

*Draft Order laid before Parliament under section 77(2) of the Deregulation and Contracting Out Act 1994, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2011 No. 000**

**CONTRACTING OUT, ENGLAND**

**The Contracting Out (Local Authorities Social Services Functions) (England) Order 2011**

*Made* - - - - *000*  
*Coming into force* - - *1st August 2011*

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 69(4), 70(2) and (4) and 77(1) of the Deregulation and Contracting Out Act 1994<sup>(1)</sup>.

In accordance with section 70(3)(a) of the Deregulation and Contracting Out Act 1994, the Secretary of State for Health has consulted with such representatives of local government as he considers appropriate.

A draft of this Order was laid before Parliament in accordance with section 77(2) of the Deregulation and Contracting Out Act 1994 and approved by resolution of each House.

**Citation, commencement and application**

1.—(1) This Order may be cited as the Contracting Out (Local Authorities Social Services Functions) (England) Order 2011 and shall come into force on 1st August 2011.

(2) This Order shall apply in relation to England only.

**Interpretation**

2. In this Order—

“the 1990 Act” means the National Health Service and Community Care Act 1990<sup>(2)</sup>;

“adult social work practice pilot scheme” is a pilot scheme relating to social services functions exercised by local authorities in relation to persons who are aged 18 or over established pursuant to the invitation of the Secretary of State for Health to submit expressions of interest dated 24th November 2010<sup>(3)</sup>;

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(1) 1994. c.40.

(2) 1990 c.19.

(3) A copy of this document can be found at [http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_122092.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_122092.pdf) or can be obtained from the Department of Health, Social Care Vision, Room 116, Wellington House, 133-155 Waterloo Road, London SE1 8UG.

“registered social worker” means a person registered as a social worker—

- (a) in a register maintained under section 56 (the register) of the Care Standards Act 2000(4);
- (b) in a register maintained by the Scottish Social Services Council under section 44 (register of social workers and of other social service workers) of the Regulation of Care (Scotland) Act 2001(5); or
- (c) in a register maintained by the Northern Ireland Social Care Council under section 3 (the register) of the Health and Personal Social Services Act (Northern Ireland) 2001(6); and

“social services function” means any of the functions conferred by or under any of the provisions listed in the Schedule to this Order.

### **Contracting out: adult social work practice pilot scheme**

3.—(1) Subject to paragraph (2), a social services function may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by a local authority(7) whose function it is.

(2) An authorisation given to a person by virtue of paragraph (1) may authorise the exercise of a social services function, and a person (or the employees of a person) to whom such an authorisation is given may exercise such a function, only where—

- (a) the exercise of the function is required for the purposes of the participation of the person authorised in an adult social work practice pilot scheme;
  - (b) the function is to be exercised only in relation to persons who are aged 18 or over;
  - (c) the function is to be exercised by, or under the supervision of, a registered social worker;
  - (d) where the function is not exercised by a registered social worker, the function is to be exercised by a person who has the qualifications or competencies which the local authority considers to be requisite for the exercise of the function;
  - (e) in relation to a function under the Mental Capacity Act 2005(8), the function is to be exercised only to instruct as an independent mental capacity advocate a person provided by an approved provider; and
  - (f) the function is to be exercised in accordance with relevant directions and guidance given to local authorities by the Secretary of State about the exercise of social services functions.
- (3) In paragraph (2)(e), “an approved provider” is a person who has entered into arrangements—
- (a) with the local authority whose functions are to be exercised under the authorisation; and
  - (b) under which that person agrees to provide independent mental capacity advocates in connection with the exercise of those functions.

### **Contracting out: right to control pilot scheme**

4.—(1) Subject to paragraph (3), a function under section 47(1) to (3) of the 1990 Act (assessment of needs for community care services)(9) in relation to review cases may be exercised by, or by employees of, such person (if any) as may be authorised in that behalf by a local authority falling within paragraph (2) and whose function it is.

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(4) 2000 c.14. Section 56 has been amended by S.I. 2007/3101.

(5) 2001 asp 8. Section 44 has been amended by S.I. 2007/3101.

(6) 2001 c.3 (N.I.). Section 3 has been amended by S.I. 2007/3101.

(7) “Local authority” is defined in relation to England by section 79A of the Deregulation and Contracting Out Act 1994. Section 79A was inserted by the Local Government and Public Involvement in Health Act 2007 (c.28), section 239(3) and amended by the Local Democracy, Economic Development and Construction Act 2009 (c.20), Schedule 6, paragraph 87.

(8) 2005 c.9.

(9) 1990 c.19. Section 47 has been amended by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 81; the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 2, paragraphs 53 and 56; and the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1, paragraphs 128 and 130.

(2) A local authority falls within this paragraph if it is a local authority that is included in the Schedule to the Community Care Services: Disabled People’s Choice and Control (Pilot Scheme) (England) Directions 2010(10) (“the 2010 Directions”).

(3) An authorisation given to a person by virtue of paragraph (1) may authorise the exercise of a function under section 47(1) to (3) of the 1990 Act in relation to review cases, and a person (or the employees of a person) to whom such an authorisation is given may exercise such a function, only where—

- (a) the exercise of the function is to take place at a time when the 2010 Directions have effect in relation to the authority;
- (b) the function is to be exercised only in relation to a disabled person who is aged 18 or over;
- (c) the function is to be exercised by a person who has the qualifications or competencies which the local authority considers to be requisite for the exercise of the function; and
- (d) the function is to be exercised in accordance with relevant directions and guidance given to local authorities by the Secretary of State about the exercise of functions under section 47(1) to (3) of the 1990 Act.

(4) In this article—

“disabled person” has the meaning given in section 47(8) of the 1990 Act; and

“review cases” are assessments carried out under section 47(1)(a) of the 1990 Act in respect of persons who are in receipt of community care services (within the meaning of section 46(3) of that Act (local authority plans for community care services)(11)) at the time that the assessment is carried out.

### Modification of Schedule 1 to the Local Authority Social Services Act 1970

5. Schedule 1 to the Local Authority Social Services Act 1970 (social services functions)(12) shall be read as if at the end (after the entry relating to the Mental Health (Wales) Measure 2010) there were added—

“The Contracting Out (Local Authorities Social Services Functions) (England) Order 2011	Contracting out”
Articles 3 and 4	

Signed by authority of the Secretary of State for Health

Date

*Name*  
Parliamentary Under Secretary of State  
Department of Health

(10) A copy of these Directions may be found at <http://odi.dwp.gov.uk/docs/wor/rtc/rtc-directions.pdf> or can be obtained from the Department of Health, Social Care Vision, Room 116, Wellington House, 133-155 Waterloo Road, London SE1 8UG.

(11) 1990 c.19. Section 46 has been amended by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 90 and Schedule 3; and the National Health Service (Consequential Provisions) Act 2005 (c.43), Schedule 1, paragraphs 128 and 129.

(12) 1970 c.42.

## SCHEDULE

Article 2

## Social Services Functions

**National Assistance Act 1948**

1. Section 21 (duty of local authorities to provide accommodation)(13).
2. Section 22 (charges to be made for accommodation)(14).
3. Section 24 (authority liable for provision of accommodation)(15).
4. Section 26(1) to (4A) (provision of accommodation in premises maintained by voluntary organisations)(16).
5. Section 29 (welfare arrangements for blind, deaf, dumb and crippled persons, etc)(17).
6. Section 48 (duty of councils to provide temporary protection for property of persons admitted to hospitals, etc)(18).

**Mental Health 1959**

7. Section 8(2) (functions of welfare authorities)(19).

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- (13) 1948 c.29. Section 21 has been amended by the Local Government Act 1972 (c.70), Schedule 23, paragraph 2; the National Health Service (Reorganisation) Act 1973 (c.32), Schedule 5; the Housing (Homeless Persons) Act 1977 (c.48), Schedule; the Children Act 1989 (c.41), Schedule 13, paragraph 11; the National Health Service and Community Care Act 1990 (c.19), section 42(1) and Schedule 9, paragraph 5 and Schedule 10; the Community Care (Residential Accommodation) Act 1998 (c.19), section 1; the Immigration and Asylum Act 1999 (c.33), section 116; the Health and Social Care Act 2001 (c.), section 53; the Nationality, Immigration and Asylum Act 2002 (c.41), section 45(5); and the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1, paragraphs 5 and 6.
- (14) 1948 c.29. Section 22 has been amended by the Housing (Homeless Peoples) Act 1977 (c.48), Schedule; the Social Security Act 1980 (c.30), Schedule 4, paragraph 2 and Schedule 5; the Health and Social Services and Social Security Act 1983 (c.41), section 20(1); the Social Security Act 1986 (c.50), Schedule 10, paragraph 32; the National Health Service and Community Care Act 1990 (c.19), section 44 and Schedule 10; and the Community Care (Delayed Discharges etc.) Act 2003 (c.5), section 17; and is prospectively amended by the Personal Care at Home Act 2010 (c.18), section 1.
- (15) Section 24 has been amended by the National Assistance (Amendment) Act 1959 (c.30), section 1; the Local Government Act 1972 (c.70), Schedule 23, paragraph 2; the Housing (Homeless Persons) Act 1977 (c.48), Schedule; the National Health Service and Community Care Act 1990 (c.19), Schedule 9, paragraph 5; the Health and Social Care Act 2008 (c.14), section 148; and the Health Act 2009 (c.21), Schedule 1, paragraph 1.
- (16) Section 26 has been amended by the Health Services and Public Health Act 1968 (c.46), section 44(2) and Schedule 4; the Local Government Act 1972 (c.70), Schedule 23, paragraph 2; the Housing (Homeless Persons) Act 1977 (c.48), Schedule; the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 20; the National Health Service and Community Care Act 1990 (c.19), section 42 and Schedule 9, paragraph 5 and Schedule 10; the Community Care (Residential Accommodation) Act 1992 (c.19), section 1; the Care Standards Act 2000 (c.14), Schedule 4, paragraph 1 and Schedule 6; the National Health Service and Health Care Professions Act 2002 (c.17), Schedule 2, paragraph 38; the Community Care (Delayed Discharges etc.) Act 2003 (c.5), section 17; and by S.I. 2007/961 and 2010/813; and has been prospectively amended by the Personal Care at Home Act 2010 (c.18), section 1.
- (17) Section 29 has been amended by the National Assistance (Amendment) Act 1959 (c.30), section 1(2); the Mental Health (Scotland) Act 1960 (c.61), sections 113(1) and 114 and Schedule 4; the Social Work (Scotland) Act 1968 (c.49), Schedule 9, Part 1; the Local Government Act 1972 (c.70), Schedule 23, paragraph 2; the Employment and Training Act 1973 (c.50), Schedule 3, paragraph 3; the National Health Service Act 1977 (c.46), Schedule 15, paragraph 6; the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 10, Part 1; the Children Act 1989 (c.41), Schedule 13, paragraph 11(2) and Schedule 14, paragraph 1; the National Health Service and Community Care Act 1990 (c.19), section 44(7); the Registered Homes (Amendment) Act 1991 (c.20), section 2(5); the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1, paragraphs 5 and 8; and the Health and Social Care Act 2008 (c.14), section 147(2).
- (18) Section 48 has been amended by the Local Government Act 1972 (c.70), Schedule 23, paragraph 2; and the Health and Social Care Act 2008 (c.14), Schedule 13, paragraphs 1 and 4 and Schedule 15, Part 5.
- (19) 1959 c.72. Section 8 has been amended by the Local Government Act 1972 (c.70), Schedule 23, paragraph 9(1); National Health Service Act 1977 (c.46), Schedule 15, paragraph 24 and Schedule 16; the Charities Act 1992 (c.41), Schedule 7; the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1, paragraphs 22 and 23; and is prospectively amended by the National Health Service and Community Care Act 1990 (c.19), Schedule 10.

### **Health Services and Public Health Act 1968**

8. Section 45 (promotion, by local authorities of the welfare of old people)(20).

### **Chronically Sick and Disabled Persons Act 1970**

9. Section 1 (information as to need for and existence of welfare services)(21).  
10. Section 2 (provision of welfare services)(22).

### **Mental Health Act 1983**

11. Section 117 (after-care)(23).

### **Health and Social Services and Social Security Adjudication Act 1983**

12. Section 17 (charges for local authority services in England and Wales)(24).

### **Disabled Persons (Services, Consultation and Representation) Act 1986**

13. Section 4 (services under s 2 of the 1970 Act: duty to consider needs of disabled persons)(25).  
14. Section 8 (duty of local authority to take into account abilities of carer).

### **National Health Service and Community Care Act 1990**

15. Section 47 (assessment of needs for community care services)(26).

### **Carers (Recognition and Services) Act 1995**

16. Section 1 (assessment of ability of carers to provide care: England and Wales)(27).

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- (20) 1968 c.46. Section 45 has been amended by the Social Work (Scotland) Act 1968 (c.49), Schedule 9, Part 1; the Local Authority Social Services Act 1970 (c.42), Schedule 3; the Local Government Act 1972 (c.70), Schedule 23, paragraph 15; the Statute Law (Repeals) Act 1978 (c.45); the Residential Homes Act 1980 (c.7), Schedule 2; the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 10, Part 1; the National Health Service and Community Care Act 1990 (c.19), section 42(7); the Local Government (Wales) Act 1994 (c.19), Schedule 10, paragraph 5(1); the Immigration and Asylum Act 1999 (c.33), section 117(1); and the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1, paragraphs 33 and 34; and by S.I. 1968/1699; and is prospectively amended by the Nationality, Immigration and Asylum Act 2002 (c.41), section 45(6).
- (21) 1970 c.44. Section 1 has been amended by the Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), section 9.
- (22) Section 2 has been amended by the Local Authority Social Services Act 1970 (c.42), Schedule 2, paragraph 12; the Local Government Act 1972 (c.70), Schedule 30; the National Health Service and Community Care Act 1990 (c.19), Schedule 9, paragraph 12 and Schedule 10; and the Health and Social Care Act 2008 (c.14), section 148(3).
- (23) 1983 c.20. Section 117 has been amended by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 107(1) and (8) (b); the Mental Health (Patients in the Community) Act 1995 (c.52), Schedule 1 paragraph 15; the Crime (Sentences) Act 1997 (c.43), Schedule 4, paragraph 12(17); the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 2, Part 2, paragraphs 42 and 47; the Mental Health Act 2007 (c.12), Schedule 3, paragraphs 1 and 24 and Schedule 11, Part 5; and the Health Act 2009 (c.21), Schedule 1, paragraph 3; and by S.I. 2007/961.
- (24) 1983 c.41. Section 17 has been amended by the National Health Service and Community Care Act 1990 (c.19), Schedule 9, paragraph 25; the Carers and Disabled Children Act 2000 (c.16), section 8; the Community Care (Delayed Discharges etc.) Act 2003 (c.5), section 17(3) and the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1, paragraphs 71 and 72; and is prospectively amended by the Personal Care at Home Act 2010 (c.18), section 1(1) and (8).
- (25) 1986 c.33.
- (26) 1990 c.19. Section 47 has been amended by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 81; the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 2, paragraphs 53 and 56; and the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1 paragraphs 128 and 130.
- (27) 1995 c.12. Section 1 has been amended by the Carers and Disabled Children Act 2000 (c.16), section 4(1) and the Carers (Equal Opportunities) Act 2004 (c.15), sections 1(1) and 2(1).

### **Carers and Disabled Children Act 2000**

- 17. Section 1 (right of carers to assessment)(28).
- 18. Section 2 (services for carers).
- 19. Section 4 (assessments and services for both carer and person cared for).
- 20. Section 6A (duty to inform carers of right to assessment)(29).

### **Community Care (Delayed Discharges etc) Act 2003**

- 21. Section 4 (duties of responsible authority following notice under section 2)(30).

### **Carers (Equal Opportunities) Act 2004**

- 22. Section 3 (co-operation between authorities)(31).

### **The Mental Capacity Act 2005**

- 23. Section 39 (provision of accommodation by local authority)(32).
- 24. Section 39A (person becomes subject to Schedule A1)(33).
- 25. Section 39C (person unrepresented whilst subject to Schedule A1)(34).
- 26. Section 39D (person subject to Schedule A1 without paid representative)(35).

### **The National Health Service Act 2006**

- 27. Section 254 (local social service authorities) and Schedule 20 (further provision about local social services authorities)(36).

### **The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009(37)**

- 28. Regulation 7 (direct payments under section 57(1) of the Health and Social Care Act 2001 or section 17A(1) of the Children Act 1989).
- 29. Regulation 8 (direct payments under section 57(1A) of the Health and Social Care Act 2001).
- 30. Regulation 9 (amount and payment under section 57(1) of the Health and Social Care Act 2001 or section 17A(1) of the Children Act 1989)(38).
- 31. Regulation 10 (amount and payment under section 57(1A) of the Health and Social Care Act 2001)(39).

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(28) 2000 c.16. Section 1 has been amended by the Carers (Equal Opportunities) Act 2004 (c.15), section 2(2).

(29) Section 6A was inserted by the Carers (Equal Opportunities) Act 2004 (c.15), section 1(2).

(30) 2003 c.5.

(31) 2004 c.15. Section 3 has been amended by S.I. 2010/1158.

(32) 2005 c.9. Section 39 has been amended by the Mental Health Act 2007 (c.12), Schedule 9, paragraphs 1 and 5.

(33) Section 39A was inserted by the Mental Health Act 2007 (c.12) ("the 2007 Act"), Schedule 9, paragraphs 1 and 6. Paragraph 182 of Schedule A1 to Mental Capacity Act 2005 (as inserted by section 50(5) of, and Schedule 7 to, the 2007 Act) provides for a local authority to be a supervisory body.

(34) Section 39C was inserted by the Mental Health Act 2007 (c.12), Schedule 9, paragraphs 1 and 6.

(35) Section 39D was inserted by the Mental Health Act 2007 (c.12), Schedule 9, paragraphs 1 and 6.

(36) 2006 c.41. Section 254 has been amended by S.I. 2010/1158.

(37) S.I. 2009/1887.

(38) Relevant amending instrument is S.I. 2010/2246.

(39) Relevant amending instrument is S.I. 2010/2246.

**32.** Regulation 11 (conditions in respect of direct payments under section 57(1) of the Health and Social Care Act 2001 or section 17A of the Children Act 1989).

**33.** Regulation 12 (conditions in respect of direct payments under section 57(1A) of the Health and Social Care Act 2001).

**34.** Regulation 17 (termination of direct payments under section 57(1) of the Health and Social Care Act 2001 or section 17A of the Children Act 1989).

**35.** Regulation 18 (termination of direct payments under section 57(1A) of the Health and Social Care Act 2001).

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision to enable a local authority in England to authorise another person, or that person's employees, to exercise social services functions for the purposes of, or in connection with, that person's participation in an adult social work practice pilot (article 3) or a right to control pilot (article 4). A right to control pilot scheme is a pilot scheme provided for under section 44 (pilot schemes) of the Welfare Reform Act 2009<sup>(40)</sup>.

The exercise of functions contracted out by virtue of this Order must be by, or under the supervision, of a registered social worker or by a person who has the requisite qualifications or competencies. Functions must also be exercised in accordance with relevant directions and guidance given to local authorities by the Secretary of State about the exercise of social services functions (articles 3(2) and 4(3)).

Article 5 modifies Schedule 1 to the Local Authority Social Services Act 1970. This will enable the Secretary of State to give guidance or directions to local authorities about the exercise of their functions under this Order.

An impact assessment has not been prepared for this instrument as there is no significant impact on the private and voluntary sectors.

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<sup>(40)</sup> 2009 c.24.