Draft Order laid before Parliament under section 568(3A) of the Education Act 1996, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

EDUCATION, ENGLAND

The Special Educational Needs (Direct Payments) (Pilot Scheme) Order 2011

Made - - - - ***

Coming into force in accordance with article 1(2)

The Secretary of State for Education, in exercise of the powers conferred by sections 532B(1) and 532C(1) of the Education Act 1996(**1**), makes the following Order:

In accordance with section 568(3) and (3A) of that Act(**2**), a draft of this instrument was laid before, and approved by a resolution of, each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Special Educational Needs (Direct Payments) (Pilot Scheme) Order 2011.

(2) This Order comes into force on the day after the day on which it is made.

(3) In this Order "pilot scheme" means the pilot scheme set out in Schedule 1.

Pilot scheme

2. The pilot scheme, in accordance with which direct payments may be made under section 532A of the Education Act 1996(**3**), has effect.

Pilot scheme: local authorities

3. The local authorities in respect of which the pilot scheme operates are those local authorities specified in Schedule 2.

(**1**) 1996 c.56. Sections 532B and 532C of the Education Act 1996 ("the 1996 Act") were inserted by section 75 of the Education Act 2011 (c. 21) ("the 2011 Act").
(**2**) Section 568(3) of the 1996 Act was amended by section 75 of the 2011 Act and a new subsection (3A) inserted.
(**3**) Section 532A was inserted by section 75 of the 2011 Act.

Pilot scheme: duration

4. The period for which the pilot scheme has effect is the period of two years from the date on which this Order comes into force.

Name
Address — Minister of State
Date — Department for Education

SCHEDULE 1 Article 2

Pilot Scheme

PART 1

General

Interpretation

1. In this Schedule—

"the 1996 Act" means the Education Act 1996;

"the 2000 Act" means the Learning and Skills Act 2000(**4**);

"the 2005 Act" means the Mental Capacity Act 2005(**5**);

"agreed provision" in respect of a beneficiary(**6**) means the qualifying goods and services or that part of those goods and services which it is agreed is to be secured by means of direct payments in accordance with paragraph 10(**7**);

"college" means the institution attended or to be attended by the beneficiary in relation to an assessment of their learning difficulties arranged in accordance with section 139A of the 2000 Act(**8**);

"local authority" means the local authority that—

(a) maintains a statement of special educational needs under section 324 of the 1996 Act for a beneficiary or is responsible for arranging an assessment of a beneficiary's learning difficulties in accordance with section 139A of the 2000 Act; or

(b) is responsible for arranging transport or anything else that may be the subject of arrangements under section 508B(1)(**9**), 508F(1)(**10**) or 509AA(7)(b)(**11**) of the 1996 Act that apply in relation to a beneficiary;

"nominee" means a person nominated in accordance with paragraph 7;

"qualifying goods and services" means any of the goods and services mentioned in section 532A(2) of the 1996 Act that are, in the case of a beneficiary, specified in a statement of special educational needs under section 324 of the 1996 Act, identified in a learning difficulty assessment under section 139A of the 2000 Act, or the subject of arrangements under section 508B(1), 508F(1) or 509AA(7) of the 1996 Act;

"representative" means—

(a) in the case of a parent(**12**) of a beneficiary—

(**4**) 2000 c.21.
(**5**) 2005 c.9.
(**6**) Beneficiary is defined in section 532A(1) of the 1996 Act.
(**7**) Direct payment is defined in section 532A(1) of the 1996 Act.
(**8**) Section 139A was inserted by section 80 of the Education and Skills Act 2008 (c.25) ("the 2008 Act") and amended by S.I. 2010/1158.
(**9**) Section 508B was inserted by section 77(1) of the Education and Inspections Act 2006 (c.40) ("the 2006 Act") and amended by S.I. 2010/1158.
(**10**) Section 508F was inserted by section 57(1) and (2) of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) ("the 2009 Act") and amended by S.I. 2010/1158.
(**11**) Section 509AA was inserted by paragraphs 1 and 3 of Schedule 19 to the Education Act 2002 (c.32) and amended by sections 83(1)(b) and (c) of the 2006 Act, sections 55(2) and 56(1) and (3) of the 2009 Act and S.I. 2010/1080 and 2010/1158.
(**12**) Parent is defined in section 576 of the 1996 Act.

(i) where a deputy has been appointed by the Court of Protection under section 16(2)(b) of the 2005 Act (powers to appoint deputies) to make decisions on the parent's behalf in relation to qualifying goods and services, any such deputy;

(ii) where the parent has appointed a donee of a lasting power of attorney within the meaning of section 9 of the 2005 Act (lasting powers of attorney) to make decisions on the parent's behalf in relation to qualifying goods and services, any such donee;

(iii) where the parent has created an enduring power of attorney within the meaning of Schedule 4 to the 2005 Act (provisions applying to existing enduring powers of attorney), which is registered in accordance with paragraphs 4 and 13 of that Schedule or in respect of which an application has been made for such registration, any attorney in whom the power is vested;

(b) in the case of a beneficiary who has attained the age of 16, but does not have capacity to consent to the making of direct payments to them, the parent of the beneficiary, or the parent's representative, as the case may be.

Effect of direct payment

2.—(1) Goods and services acquired by means of direct payments made in accordance with this scheme are to be treated as goods and services provided or arranged by a local authority in pursuance of the relevant statutory duty.

(2) In this paragraph "the relevant statutory duty" means—

(a) where the goods and services are the special educational provision specified in a statement of special educational needs under section 324 of the 1996 Act, the duty specified in section 324(5)(a)(i) of that Act;

(b) where the services relate to the travel arrangements specified under section 508B of the 1996 Act, the duty specified in section 508B(1) of that Act;

(c) where the services relate to the provision of transport or of anything else that may be the subject of arrangements under section 508F of the 1996 Act, the duty specified in section 508F(1) of that Act; and

(d) where the services relate to the provision of transport or anything else which may be the subject of arrangements under section 509AA of the 1996 Act, the duty specified in section 509AA(7) (b) of that Act.

PART 2

Circumstances in which direct payments may be made

Request for direct payments

3.—(1) Where a local authority has—

(a) served a copy of a statement or an amended statement of special educational needs in accordance with paragraph 6 of Schedule 27 to the 1996 Act; or

(b) carried out an assessment of a beneficiary's learning difficulties in accordance with section 139A of the 2000 Act, and has prepared the written report referred to in section 139B(3) of the 2000 Act(**13**),

(**13**) Section 139B was inserted by section 80 of the 2008 Act and amended by S.I. 2010/1158.

the authority must provide P with information and advice about direct payments under section 532A(1) of the 1996 Act and if P requests the authority to consider making a direct payment under that section, the authority must consider that request.

(2) In this paragraph P means—

(a) the parent of a beneficiary where the beneficiary has not yet attained the age of 16;

(b) the beneficiary where the beneficiary has attained the age of 16 and has capacity to consent to the making of direct payments to them; or

(c) a representative.

Goods and services in respect of which direct payments may be made

4. A local authority may make direct payments in respect of any qualifying goods and services.

Persons in respect of whom direct payments may be made

5. Direct payments may be made in respect of a beneficiary.

Persons to whom direct payments may be made

6.—(1) Subject to sub-paragraph (2), a local authority may make direct payments to a person who is either—

(a) the parent of a beneficiary, where the beneficiary has not yet attained the age of 16; or

(b) the beneficiary, where the beneficiary has attained the age of 16.

(2) Direct payments may only be made to a person falling within sub-paragraph (1) if the person—

(a) appears to the local authority to be capable of managing direct payments without assistance or with such assistance as may be available to them;

(b) has attained the age of 16;

(c) has capacity to consent to the making of direct payments to them; and

(d) is not a person described in Part 4.

Nominees

7.—(1) Subject to sub-paragraph (2), a local authority may make direct payments to a nominee where—

(a) the parent of a beneficiary, where the beneficiary has not yet attained the age of 16; or

(b) the beneficiary, where the beneficiary has attained the age of 16,

with capacity to consent to the making of direct payments to them, nominates in writing a person (a "nominee") to receive the direct payments on their behalf.

(2) Direct payments may only be made to a nominee where the nominee—

(a) agrees in writing to—

(i) act on behalf of the parent or beneficiary in relation to the direct payments;

(ii) use the direct payments to secure the agreed provision; and

(iii) act in the best interests of the beneficiary when securing the agreed provision; and

(b) is not a person described in Part 4.

(3) If the parent or beneficiary notifies the local authority in writing that they wish to withdraw or change their nomination, the local authority must stop making direct payments to the nominee