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.

DRAFT STATUTORY INSTRUMENTS

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(**1**).

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(**2**);

"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(**3**);

(**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 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.

(**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 Articles 3 and 4	Contracting out"

Signed by authority of the Secretary of State for Health

Name
Parliamentary Under Secretary of State
Department of Health

Date

(**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.