for healthcare to be made available across England, not just in pilot schemes, which necessitates repealing the part of the legislation that states only pilot schemes can make direct payments for healthcare.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 This instrument repeals sections 12A(6) and 12C(1) to (4) of the National Health Service Act 2006, which were inserted by section 11 of the Health Act 2009. Currently only authorised pilot schemes are able to provide patients with direct payments for healthcare as part of their personal health budget. Following an independent evaluation, the pilot schemes limitation is to be revoked.
  - 4.2 This instrument will pave the way for the revision of the National Health Service (Direct Payments) Regulations 2010 which will be put before Parliament later in 2013.
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to England only.
6. **European Convention on Human Rights**

The Rt Hon Norman Lamb MP, the Minister of State for Care Services has made the following statement regarding Human Rights:

In my view the provisions of the draft National Health Service (Direct Payments) (Repeal of Pilot Schemes Limitation) Order 2013 are compatible with the Convention rights.

## 7. Policy background

- What is being done and why

7.1 The Government announced in November 2012 that personal health budgets, including direct payments, would be rolled out across England from April 2014.

7.2 The aim of personal health budgets is to enable greater personalisation of healthcare services, give people more choice and control, improve patient satisfaction and quality of life.

7.3 A personal health budget is an amount of money that is provided to a patient in lieu of their regular NHS care. The patient and their healthcare professional agree the desired health outcomes and the individual, with support, is able to plan how to use the money available to meet those needs.

7.4 There are three methods of having a personal health budget: notional, where the money is managed by the NHS; third-party, where a person or organisation independent of the NHS and the patient manages the budget; or a direct payment, which is managed by the individual themselves.

7.5 As set out above, at present, only authorised pilot schemes are able to make direct payments for healthcare, and the Government wishes to make it possible for all clinical commissioning groups (as well as the Secretary of State, the NHS Commissioning Board and local authorities) across England to be able to give direct payments for healthcare to patients. The independent evaluation of the pilot programme showed that the patients who benefited most from personal health budgets were those who were able to exercise the most choice and control over their personal health budget, including what it was spent on and how it was managed.

7.6 The regulations that will provide detail about the rules for direct payments for healthcare (currently the National Health Service (Direct Payments) Regulations 2010) will be revised following a consultation, and made under negative resolution. Subject to Parliamentary approval, we would wish those regulations to come into force on the same day as this Order.

## 8. Consultation outcome

8.1 This instrument has not undergone a consultation. A consultation is currently being undertaken on the elements of the National Health Service (Direct Payments) Regulations 2010 that the Government proposes to change.

8.2 This can be found at <http://www.dh.gov.uk/health/2013/03/direct-payments-consultation/> along with the impact assessment for the policy as a whole.

## 9. Guidance

9.1 Guidance will be published in due course by the NHS Commissioning Board. In the meantime, the existing guidance, *Direct payments for health care – Information for pilot sites*

<https://www.gov.uk/government/publications/direct-payments-for-health-care-information-for-pilot-sites> will continue to apply.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is mainly in terms of their roles as providers of healthcare services. Personal health budgets allow patients to choose the healthcare services, regardless of provider, that allow them to achieve their healthcare goals and needs in ways that work best for them.

10.2 The impact on the public sector also mainly affects healthcare providers. Personal health budgets allow budget-holders to buy any of a variety of services, including from the NHS or from independent or third sector providers. It does not affect providers' ability to provide NHS-funded healthcare but it may mean that patients do not always choose the option of an NHS provider.

10.3 An Impact Assessment has not been prepared for this instrument as the instrument itself has no impact on the private sector or the voluntary sector.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 This instrument is intended as enabling legislation. Following the removal of the pilot schemes limitation, sections 12A to 12D of the NHS Act 2006 will enable the Secretary of State, the NHS Commissioning Board, all clinical commissioning groups and local authorities to give patients direct payments for healthcare if it is appropriate and beneficial for the patient. There will not be a target for how many patients should be given a personal health budget or a direct payment for healthcare.

12.2 There is an objective in the first mandate to the NHS Commissioning Board that patients who may be able to benefit will have the option to hold their own personal health budget by 2015. This objective will be reviewed at the time of review of the next mandate.

## **13. Contact**

Dr Alison Austin at the Department of Health, Tel: 0207 210 5218 or email: [alison.austin@dh.gsi.gov.uk](mailto:alison.austin@dh.gsi.gov.uk) can answer any queries regarding the instrument.