Making **choice** and **control** a reality for disabled people

Consultation on the Right to Control Trailblazer Regulations

Office for Disability Issues
HM Government
Making choice and control a reality for disabled people

Consultation on the Right to Control Trailblazer Regulations

We are aware that the regulations and the information contained in this document are complex. If you would like to ask questions about any of the issues raised, please contact us using the contact information in Chapter 5.
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Introduction

This consultation seeks your views on the proposed regulations and statutory guidance to enable the delivery of the Right to Control Trailblazers. We would like to hear from all interested disabled people, organisations, selected Trailblazer local authorities and their delivery partners, service providers and their representative bodies and third sector organisations.

Through the Welfare Reform Act 2009, the government has legislated to put in place a Right for disabled people to have choice and control over certain public funding they receive to go about their daily lives.

From late 2010, the government plans to test the best ways of delivering this new Right in eight local authority areas in England. These areas will be known as Trailblazers and will inform decisions on any wider roll out. Details of the areas selected can be found at Annex B.

What is the Right to Control?

The Right to Control is intended to ensure disabled people have choice and control over the support they need to go about their daily lives. It aims to shift the balance of power from the state to the individual, assisting disabled people to achieve better outcomes from the support they currently receive.

The Right to Control builds on the significant progress that has been made over recent years towards the personalisation of services, particularly the transformation of adult social care.

‘Putting People First: A shared vision and commitment to the transformation of adult social care’ established a framework between central government, local government and other partners in December 2007. It pledged to ensure that all public bodies work together towards a society that enables individuals to have choice and control over their lives.

Personalisation aims to improve outcomes by transforming services for individuals to promote full and equal citizenship for disabled people.

The Right to Control will ensure that for certain public funding disabled people will have a right to:

- be told the monetary value of resources available to them
- have choice and control over how resources are used to meet agreed outcomes
- be entitled to receive a direct payment, or to influence the way services are commissioned on their behalf, or to take a mixture of direct payments and commissioned services.

To help explain some of the terms used in this document, there is a glossary at Annex E.

**What are the Right to Control Trailblazers?**

The government is committed to providing real choice and control to disabled people. To identify the best ways of delivering choice and control the Right will be tested in eight local authority areas in England for two years. These sites will be known as Trailblazers and will begin testing the Right from late 2010.

The Trailblazers will operate only in England. The devolved administrations have confirmed their continuing commitment to approaches that empower disabled people and place them at the centre of the assessment and delivery processes, and the services, which aim to meet their needs for support. Scottish and Welsh Ministers will have access to the evidence from the Trailblazer areas to enable them to undertake an informed consideration of what their appropriate responses should be. The legal powers within the Welfare Reform Act 2009 provide all the necessary enabling powers for the devolved administrations to apply the Right to Control as they deem appropriate.

Within the Trailblazers, the Right to Control will apply to all disabled people aged 18 and over who are eligible for certain public funding. This includes people with learning disabilities and those with mental health support needs. Disabled people along with local public bodies, service providers and third sector organisations will help decide what works, and what does not work.

An evaluation report will be prepared and published following the end of the Trailblazing period. This will assess the impact of the Right to Control, costs and benefits, the merits of different approaches and will inform a decision about wider roll-out.
Our approach

The Right to Control has been developed in partnership with disabled people, their organisations and other stakeholders. This is in line with the principles of co-production, which means working in partnership with disabled people and their representative organisations, at every stage of a project, to ensure that their expertise and experiences inform the work.

In June 2009 we published a consultation document called ‘Making choice and control a reality for disabled people’\(^2\). We wanted to ensure disabled people, local public bodies, service providers and relevant third sector organisations could have input into developing the Right to maximise the benefits, and reduce the barriers to delivering choice and control. We launched the consultation at two events, which were both attended by over 100 people, and we supported a further 34 events. In addition to the comments we receive at these events, we received 176 written responses from individuals and organisations. Many responses from organisations were the outcome of events that they held, which, although only counted as a single response, represented the views of many people. For example, the response from the Independent Living Fund (ILF) was a collective response from over 600 people.

In December 2009 the Government published a response to this consultation\(^3\). All the responses received have helped, and will continue to help, shape the Right to Control policy.

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This consultation

We are now consulting on regulations which set out the requirements for delivering the Right to Control in the Trailblazers.

We welcome the advice and support we have received from the Right to Control Advisory Group, chaired by Baroness Jane Campbell, which has been invaluable in developing these draft regulations.

To ensure the Trailblazers are supported by the most appropriate regulations, we are now keen to have comments on the draft regulations from all who will benefit from, or are involved in delivering the Right:

- disabled people and their organisations
- local authorities and their partners
- voluntary organisations
- service providers and their representative bodies.

The Welfare Reform Act 2009 provides the Secretary of State with the legal powers to make regulations to implement the Right to Control. The Act sets out:

- to whom the Right applies
- the types of funding that can be covered by the Right and those which are excluded
- how the Right will operate
- provisions to enable information sharing
- the ability to modify legislation that applies to Right to Control funding streams
- a framework for making direct payments
- provision to make regulations to enable a person who lacks capacity to exercise the Right
- powers to pilot the Right and
- powers for Scottish and Welsh Ministers to exercise the Right over devolved funding streams.
The powers to make regulations to pilot the Right to Control therefore flow from the Welfare Reform Act 2009 provisions. In summary, the regulations will:

- set out the precise scope of the Trailblazers
- convey rights to disabled people in the Trailblazer areas
- allow the Trailblazers to do certain things necessary for delivery, for example, share information or make direct payments
- ensure a consistent approach to the delivery of the Right to Control
- modify the Housing Grants, Construction and Regeneration Act 1996\(^4\) which provides for Disabled Facilities Grants, to ensure people in receipt of this funding stream have the Right to Control.

Because the Trailblazers are testing the Right to Control, we have sought to avoid being over-prescriptive with the regulations so that different approaches can be tested. These regulations (and the related guidance) apply during the Trailblazer period. If, following evaluation of the Trailblazers, a decision is made to implement the Right to Control more widely, new regulations will be made.

We will also be producing guidance to support the Trailblazers. Some of this will be statutory and will be closely linked to these regulations. For clarity, this consultation document sets out where something is in regulations or will be in statutory guidance.

We will also be producing a range of non-statutory guidance based on good practice from other personalisation pilots to help Trailblazers deliver the Right to Control. We will develop this in discussion with the Trailblazers and disabled people during 2010. We will also encourage Trailblazers to innovate and learn from each other to develop and improve their delivery of the Right to Control.

\(^4\) From this point forward the Housing Grants, Construction and Regeneration Act 1996 will be referred to as the “1996 Act”. 
Structure of this document

Because disabled people can exercise the Right across a range of funding streams, and some of these already have their own legal frameworks, regulating for the Right to Control is complex. We have therefore explained in some detail the legislative approach we are taking. The chapters in this document explain:

• Chapter 1: the structure for the legislative process.
• Chapter 2: the draft regulations, which include modifications to the 1996 Act and the proposed statutory guidance.
• Chapter 3: extending the Right to Control to funding streams with their own legislative frameworks, that is Adult Community Care and the Independent Living Fund.
• Chapter 4: our plans for assessing how the Right to Control impacts on public authority funding, delivery mechanisms, and disabled peoples’ experiences and outcomes.
• Chapter 5: how to contact us to respond to the consultation
• Annex A: the consultation question summary
• Annex B: the selected Trailblazer areas
• Annex C: the draft regulations
• Annex D: our Equality Impact Assessment
• Annex E: the glossary

Timetable and questions for consultation

• Consultation period begins on 25 February 2010, for 12 weeks.
• Consultation closes on 19 May 2010.
• Key consultation questions are summarised at Annex A.

Where possible, it will help us analyse responses quickly if you can follow the framework of these key questions. If you have any additional suggestions or observations, please add these to the end of your response.

• How to respond to the consultation – you can respond by email or by letter. Our contact details are provided at Chapter 5.

• The consultation response document will be published by July 2010.

Once the consultation period is finished, we will publish our response. The response document will outline how the comments have been, or will be, acted upon to inform the production of the final regulations.
Chapter 1

Structure of the legislative process for the Right to Control

Introduction
This chapter sets out the proposed legislative approach for each of the Right to Control funding streams. For funding streams that have their own legal frameworks, we plan to modify these frameworks to enable the delivery of the Right. The remaining funding streams will be governed by the Right to Control regulations.

The Right to Control Trailblazer funding streams
The Trailblazers will test the Right for the following funding streams:

- Access to Work
- Work Choice (Jobcentre Plus specialist disability employment programme) which is planned to begin in late 2010
- Housing related-support (also known as Supporting People)
- Disabled Facilities Grants
- Independent Living Fund.

The Right to Control will be aligned with Adult Community Care which includes funding provided by Integrated Community Equipment Services.

The Trailblazers will deliver the Right to Control for each funding stream. This means that all disabled people who are new recipients of one or more of the funding streams in a Trailblazer area will have the Right to Control.
Chapter 1  Structure of the legislative process for the Right to Control

Proposed legislative approach

These regulations govern the delivery of the Right to Control for Work Choice, Access to Work and Supporting People. In the regulations these are known as ‘qualifying services’. The relevant authorities delivering these qualifying services are principal local authorities and Jobcentre Plus on behalf of the Secretary of State. The regulations refer to the relevant authorities delivering qualifying services as ‘responsible authorities’.

The other Right to Control funding streams (Disabled Facilities Grants, the Independent Living Fund, and Adult Community Care) have their own legal frameworks. We are dealing with these as follows:

Disabled Facilities Grant (DFG)

Schedule 2 of the regulations modifies the way the Housing Grants, Construction and Regeneration Act 1996 works in Trailblazer areas. These modifications ensure that the Right to Control can be delivered to DFG applicants who are homeowners or social housing tenants. This is explained in Chapter 2.

Adult Community Care

To ensure new Adult Community Care recipients in the Trailblazer areas have the same choice and control over this funding stream as they do over other Right to Control funding streams, the Department of Health will issue Directions under the National Health Service and Community Care Act 1990, and/or Section 7A of the Local Authority Social Services Act 1970. Directions are statutory and will set out how authorities are expected to deliver choice and control to Adult Community Care recipients. This is explained in Chapter 3.

Independent Living Fund (ILF)

The ILF operates within a framework set out in a Trust Deed. We will be amending the Trust Deed to ensure the Right to Control can be delivered to both new and existing ILF recipients in the Trailblazer areas. This is explained in Chapter 3.

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5 The services that can be included in the regulations are limited by the powers in the Welfare Reform Act 2009, which states these can only be services paid for from the public purse.

6 Referred to in this consultation document as the 1996 Act
We are proposing to modify the legal frameworks of the three funding streams above. However, we recognise there are some provisions, such as information sharing (regulation 20), that we would want to apply to all the Right to Control funding streams to support the streamlining of services. That is why the regulations refer to the three funding streams above, together with qualifying services, as ‘Right to Control Services’.

Regulation 20 provides that all Right to Control funding streams can disclose information to each other, subject to the principles of the Data Protection Act (1998). We have also included regulation 19 that enables Right to Control funding streams to work together to streamline services. This is discussed further in Chapter 3.

In the regulations, the Trailblazers are called ‘pilots’. The term ‘pilot’ is used because this is the technical wording used to describe Trailblazers in the enabling powers in the Welfare Reform Act 2009.

**Conclusion**

The legislative structure outlined in this chapter will enable a disabled person to have the Right to Control across all the funding streams for which they are eligible. It will also enable the public bodies responsible for delivering the funding streams to align or integrate the different stages of the Right to Control customer journey.
Chapter 2

The Right to Control regulations

This part of the consultation sets out the proposed regulations and statutory guidance to enable the delivery of the Right to Control. Throughout this chapter, and the following chapters, Trailblazers are referred to as pilots.7

Commentary on the draft regulations

A copy of the proposed regulations can be found at Annex C. The structure of this chapter follows the structure of the regulations for ease of reference.

1. The pilot scope

Regulations 1 to 6 specify:

• when regulations will come into force and when they will cease
• the interpretation of terms used in the regulations
• the pilot areas
• the qualifying services and the relevant authorities, and
• the cases in which the new Right will apply.

Citation, commencement, expiry, extent and application (regulation 1)

Regulation 1(2) provides that the information sharing provisions will be brought into force earlier than the main regulations. This is to allow pilots time to test their systems for sharing information in advance of the pilots fully commencing.

7 The term ‘pilot’ is used because this is the technical wording used to describe Trailblazers in the enabling powers in the Welfare Reform Act 2009.
Regulation 1(2) states that the information sharing provisions will come into force in November 2010. Regulation 1(3) states that the full regulations will come into force in December 2010. Regulation 1(4) states that the pilots will cease after 24 months in December 2012. These dates are indicative and are dependent on both the consultation responses and time available in Parliament for debating the regulations.

Regulation 1(6) specifies that the regulations apply in England only (although for technical legal reasons the regulations extend to Wales). Further provision about the specific pilot areas is included in regulation 3.

The Welfare Reform Act 2009 allows the Secretary of State to make further piloting regulations. This means:

- the Right could be extended to other pilot areas, or
- extended for an additional period, or
- regulations for wider roll-out could be put in place.

**Interpretation (regulation 2)**

Regulation 2(1) sets out the meaning of the terms used in the regulations. These terms are covered in the Glossary (at Annex E).

Regulation 2(2) specifies that references to a person lacking capacity should be read in accordance with the Mental Capacity Act 2005. This means that a person is determined to be lacking capacity using criteria set out in the 2005 Act.

Regulation 2(3) specifies that where any regulation requires an authority to inform a person in writing, this should be read as requiring the authority to inform the person in a format accessible to that person. Statutory guidance will outline to responsible authorities how they can fulfil this duty.
Chapter 2  The Right to Control regulations

Pilot areas (regulation 3)
Regulation 3 lists the Right to Control local authority pilot areas in alphabetical order. The eight pilot areas are:

- Barnsley Metropolitan Borough Council and Sheffield City Council
- Essex County Council
- Greater Manchester – this incorporates Manchester City Council, Oldham Council, Bury Council, Stockport Metropolitan Borough Council and Trafford Council
- Leicester City Council
- London Borough of Barnet
- London Borough of Newham
- Redcar and Cleveland Borough Council
- Surrey County Council – the Right to Control will be delivered in two districts in Surrey. These are Epsom and Ewell Borough Council, and Reigate and Banstead Borough Council.

Qualifying services (regulation 4)
Regulation 4 defines qualifying services and the authorities responsible for delivering these services. In the regulations qualifying services are Work Choice, Access to Work and Supporting People. The regulations refer to the relevant authorities delivering these services as ‘responsible authorities’, these authorities are principal local authorities and Jobcentre Plus on behalf of the Secretary of State.

The Right to Control will be extended to disabled people accessing a qualifying service provided or commissioned by a responsible authority. Responsible authorities have specific duties, these are set out in regulations 7 to 18.

Supporting People (SP) is a qualifying service (defined in regulation 4(2)). However, the regulations only require the Right to Control to be offered where the Supporting People service is first provided with the expectation that it will last for a period of more than two years, is provided to overcome barriers associated with disability and is not provided to meet accommodation costs.
This definition ensures that the Right to Control funding is independent of the disabled person’s financial commitment to their landlord and only relates to their ‘floating’ housing-related support services. It also ensures that the Right to Control does not extend to a non-disabled recipient of SP, or to a disabled person who is receiving support for a purpose other than to overcome barriers related to their impairment or long-term condition.

As outlined in Chapter 1, qualifying services do not include the Independent Living Fund, Adult Community Care Services and Disabled Facilities Grants. These funding streams have their own legal frameworks that we propose to modify to enable the delivery of the Right to Control. For more information on extending the Right to Control to these funding streams please refer to Chapter 3.

**Meaning of ‘representative’ and ‘surrogate’ (regulation 5)**

Regulation 5 defines people that can be classed as a ‘representative’ or ‘surrogate’. Under the Mental Capacity Act 2005, a ‘representative’ is a person who has been appointed by a Court to represent the interests of the disabled person who lacks capacity, or is an individual appointed by the disabled person whilst he or she still had capacity to represent them. A ‘surrogate’ is a representative who has specific powers to act on behalf of a disabled person in relation to decisions about securing the provision of a community care service or a qualifying service. These terms are used in regulations 9,15,16,17 and 18 where there are provisions for ‘representatives’ or ‘surrogates’ to develop support plans or manage direct payments on behalf of people that lack capacity to give informed consent.

**Application of regulations 7 to 17 (regulation 6)**

Regulation 6 sets out to whom the new Right applies and how regulations 7 to 17 should be interpreted.

Regulation 6(1) outlines that regulations 7 to 17 apply, if and only if, the disabled person is aged 18 or over, is resident in a pilot area and is entitled to, or is being provided with, a qualifying service. This is subject to regulation (6(4) and 6(5)).

Regulation 6(2) outlines that the following regulations refer to the eligible disabled person as ‘P’. The relevant authority providing a qualifying service is the ‘responsible authority’.
Regulation 6(4) provides that the Right to Control is not available to existing users of Access to Work or Work Choice, unless Jobcentre Plus on behalf of the Secretary of State and the disabled person agree they are eligible for the Right to Control from a specified date.

Regulation 6(5) provides that the Right to Control is not available to existing Supporting People recipients until the time the authority would have undertaken a review of the disabled person’s needs, or an earlier date agreed between the responsible authority and the disabled person. This ensures that authorities can extend the Right to Control to existing recipients of SP support services.

**Consultation question 1**

Do regulations 1 to 6 provide sufficient detail about where the Trailblazers will take place, and who and what will be included?

### 2. How the Right to Control will be delivered

Regulations 7-13 place the following duties on the responsible authority:

- to notify the disabled person about their Right to Control
- to work with the disabled person or their appointed representative to develop a support plan
- to include specified details in the support plan
- to take into account the wishes of the disabled person as they work together to develop a support plan
- to provide services in accordance with the support plan, and
- to review support plans.

**Duty of responsible authority to provide information to beneficiary (regulation 7)**

The responsible authority will have a duty to inform the disabled person of their Right to Control. We have always made clear that disabled people should be told about the Right to Control and that the onus should not be on the disabled person to know about and request the Right.
Chapter 2  The Right to Control regulations

Regulation 7(1) stipulates that the responsible authority must notify the disabled person in writing, or in a format that is accessible to the person to whom information is provided (regulation 2(3)), of:

- what the Right to Control is
- an indication of the amount of funding they are eligible to receive from the authority that has written to them
- details of the other Right to Control funding streams and how to access them.

The majority of respondents to our national consultation on the Right to Control, made clear that people should have access to independent information, advice and advocacy services. Respondents felt access to these services would help people to understand what the Right to Control is, the choices available to them and how to exercise their Right. Regulation 7(2) therefore places a duty on the authority to provide the disabled person with information about organisations that provide independent information and advice with support planning. Statutory guidance will provide information on how this duty can be fulfilled.

Regulation 7(3) enables responsible authorities to work together to provide the information requirements for regulation 7. This will help to ensure that disabled people can receive joined-up notification.

Support Plan: general (regulation 8)

Regulation 8(1) specifies the duty on the responsible authority to work with the disabled person to develop a support plan.

Regulation 8(2) specifies that the authority retains a duty to provide services and a support plan even if the disabled person is unwilling to work with the authority.

Regulations 8(3), 8(4) and 8(5) specify the plan must be in writing, signed by or on behalf of the disabled person (if the disabled person approves the plan) and authority, and all parties have a copy of the plan. This is subject to the requirements in regulation 2(3) to provide the plan in an accessible format.

Many respondents to our national consultation favoured the streamlining of support plans, so that a disabled person could have one support plan covering all of the Right to Control funding streams. Regulation 8(6) therefore enables responsible authorities and Right to Control Services to combine their support plans into one plan.

Support plan: cases where beneficiary lacks capacity to approve (regulation 9)

Regulations 9(1) and 9(2) provide that, where a person lacks capacity, the responsible authority can work with a suitable person. A suitable person is either a surrogate, a representative, or a person deemed suitable by the disabled person or by the local authority. A suitable person can develop a support plan on the disabled person’s behalf.

Regulation 9(3) specifies that, where a suitable person is not a surrogate and there is at least one person who is a surrogate of the disabled person, the surrogate, as well as the suitable person, must approve the support plan. Statutory guidance will outline to authorities who can be appointed as a suitable person.

Regulation 9(4) outlines that a suitable person can approve the support plan and receive a copy of the plan on the disabled person’s behalf.

Regulations 9(5) and 9(6) specify who must be consulted in the development of the support plan on the disabled person’s behalf and the factors that must be taken into account. These provisions aim to ensure that key people in the disabled person’s life are consulted, and the disabled person’s wishes and aspirations are taken into account.

Regulation 9(7) mirrors regulation 8(6). It ensures that responsible authorities and Right to Control Services can work with a suitable person to develop a combined support plan on the disabled person’s behalf.

Contents of the support plan (regulation 10)

Regulation 10 provides that the contents of the support plan must include as a minimum:

- the amount of money the disabled person will receive and how eligibility has been determined,
- the outcomes to be achieved which have been agreed with the disabled person or the suitable person,
- the services and support that will be purchased,
- whether a direct payment will be taken,
- whether the disabled person is contributing to the funding, and
- details of when the plan will be reviewed.
Chapter 2  The Right to Control regulations

Right of beneficiary to control manner in which services are provided (regulation 11)

A large number of respondents to our national consultation focused on the need for services to be more flexible and tailored to the needs of disabled people. The Right to Control will enable disabled people to work with authorities to shape services to meet their needs. Regulation 11(1) provides that once the outcomes for the funding provided to the disabled person have been agreed, the responsible authority must give effect to any request made by the disabled person as to how available resources are to be used to meet the outcomes (subject to regulation 11(2)).

Regulation 11(2) provides that a request from the disabled person may be refused by the responsible authority for two reasons:

- It is not reasonably practicable for the service to be provided in the manner requested by the disabled person. For example, if a person wanted to purchase a service that was not available in their local area.
- Or, the service requested would not meet the agreed outcomes of the support plan.

If any request is refused the authority must provide the disabled person with a written statement of the reasons for the refusal.

An example of how regulation 11 could be applied is provided below.

John currently has three different support workers.

- Christopher provides personal assistance to John for one hour each morning from funding provided by Adult Community Care.
- John works during the week. Access to Work provides funding for Mandy to attend John’s workplace and assist him.
- John has assistance from Simon the local community worker provided by Supporting People to help him maintain his tenancy.

Under the Right to Control, although John still has his funding provided by three separate funding streams, he has chosen to appoint Christopher to assist him in all his requirements at home, at work and to help him maintain his tenancy.
Duty to provide services in accordance with support plan (regulation 12)
Regulation 12 provides that where the support plan includes services provided or commissioned by the responsible authority, the authority must arrange for services to be provided to the disabled person in line with their support plan, so far as it is reasonably practicable to do so.

Duty to review support plan (regulation 13)
Regulation 13 provides that the support plan must specify when the authority and the disabled person have agreed to review the contents of the support plan.

Consultation question 2
Do regulations 7 to 13 provide an adequate basis for the Trailblazers to deliver information, support planning and choice to the disabled person?

3. Exercising choice and control by a taking a direct payment
Regulations 14 to 17 provide the framework for direct payments. A direct payment is where the disabled person chooses to take a cash payment which they can use to purchase services to meet their agreed outcomes. The provisions cover:
  • how a disabled person can take a direct payment and the conditions that apply
  • how direct payments can be administered and managed for a disabled person that lacks capacity to request them and the conditions that apply, and
  • when direct payments can be terminated.
Chapter 2  The Right to Control regulations

Direct payments to beneficiary (regulation 14)

We propose that the Right to Control direct payments regulations should not be overly prescriptive. They should only contain the necessary elements to ensure authorities and disabled people are provided with a clear indication of their responsibilities and entitlements.

Provisions for direct payments are set out in the Adult Community Care regulations\(^\text{10}\). Regulation 14 mirrors these provisions. This approach ensures consistency in the delivery of direct payments for public funding and reduces the potential for confusion amongst disabled people and authorities about how direct payments are made. It also ensures that the Right to Control provisions build on the lessons learnt from the delivery of direct payments to Adult Community Care recipients.

Regulation 14(1) provides that the responsible authority must give the disabled person the opportunity to take a direct payment. This is in line with increasing choice and control and the rights-based approach disabled people have told us is important to them.

Regulation 14(2) provides that a relevant authority can refuse a direct payment for all or part of the support available if it appears to the authority that:

- the disabled person cannot manage a direct payment, even with assistance
- the disabled person’s need for a qualifying service cannot be met by a direct payment
- the request would place an unreasonable financial burden on the authority (regulation 14(2)(c)) or would have an adverse effect on the provision of qualifying services to, or for the benefit of, other people (regulation 14(2)(d))
- that it is not reasonably practicable in all the circumstances to make direct payments (regulation 14(2)(e)).
In determining what is an unreasonable financial burden, the relevant authority can refuse a direct payment under the Right to Control if this would put in jeopardy the viability of existing services to other service users. An example is provided below.

Louisa is a community support worker who provides support to ten people within a local community and is paid by Supporting People funding. To ensure this service is financially viable, a minimum of eight people must receive support from Louisa on a regular basis. Under the Right to Control, if three of these ten people request a direct payment to purchase support from an alternative service, the authority would firstly try to find other Supporting People funding recipients to receive support from Louisa or, if this was not possible, the authority could refuse the three people a direct payment for this particular service. The refusal would be on the grounds that this would mean the service was not affordable by the other seven attendees. The authority would still work with the three people who wanted to purchase alternative support to try to adapt the current service to better meet their needs and agreed outcomes.

Respondents to our national consultation\(^\text{11}\) felt that authorities delivering the Right to Control still need to ensure that disabled people who enjoy an existing service are supported. This is the basis of regulations 14(2)(c) and 14(2)(d). However, respondents also outlined that a guiding principle for the Right to Control should be that if the majority of people choose to leave a service, the authority should consider the future viability of that service. We fully expect authorities to have regard for the affordability of the Right to Control within existing and future budgets, and for value for money opportunities. This means that we would not expect an authority to refuse a direct payment if, for example, a significant proportion of the service recipients were dissatisfied with the service being provided. In the example above, if eight of the ten service recipients asked to take a direct payment to purchase alternative support we would expect the authority to consider re-shaping the service, or to commission an alternative. We plan to specify this in non-statutory guidance to ensure, where practicable, authorities apply a longer-term perspective.

In line with the Department of Health (DH) direct payment provisions, regulation 14(3) specifies that a direct payment cannot be made to a disabled person who is subject to drug-and/or alcohol-related provisions of certain criminal justice legislation\textsuperscript{12}. These provisions are detailed in Schedule 1, an additional section at the end of the regulations.

Regulation 14(4) provides that it is the duty of the authority to ensure that disabled people taking direct payments are aware of their obligation to repay the money if it is not spent to meet their agreed outcomes.

Regulation 14(5) and 14(6) mirror the DH conditions for taking a direct payment and prevent the disabled person from securing paid services from a spouse or civil partner, or a family member living in their household. Regulation 14(5) does provide that the responsible authority can exercise discretion and enable services to be secured from family members where necessary. Statutory guidance will outline circumstances when this discretion could be applied. An example is provided below.

**Cathy lives in a farm house in Lincolnshire that is 25 miles from the nearest town. Cathy requires personal assistance but has had difficulty recruiting a personal assistant willing to travel. Her daughter-in-law Shelly also lives on the farm. Shelly would be happy to provide personal assistance support to Cathy. Given Cathy's remote location, the authority agrees that Cathy can use her direct payment to employ Shelly as her personal assistant.**

Regulation 14(7) mirrors the DH regulations and provides that the authority can apply other conditions to the taking of a direct payment. Regulation 14(8) sets out that these conditions could specify that a disabled person cannot purchase services from a particular person or that they must provide the authority with particular information in connection with a direct payment, for example, financial invoices. We expect authorities to work with the disabled person to ensure they understand the conditions of taking a direct payment and that these are documented in the agreed support plan. Statutory guidance will outline when and how this provision can be used.
Direct payments in case of person lacking capacity to request them (regulation 15)

Regulation 15 provides that where the person eligible for a service does not have the capacity to request or consent to the making of a direct payment, payments can be made to a suitable person.

Regulation 15(3) provides that the responsible authority must consider whether a direct payment to a suitable person would enable the disabled person to achieve the outcomes of their support plan. Regulation 15(4) provides for a suitable person to receive a direct payment on the disabled person’s behalf (subject to the conditions set out in regulation 16 and Schedule 1).

Regulations 15(5), 15(6), 15(7) and 15(8) mirror the provisions for direct payments made directly to the beneficiary which are set out in regulations 14(4), 14(5), 14(7) and 14(8).

Conditions for direct payment to suitable person (regulation 16)

Regulation 16 sets out the conditions for a suitable person to receive a direct payment on behalf of the disabled person.

Regulation 16(2) provides that where a suitable person is not a ‘surrogate’ of the disabled person, and there is at least one surrogate, the surrogate must consent to the suitable person receiving the direct payment.

Regulation 16(3) sets out the individuals whom authorities should consult with before providing a direct payment to a suitable person. This regulation provides for representatives, surrogates and those caring for the disabled person to be consulted.

Regulation 16(4) provides that the responsible authority should, as far as possible, take into account the disabled person’s past and present wishes, beliefs and any other important factors when considering whether to provide the suitable person with a direct payment.

Regulation 16(5) states the conditions under which the responsible authority would need to undertake a Criminal Records Bureau check on the suitable person. This is not needed where:

- the suitable person is a relative of the disabled person, or
- a friend involved in providing care to the disabled person.
Regulation 16(6) specifies that the responsible authority can provide the suitable person with a direct payment:

- if the outcomes for the qualifying service can be achieved by a direct payment,
- the suitable person is capable of managing a direct payment alone or with assistance, and
- they are satisfied the suitable person will act in the best interests of the disabled person.

**Termination of direct payments to beneficiary or other person (regulation 17)**

The relevant authority must terminate direct payments to the disabled person, or their recognised representative for the following reasons:

- the disabled person is no longer eligible for a qualifying service
- the disabled person or suitable person is not using the direct payment in accordance with the agreed support plan
- the disabled person or suitable person is no longer capable of managing a direct payment
- the agreed outcomes can no longer be secured by means of a direct payment, for example if there is no longer a local market from which a person can individually purchase support
- the disabled person or the suitable person requests that they no longer want to take a direct payment.

Regulation 17(2) stipulates the responsible authority must notify the disabled person or the suitable person in writing (or an accessible format) of these changes. The support plan must be amended accordingly.

**Consultation question 3**

Do regulations 14 to 17 provide a sufficient framework for making direct payments?
Review of decisions (regulation 18)

Regulation 18 requires responsible authorities to ensure their existing review/complaints processes are extended to enable disabled people to request a review of a decision to refuse the Right to Control.

Regulation 18(a) to (e) specify the types of decisions that a disabled person can request to have reviewed. These cover:

- A decision to refuse the Right to Control because it is not reasonably practicable to provide the services in the way the disabled person has requested, or the services requested by the disabled person would not meet their agreed outcomes.
- A decision to refuse the disabled person a direct payment.
- A decision to refuse a suitable person the ability to take a direct payment.
- A decision to terminate the making of a direct payment.

The regulations specify that existing review and complaints mechanisms should be extended for the Right to Control. This approach has been informed by consultation with local authorities, disabled people and service providers. They outlined that extending existing practices could make it easier for a disabled person or their representative to identify who to contact for a review, than if a new Right to Control specific process were to be introduced.

The Right to Control evaluation will explore disabled people’s experiences of the delivery of the Right, including the review process, and whether this approach is effective.

Consultation question 4

Does regulation 18 provide a sufficient framework for reviewing decisions?
4. Removing barriers

Regulations 19 to 21 enable streamlining of procedures and the sharing of information between authorities. These provisions enable the Right to Control Services to test integration of budgets, assessment, review, and accountability processes. Regulation 20 enables authorities to share data in line with the Data Protection Act 1998. This is a permissive power which does not place a requirement on an authority to share data, but simply enables an authority to do so.

Arrangements for exercise of functions (regulation 19)

Regulation 19(1) provides that a responsible authority will be able to delegate the Right to Control functions under regulations 6 to 11 and 13, to any person or to their employees. For example, a local authority could delegate to a service provider the notification of the Right to Control to people eligible for Supporting People funding.

This regulation also enables the responsible authority to delegate functions to other Right to Control Services.\(^{13}\) We plan to mirror this provision in the ILF and Adult Community Care legal frameworks. This will enable one Right to Control funding stream to work with a disabled person to put in place one support plan and one set of reviews covering all the funding they receive under the Right to Control.

The functions authorities can delegate are:

- assessing whether an individual is eligible for a qualifying service
- informing a disabled person about the Right to Control
- advising and supporting the disabled person through the completion of the support plan, and
- reviewing the support plan.

A relevant authority cannot act on behalf of another authority when it comes to the award of funding or taking recovery action if the funding has not been appropriately awarded or spent. This will be specified in statutory guidance.

Regulation 19(2) provides that the duty to provide the Right to Control remains with the responsible authority.

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\(^{13}\) This means that Jobcentre Plus or the local authority responsible for Supporting People will be able to delegate functions to the ILF or to authorities with responsibility for Adult Community Care.
Information sharing (regulation 20)

Regulation 20(1) provides that authorities will only be able to disclose information to each other in line with the Data Protection Act 1998, and where the information is relevant to and necessary for:

- determining eligibility for the Right to Control
- developing support plans
- monitoring direct payments
- measuring performance, and
- evaluation purposes.

Regulation 20(3) stipulates these data sharing provisions are subject to the Data Protection Act 1998. They will also be subject to existing cross-government policies and standards on data sharing. If the Data Protection Act 1998 requires an individual’s consent to be obtained before information can be shared, the authority will also need to obtain a disabled person’s consent in order to share information about them.

Consultation question 5

Are regulations 19 and 20 sufficient to allow relevant authorities to work together to provide a more streamlined service for the disabled person?

Transitional provisions on expiry (regulation 21)

Regulation 21 provides that a disabled person that has the Right to Control during the pilot period, can continue to receive the Right to Control for a specified period after the pilots end. Regulation 21(a) stipulates this can be up to the next agreed review point, or for a period of 12 months from the last day of the pilot period (regulation 21(b)). This provision ensures that authorities can still provide the Right to Control to disabled people up to and including the final date of the pilots, and that disabled people who have put in place support plans do not need to amend these as soon as the pilot period is completed.
Persons excluded from direct payments (Schedule 1)

Schedule 1 specifies who is excluded from being able to receive a direct payment in accordance with regulations 14(3) and 15(4). The schedule outlines that people subject to specified legal orders related to drug or alcohol dependency are excluded. This provision is in line with the DH direct payment regulations\(^{14}\).

Disabled Facilities Grants

Disabled Facilities Grants (DFG) are grants paid for a specific purpose rather than ongoing support like the other Right to Control funding streams and they have their own legislative framework. For these reasons we are including DFG in the Right to Control regulations in a different way. Disabled Facilities Grants are provided under the Housing Grants, Construction and Regeneration Act 1996\(^{15}\). We will modify some of the provisions within this Act to make it possible for the Right to Control flexibilities to extend to DFG in the pilot areas during the pilot period.

The provisions in the 1996 Act apply to the applicant for a DFG. There are broadly two types of applicant, the person living in the household or a landlord.

For owner occupiers, the applicant is either the disabled person (if they own the home), the owner on behalf of an adult member of the household, or the owner as a parent of a disabled child. The Right to Control provisions in the Welfare Reform Act 2009 extend only to disabled people aged 18 and over. Therefore the Right to Control will apply to:

- adult owner occupiers that are applying for a DFG to meet their own needs, or
- the disabled adult in a household where an owner occupier has applied for a DFG to meet the disabled adult’s needs.

\(^{14}\) Stated within Community Care, Services for Carers and Children’s Services Regulations 2009 Schedule 1

\(^{15}\) Referred to in this document as the 1996 Act.
Where the applicant lives in housing provided by a local housing authority or by a housing association, a DFG can be applied for by either the landlord or the disabled person directly. In either case, the landlord will be asked to consent that the disabled person can have the Right to Control. With the landlord’s consent, the disabled person will have the Right. The landlord will be asked to agree the final support plan which will detail how the property will be adjusted to meet the disabled resident’s needs.

Disabled people that live in private-sector rented accommodation will not receive the Right to Control. This is because in the private-sector market the majority of residents are on short term tenancy agreements and could seek alternative accommodation.

Regulation 22 provides that the 1996 Act will be modified for people living in the pilot areas with the exception of Essex County Council. Regulation 22(2)(a) provides that in Essex initially five district councils will be delivering the Right to Control to DFG recipients. Regulation 22(2)(b) names the five districts in alphabetical order:

- Brentwood Borough Council
- Epping Forest District Council
- Harlow District Council
- Maldon District Council
- Uttlesford District Council

Disabled Facilities Grants (DFG) are administered by housing authorities. In two tier areas, these are District Councils rather than County Councils. Essex is a large local authority area and we have agreed that they will test the Right to Control in the above five named districts only, with the option of including other districts at a later stage.

Regulation 22(3) provides that the modifications to the 1996 Act apply to the disabled occupant if they are aged 18 or over.

Regulation 22(4)(a) provides that disabled homeowners can receive the Right to Control. Regulation 22(4)(b) provides that a disabled tenant of a local housing authority or a registered provider of social housing can have the Right to Control.

Regulation 22(4)(c) provides that disabled people living in houseboats and caravans have the Right to Control.
Chapter 2  The Right to Control regulations

Modifications of Chapter 1 of Part 1 of Housing Grants, Construction and Regeneration Act 1996 (Schedule 2)

Schedule 2 paragraph 2 provides local authorities with the flexibility to:

• require applicants to provide two builders’ quotes for the works when they submit their application, or

• remove from the application process the need for the applicant to provide two builders’ quotes with their application, or

• use their own estimates if an authority has not indicated that it does not need two estimates and the applicant does not provide the estimates.

It is intended that this flexibility will enable authorities to draw on a framework of quotes from builders to determine a standard sum of money or tariff for standard works, such as a walk-in shower. This should enable authorities to provide the disabled person with an indicative budget as part of the support planning process.

Schedule 2 paragraph 3 inserts into Section 34(3) of the 1996 Act provisions that require the authority, once a disabled person is deemed eligible for a Right to Control, to:

• notify the disabled person of their right to choose their own contractor

• provide the disabled person with a right to receive a direct payment of the grant (subject to the provisions of Schedule 2, paragraph 6)

• provide the disabled person with information about the other Right to Control funding streams and their relevant authorities, and

• provide the disabled person with information about organisations that provide advice and assistance with exercising the provisions under the Right to Control, such as support planning and managing direct payments.

Schedule 2 paragraph 4(1) provides that if the local housing authority approves an application for a grant, they must work with the disabled occupant and with the applicant (where they are not the same person), to develop and agree a support plan for the disabled occupant. This provision ensures that if the applicant is the homeowner or the landlord, they must agree the adaptations to the home.
Schedule 2 paragraph 4(2) stipulates that the support plan must contain:

- the amount of the grant
- the works to be carried out and the contractor that will be appointed
- whether the grant is to be paid to the disabled occupant, to the applicant (if not the disabled person) or the contractor
- whether the grant is to be paid in instalments and if so to list the instalments, and
- the purpose that carrying out the works is intended to achieve, in line with the purposes set out in the 1996 Act. These purposes are to enable a disabled person to live comfortably and safely in their own home. They include enabling a disabled person to move freely about their home, enabling them to wash themselves or to cook, and ensuring there is an adequate heating system in place.

Schedule 2 paragraph 4(3) stipulates that the support plan must be agreed by the applicant if they are not the disabled occupant.

Schedule 2 paragraphs 4(4) stipulates the support plan must be in writing and signed by or on behalf of the housing authority.

Schedule 2 paragraphs 4(5) provides that the housing authority must give a copy of the support plan to the disabled occupant and the applicant (if they are different people).

Schedule 2 paragraph 4(6) enables the housing authority to combine this support plan with other Right to Control support plans. This will enable disabled people to have one Right to Control support plan.

Schedule 2 paragraph 5 specifies when a housing authority can refuse an individual a direct payment of a grant or terminate a payment. These circumstances are:

- that the authority is not satisfied the applicant can manage a grant payment, even with assistance, or
- that the authority is not satisfied the applicant can manage the proposed works, even with assistance.
Chapter 2  The Right to Control regulations

Schedule 2 paragraph 6 provides that Section 39 of the 1996 Act is modified so that the authority can provide a grant to a contractor as a direct payment or a cheque/payable order for the following reasons:

- the disabled person requests this approach
- the authority is not satisfied the applicant can manage a grant payment, even with assistance
- that the authority is not satisfied the applicant can manage the proposed works, even with assistance, or
- where an instalment has already been paid and the instalment has not been used in accordance with the support plan.

Schedule 2 paragraph 7(1) provides that the local authority must make a direct payment to the disabled occupant if this has been agreed in the support plan.

Schedule 2 paragraph 7(2) provides that the grant cannot be paid directly to the disabled person if they are subject to drug-and/or alcohol-related provisions of certain criminal justice legislation\(^{16}\). These provisions are detailed in Schedule 1.

Schedule 2 paragraph 8 modifies Section 52(1) of the 1996 Act to provide that where a grant is to be repaid to the housing authority, it can be repaid by the disabled occupant who received the grant.

Schedule 2 paragraph 9 ensures the disabled person can request a review of a decision in relation to the Right to Control.

Schedule 2 paragraph 10 provides that, where an application for a DFG has been approved up to and including the last day of the pilot period, the Right to Control applies until the works specified in the application have been completed. This ensures disabled people can receive the Right to Control even if their application is approved on the last day of the pilot period. Housing authorities have a statutory duty to pay out grant money within 12 months of a person being informed they are eligible for a DFG, and therefore for the Right to Control.

The provisions in Schedule 2 aim to ensure the flexibilities of the Right to Control can be applied to DFG in the pilot areas, the example below highlights how these flexibilities could be applied.

\(^{16}\) Stated within Community Care, Services for Carers and Children's Services Regulations 2009 Schedule 1
Chapter 2  The Right to Control regulations

Mina uses a wheelchair and needs a stair lift and a shower adaptation in order to go about her daily life. Before the Right to Control, the local authority would have arranged for these works to be done by approved builders. Under the Right to Control, Mina chooses to take the cost of these works as a direct payment. She puts this funding together with her own savings and chooses builders she is familiar with to build an extension to the ground floor of her house which incorporates a bedroom and an accessible shower of her choice.

Guidance

Statutory guidance provides greater detail on how legislation is to be applied. Regulation 23 requires authorities to have regard to such guidance. We expect to issue statutory guidance covering the following areas:

- Explain how authorities can notify disabled people of their Right to Control in a format acceptable to the disabled person in accordance with the Disability Discrimination Act 1995.
- Clarify how authorities can meet the requirement to assist a disabled person to access independent advice and guidance with their support plans and with exercising their Right to Control.
- Stipulate the monitoring and auditing requirements for direct payments to ensure that Right to Control does not place an unacceptable burden on the disabled person.
- Clarify the requirement for the relevant authority to make clear to the disabled person the financial auditing and monitoring that they would be subject to, so they can make a more informed decision on whether to take up a direct payment.
- Provide that where an individual is already in receipt of a direct payment for Adult Community Care that they can use the same bank account for any Right to Control funding streams as long as it is clear where each monies came from and how the money has been spent.
• Outline to authorities who can be appointed as a suitable person, in cases where the disabled person lacks capacity, to develop a support plan and receive a direct payment on behalf of the disabled person.

• Outline circumstances when authorities can exercise discretion regarding the securing of paid services from family members where a disabled person takes a direct payment.

• Clarify how repayment processes should be implemented. For example, where any funding that a disabled person receives is unspent, guidance will provide details of how this money could be repaid.

**Consultation question 6**

*Are there any further areas where statutory guidance is essential to support delivery of Right to Control?*

We will also develop non-statutory guidance that will ensure best practice is recorded, shared and utilised across the pilot areas.
Chapter 3

Other Right to Control funding streams outside these regulations

As stated within Chapter 1, Adult Community Care Services and the Independent Living Fund have their own legal frameworks. We plan to modify these frameworks to enable the delivery of the Right to Control. These two funding streams are therefore not covered by most of the detailed provisions within our regulations but are named as ‘Right to Control Services’. The regulations enable Right to Control Services to share data with the other Right to Control funding streams and to work together with all participating funding streams to streamline the application process, support planning, review and monitoring systems.

Adult Community Care Services

The aim of aligning the Right to Control with Adult Community Care services is to enable the delivery of the Right to Control flexibilities to people who are eligible for community care services. This will provide the significant improvements that disabled people are looking for in joined-up self-directed support.

Adult Community Care Services have their own legal framework that governs the services that are delivered. This framework provides that people eligible for Adult Community Care Services can take a direct payment in lieu of those services.
To ensure people eligible for Adult Community Care Services living in the pilot areas can have the full flexibilities of the Right to Control, the Department of Health will be issuing directions to local authorities. Directions are statutory provisions that place requirements on local authorities. Directions will be issued under the National Health Service and Community Care Act 1990 and/or Section 7A of the Local Authority Social Services Act 1970.17

Directions

Directions support legislation by setting out details of instructions, including procedural matters. To deal with delivery of the flexibilities of the Right to Control, directions will be issued by the Department of Health to local authorities testing the Right to Control. These directions will set out how these flexibilities must be delivered to disabled people in the context of community care services.

The alignment of the Right to Control builds upon the work already undertaken as part of the transformation of adult social care as set out in Putting People First18.

To support the Right to Control, directions will be issued that take into account the more inclusive and streamlined service that we want to be provided to disabled people living in the pilot areas. We propose that directions will include:

- When a disabled person is deemed eligible for Adult Community Care Services they should be notified of the availability of equivalent flexibilities to the Right to Control and what this means.
- They will be told about other Right to Control funding streams they may be eligible to receive.
- Joining up the eligible funding streams, and where possible combining the gathering of information for assessment purposes.
- Providing the disabled person with an indication of the level of resources they will be entitled to.

17 From this point forward, these will be referred to in this document as ‘directions’.

Chapter 3 Other Right to Control funding streams outside these regulations

- Working with the disabled person to agree the outcomes to be achieved from the resources allocated, underpinned where possible by a single agreed care/support plan.
- Ensuring the disabled person has access to information, advice and assistance to inform the development of their care/support plan.
- Working in partnership with other Right to Control funding streams to deliver a seamless service to disabled people in receipt of a number of funding streams.
- Reviewing and monitoring the care/support plan and agreed spending on behalf of other funding streams.
- Ensuring the disabled person is aware of the possibility of access to a complaints process to request a review of a decision connected with the flexibilities of the Right to Control.

In the Trailblazers we will evaluate how the services under the Right to Control align with Adult Community Care services in order to test the approach of a seamless service.

Consultation question 7

Do you think there are any further steps that should be included in the Adult Community Care directions?

Independent Living Fund

The Independent Living Fund is a UK-wide resource providing financial support to enable disabled people to live independently in the community rather than in residential care.

Disabled people who are offered support by the ILF receive a regular, four-weekly payment to buy personal care to live in the community. ILF awards are made only to candidates eligible for a certain level of local authority community care services.

An independent board of Trustees has responsibility for overseeing the governance and delivery of the organisation’s objectives. The Trustees work with the Chief Executive to make payments to individuals from funds provided by the Department for Work and Pensions (DWP).
The Trustees manage the fund in accordance with a Trust Deed. This is a document that sets out the framework in which they are able to issue payments and what kind of support recipients are able to purchase.

To enable the ILF to take full part in the Trailblazers, the Trust Deed will be amended by way of a supplementary schedule. The changes set out in the schedule, which will be agreed with the ILF, will only apply in the pilot areas. The ILF is also named as a ‘Right to Control Service’ within the regulations. This ensures that the ILF can share data with the other Right to Control funding streams and can work with the other funding streams to streamline application processes, support planning, review and monitoring systems.

The key changes we are proposing for inclusion in the Trust Deed schedule are:

- Currently ILF customers are restricted to using their ILF funding to purchase specific services and support. For the Trailblazers, this requirement will be amended to enable recipients of the ILF to purchase the support and services they need to enable them to achieve the outcomes in their support plan.

- Customers would like payments aligned with other funding streams and payments in advance, rather than in arrears, to enable them to plan ahead. There are sufficient flexibilities within the Trust Deed to enable this, but there is a restriction that customers who receive the highest amount can only receive a maximum payment of 52 times that amount in a year. We plan to amend the Deed to ensure that those customers who live in a Trailblazer area and receive the highest award can choose to receive advance payments. This may result in their receiving an extra payment in the first year.

- Currently the Trustees have to monitor the payments made by the ILF. Under the Right to Control, it may be more practical if other Right to Control Services were able to undertake this on behalf of the Trustees. We are therefore considering prescribing that the Trustees should satisfy themselves that the monitoring arrangements used by other funding streams are appropriate for the ILF.

- We need to ensure that where it is decided an assessment should be undertaken by a Right to Control Service on behalf of the ILF, there are appropriate procedures in place covering when an assessment or review needs to be completed and by whom.
How will the Right to Control work in practice for ILF recipients?

Both new and existing ILF customers in the Trailblazer areas will be eligible for the Right to Control. Shortly before the Trailblazers go live, existing ILF customers will be contacted in writing to inform them of their new Right and what it means for them. They will be given an opportunity to discuss the Right to Control with their caseworker. At this meeting the disabled person can explore what the Right could deliver for them, either at that time or when their scheduled review is due.

At the review stage, a support plan will be developed to look at all aspects of the disabled person's life. This will take into account the funding received for their existing needs, eligibility for any other funding streams and whether, if applicable, the support plan should be revised to achieve their aspirations.

Currently the money received from the ILF, together with a minimum sum from the local authority, can only be spent on Qualifying Support and Services (QSS). The QSS are support and services provided in respect of:

- cleaning and other domestic duties
- cooking and preparing food and drink
- laundering and ironing
- shopping
- personal hygiene and grooming
- dressing
- eating
- drinking
- physical movement such as turning, walking
- supervision in order to avoid substantial danger to him or herself or others.
In Trailblazing areas, the QSS will still be used to determine entitlement to the ILF but the conditions relating to how the money can be spent will be relaxed. Once a person is deemed eligible for ILF support they can utilise the funds more freely to meet the outcomes as agreed in their support plan. New ILF customers will also be given the opportunity to exercise the Right to Control from the outset of their claim, in line with the Right to Control customer journey.

**Consultation question 8**

_Do the suggested changes provide a sufficient framework to enable the Independent Living Fund to participate fully in the Right to Control Trailblazers?_

A list of all the consultation questions can be found at Annex A.
Chapter 4

The potential impacts of the Right to Control

Our approach to measuring the impacts of the Right to Control

We want to understand how the Right to Control Trailblazers affect:

• local authorities and Jobcentre Plus
• disabled people
• carers
• service providers, and
• information, advice, advocacy and brokerage services.

To ensure that we fully understand the impact of the Right to Control, we will commission a comprehensive evaluation of the Trailblazers. The evidence from this evaluation will play a key part in helping us and others to understand how best to deliver choice and control to disabled people. The evaluation evidence will be used to inform any decision to offer the Right to Control more widely.

The Right to Control evaluation will be conducted by an independent research organisation and a report of the findings will be published.
What impacts are we measuring?
The key impacts the evaluation will be looking to measure are:

- How disabled people choose to exercise the Right, for example staying with existing services, varying existing services, taking a direct payment or adopting a mixture of these options.

- The impact of the Right to Control on the experiences and outcomes of disabled adults. This could include whether more disabled adults in the Trailblazer areas move into work or whether disabled people living in the Trailblazer areas perceive that they have more or less choice and control in their ability to determine their own support.

- Whether disabled people’s experience of accessing support services including advocacy services differs from those not participating in the Trailblazers.

- The impact on existing services and delivery processes (including block contracts). For example, does the Right affect how much services cost to deliver or how staff use their time.

- The evaluation will also review if services become more or less affordable under the Right to Control.

- The impact on public authorities’ finances and resources of delivering the Right to Control. This may include both set-up costs and estimates of any costs associated with wider roll-out.

- How the Right to Control affects the operation of the funding streams, including the level of demand for support and any effect of streamlining service delivery.

We recognise that the Right to Control is likely to not only affect disabled people but may also affect their families, carers, support staff, service providers and advocacy services. The evaluation will therefore explore how these individuals and organisations are affected by the Right to Control. This will include any changes made to the delivery of services and their views of the policy. The evaluation will also facilitate the sharing of learning amongst the Trailblazers.
How we plan to measure impacts

To understand the impact of the Right to Control the evaluation will collect information from the Trailblazer areas and compare this with information from very similar areas that are not Right to Control Trailblazers.

To look at differences in outcomes for disabled people, the evaluation will use information collected by funding stream authorities on all customers who receive support. In addition, a survey will be conducted among a group of people who participate in the Right to Control and another group who do not participate. The survey will ask questions, such as whether someone has moved into work, to analyse if there are any differences between the two groups.

How will the evidence be used?

The evidence for the evaluation will help decide whether the Right to Control has improved outcomes for disabled people. We want to know if people who had been part of the Right to Control felt they had more control over the decisions made about their support and if they were content to make these decisions. We also need to ensure that we capture concerns of those who felt that they had not been supported sufficiently, and what help they would like to have received.

The evaluation will examine how each of the funding streams operated under the Right to Control and whether a difference in the way services are delivered has demonstrated the best ways of delivering choice and control over public funding.

The evaluation will examine impacts on the costs of delivery. Estimates of the impact on costs of a wider roll-out will also be considered.

Collectively this evidence will inform decisions on any wider roll-out of the Right to Control.

The evaluation will run throughout the full duration of the Trailblazers. This will enable evaluators to examine the longer-term as well as short-term outcomes of those people, authorities, organisations and user-led organisations participating in the Right to Control. Once the Trailblazers have ended, a full evaluation report will be published to ensure that the lessons learnt from the Right to Control are publicly available.
Equality Impact Assessment

The role of an Equality Impact Assessment

Equality Impact Assessments help us to look at the likely effects of a policy on certain groups of people, paying particular attention to gender, age, ethnicity, disability, sexual orientation and religious beliefs. The assessment identifies any potentially negative or disproportionate impacts on any groups to ensure a policy does not discriminate. It also looks for opportunities for promoting equality.

Equality Impact Assessments help policy makers to ensure they have effectively considered the impact on equality of all the policies and projects they are putting in place.

Our Equality Impact Assessment

We are committed to assessing the equality impacts of all our new policies, and have produced an Equality Impact Assessment to sit alongside our regulations. It looks at how the Right to Control might impact on different groups in society. Some of the most important areas we identified are below:

- We will make sure all information provided, including notifying people whether they are eligible for the Right to Control, will be in an appropriate and accessible format to ensure that all groups understand the Right and no group is discriminated against.

- Evidence from previous personalisation pilots has suggested that increased choice and control for some older people may result in higher anxiety levels. We will make sure all people included in the Right to Control Trailblazers, including older people, are thoroughly supported to make informed decisions, and can choose how they want to exercise their Right to Control.

- We recognise the important role independent advice and advocacy can play in helping people understand their choices. The Office for Disability Issues recently provided funding to build the capacity for user-led organisations to provide advice and support to disabled people accessing the Right to Control.

- The Right to Control is an opportunity to promote equality for disabled people by increasing their opportunities to find employment and access independent living.
We expect Trailblazer authorities to work with disabled people and their organisations to shape the delivery of the Right to Control. As we have outlined above, we will closely monitor and evaluate the impact of the Right and if necessary take steps to address any negative effects. We will also continue to consult with the people whose lives will be affected by the Right to Control and make sure we remain aware of promoting equality at all stages.

Our full Equality Impact Assessment can be found at Annex D.
Chapter 5

Important consultation information

In this chapter we provide important information on how to respond to us.

Consultation arrangements:
Please send your consultation responses to:
Right to Control Consultation Responses
Office for Disability Issues
Ground Floor (Room G.40)
Caxton House
Tothill Street
London SW1H 9NA
Telephone: 020 7449 5093
Fax: 020 7449 5087
Email: right.control@dwp.gsi.gov.uk

Please ensure your response reaches us by 19 May 2010. We will acknowledge all responses. Please say whether you are responding as an individual, or on behalf of an organisation. If on behalf of an organisation, please make clear who the organisation represents and how the views of members were obtained.

If you have any queries about this consultation, or would like to receive the consultation in a different format please contact the Right to Control Team (contact details as above)
Freedom of Information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case you should limit any personal information provided or remove it completely. If you want the information in your response to the consultation to be kept confidential you should explain why as part of your response, although we cannot guarantee to do this.

Consultation criteria

The consultation is being conducted in line with the Government Code of Practice on Consultation\(^\text{19}\). The seven consultation criteria are:

- **When to consult** – formal consultation should take place at a stage when there is scope to influence the outcome.
- **Duration of consultation exercises** – consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact** – consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises** – consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation** – keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises** – consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult** – officials running consultation exercises should seek guidance in how to run an effective exercise, and share what they have learned from the experience.

Feedback on this consultation

We value your feedback on how well we consult. If you have any comments on the process of this consultation, for example, how it could be improved, but not about the issues raised, please contact our Consultation Co-ordinator:

Roger Pugh
DWP Consultation Coordinator
Room 4F, Britannia House
2 Ferensway, Hull HU2 8NF
01482 609571
roger.pugh@dwp.gsi.gov.uk
Annex A

Consultation question summary

Consultation question 1
Do regulations 1 to 6 provide sufficient detail about where the Trailblazers will take place, and who and what will be included?

Consultation question 2
Do regulations 7 to 13 provide an adequate basis for the Trailblazers to deliver information, support planning and choice to the disabled person?

Consultation question 3
Do regulations 14 to 17 provide a sufficient framework for making direct payments?

Consultation question 4
Does regulation 18 provide a sufficient framework for reviewing decisions?

Consultation question 5
Are regulations 19 and 20 sufficient to allow relevant authorities to work together to provide a more streamlined service for the disabled person?

Consultation question 6
Are there any further areas where statutory guidance is essential to support delivery of Right to Control?
Annex A  Consultation question summary

Consultation question 7
Do you think there are any further steps that should be included in the Adult Community Care directions?

Consultation question 8
Do the suggested changes provide a sufficient framework to enable the Independent Living Fund to participate fully in the Right to Control Trailblazers?

If you have any additional suggestions or observations about issues that you consider have not been met within the consultation document, please add these to your response.

For details on how you can get your views to us, please refer to Chapter 5.
Annex B

Selected pilot areas

The Right to Control will be tested in eight Trailblazer areas. The selected Trailblazer areas in alphabetical order are:

• Barnsley Metropolitan Borough Council and Sheffield City Council
• Essex County Council
• Greater Manchester – this incorporates Manchester City Council, Oldham Council, Bury Council, Stockport Metropolitan Borough Council and Trafford Council
• Leicester City Council
• London Borough of Barnet
• London Borough of Newham
• Redcar and Cleveland Borough Council
• Surrey County Council – the Right to Control will be delivered in two districts in Surrey. These are Epsom and Ewell Borough Council, and Reigate and Banstead Borough Council.

Disabled Facilities Grants (DFG)

Essex is a large two-tier local authority area. Initially five district councils will be delivering the Right to Control to DFG recipients, with the option of including other districts at a later stage. The five districts in alphabetical order are:

• Brentwood Borough Council
• Epping Forest District Council
• Harlow District Council
• Maldon District Council
• Uttlesford District Council
Annex C

Draft regulations

For the draft regulations, see the following pages.
Draft Regulations laid before Parliament under section 49(1) of the Welfare Reform Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

DISABLED PERSONS, ENGLAND

THE DISABLED PEOPLE’S RIGHT TO CONTROL (PILOT SCHEME) (ENGLAND) REGULATIONS 2010

Made *** 2010

Coming into force

Regulation 20 *** November 2010

Remaining provisions *** December 2010

These Regulations are made in exercise of the powers conferred on the Secretary of State by sections 41 and 44 of the Welfare Reform Act 2009(a).

These Regulations are made for the purpose mentioned in section 38 of that Act and with a view to ascertaining the matters mentioned in section 44(2)(a) to (c) of that Act.

In accordance with section 47(1) of that Act the Secretary of State published a draft of these Regulations and invited representations to be made to the Secretary of State about the draft, by persons appearing to the Secretary of State to be affected by the Regulations, during a period of at least 12 weeks.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 49(1) of that Act.

The Secretary of State with the consent of the Treasury makes the following Regulations:
Citation, commencement, expiry, extent and application

1.—(1) These Regulations may be cited as the Disabled People’s Right to Control (Pilot Scheme) (England) Regulations 2010.

(2) Regulation 20 (information sharing) comes into force on *** November 2010.

(3) The other provisions of these Regulations come into force on *** December 2010.

(4) These Regulations cease to be in force on *** December 2012, but this is subject to regulation 21 and to paragraph 7 of Schedule 2.

(5) These Regulations extend to England and Wales.

(6) These Regulations apply to England only.

Interpretation

2.—(1) In these Regulations—

“the 2009 Act” means the Welfare Reform Act 2009;

“community care services” has the meaning given by section 46(3) of the National Health Service and Community Care Act 1990(a);

“direct payment” is to be read in accordance with regulations 14 and 15;

“expiry date” means the date specified in regulation 1(4);

“principal local authority” means—

(a) a county council,

(b) the council of any district comprised in an area for which there is no county council,

(c) a London borough council,

(d) the Common Council of the City of London in its capacity as a local authority, or

(e) the Council of the Isles of Scilly;

“pilot area” means an area listed in regulation 3;

“qualifying service” has the meaning given by regulation 4;

“relevant authority”, in relation to a right to control service, means the relevant authority (within the meaning of Part 2 of the 2009 Act) that is responsible for the provision of the service;

(a) 1990 c. 19.
“representative”, in relation to a person who lacks capacity in relation to any matter, has the meaning given by regulation 5(1);

“the responsible authority” is to be read in accordance with regulation 6(2)(b);

“right to control service” means—
(a) a qualifying service,
(b) community care services,
(c) financial assistance provided by the Independent Living Fund (2006) established by a deed dated 10 April 2006, or
(d) grants under Chapter 1 of Part 1 of the Housing Grants, Construction and Regeneration Act 1996(a);

“support plan” means—
(a) in relation to a qualifying service, a support plan developed in accordance with regulation 8 or 9, and
(b) in relation to a right to control service which is not a qualifying service, a support plan developed in relation to that right to control service;

“surrogate”, in relation to a person who lacks capacity in relation to any matter, has the meaning given by regulation 5(2).

(2) References to a person lacking capacity are to be read in accordance with the Mental Capacity Act 2005(b).

(3) Where any provision of these Regulations requires a relevant authority to inform a person in writing of any matter, that requirement is to be read as including a requirement so far as reasonably practicable to make the information available in a format that is accessible to the person to whom the information is provided.
Pilot areas

3. The pilot areas are as follows—
   (a) the London borough of Barnet;
   (b) the metropolitan district of Barnsley;
   (c) the metropolitan district of Bury;
   (d) the non-metropolitan district of Epsom and Ewell;
   (e) the county of Essex;
   (f) the non-metropolitan district of Leicester;
   (g) the metropolitan district of Manchester;
   (h) the London borough of Newham;
   (i) the metropolitan district of Oldham;
   (j) the non-metropolitan district of Redcar and Cleveland;
   (k) the non-metropolitan district of Reigate and Banstead;
   (l) the metropolitan district of Sheffield;
   (m) the metropolitan district of Stockport;
   (n) the metropolitan district of Trafford.
### Qualifying services

4. The following Table sets out the right to control services that are qualifying services for the purposes of these Regulations—

<table>
<thead>
<tr>
<th>Qualifying service</th>
<th>Relevant authority providing the service</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Assistance provided under the programmes known as “Access to Work” and “Work Choice Specialist Disability Employment Programme” in pursuance of arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973.</td>
<td>The Secretary of State.</td>
</tr>
<tr>
<td>(2) Discretionary assistance provided by a principal local authority for the purpose of enabling people aged 18 or over to overcome barriers associated with their disability where—</td>
<td>A principal local authority.</td>
</tr>
<tr>
<td>(a) the assistance is given for the purpose of developing and sustaining people’s capacity to live in their accommodation,</td>
<td></td>
</tr>
<tr>
<td>(b) the assistance does not include the grant of a tenancy or the provision of accommodation,</td>
<td></td>
</tr>
<tr>
<td>(c) the assistance is not a community care service, and</td>
<td></td>
</tr>
<tr>
<td>(d) when the assistance is first provided it appears to the principal local authority that the need for the assistance is likely to last for more than 2 years.</td>
<td></td>
</tr>
</tbody>
</table>
Meaning of “representative” and “surrogate”

5.—(1) — In these Regulations “representative”, in relation to a person (“A”), means—

(a) a deputy appointed for A by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005, or

(b) a donee of a lasting power of attorney within the meaning of section 9 of that Act created by A.

(2) In these Regulations “surrogate”, in relation to a person, means a representative of the person whose powers, as deputy or donee, consist of or include powers relating to decisions about securing the provision of a community care service or a qualifying service.

Application of regulations 7 to 17

6.—(1) Regulations 7 to 17 apply if (and only if), in the case of an individual aged 18 or over who is resident in a pilot area, a relevant authority specified in the Table in regulation 4 has determined—

(a) that the individual is entitled to receive a qualifying service, or

(b) that it will provide a qualifying service, or arrange for a qualifying service to be provided, to the individual.

(2) In the following provisions of these Regulations—

(a) the individual concerned is referred to as “P”, and

(b) the relevant authority concerned is referred to as “the responsible authority”.

(3) Paragraph (1) is subject to paragraphs (4) and (5).

(4) Where, immediately before the commencement of these Regulations, P is already receiving a qualifying service falling within paragraph (1) of the Table in regulation 4 from the Secretary of State, regulation 7 to 17 do not apply in relation to that service unless the Secretary of State and P agree that they are to apply in relation to that service as from a specified date.

(5) Where, immediately before the commencement of these Regulations, P is already receiving a qualifying service falling within paragraph (2) of the Table in regulation 4 from a principal local authority, regulation 7 to 17 do not apply in relation to that service until—

(a) the time when the authority would, apart from these regulations, have reviewed P’s needs, or

(b) such earlier date as may be agreed by P and the authority.
Duty of responsible authority to provide information to beneficiary

7.—(1) The responsible authority must inform P in writing of—

(a) the rights available by virtue of these Regulations and the choices available to P in relation to the provision of the qualifying service,

(b) the likely value of the qualifying service for which P is eligible, and

(c) the existence of the other right to control services and details of the relevant authorities by which they are provided.

(2) The responsible authority must provide P with written information about organisations which provide advice and assistance in connection with the exercise of the rights available by virtue of these Regulations.

(3) The responsible authority may arrange for the information required under this regulation—

(a) to be provided by the relevant authority providing any other right to control service, and

(b) to be combined with similar information about the other service.

Support plan: general

8.—(1) The responsible authority must work with P to develop a support plan for P.

(2) In relation to a qualifying service falling within paragraph (2) of the Table in regulation 4 the responsible authority must where appropriate develop a support plan for P even if P, though not lacking capacity to approve a support plan, is unwilling to work with the authority to develop a support plan.

(3) The support plan must be in writing and be signed on behalf of the responsible authority.

(4) If P approves the support plan, P or a person on his behalf must sign the plan.

(5) The responsible authority must give a copy of the support plan to P.

(6) The responsible authority may arrange for a support plan under this regulation to be combined with a support plan developed in relation to any other right to control service.
Support plan: cases where beneficiary lacks capacity to approve

9.—(1) Where P falls within paragraph (2) or is believed by the responsible authority to fall within that paragraph, the responsible authority must if possible work with a suitable person (“S”) other than P to develop a support plan for P.

(2) P falls within this paragraph if P lacks capacity to approve the provisions of a support plan.

(3) Where S is not a surrogate of P but there is at least one person who is a surrogate of P, any approval of a support plan must be given by a surrogate of P as well as by S.

(4) Where a support plan requires approval by a person other than P, references to P in regulations 8(4) and (5) are to be read as references to S and any other persons approving the plan.

(5) In developing the support plan, the responsible authority must consult and take into account the views of —
   (a) anyone named by P as someone to be consulted on the matter of a support plan relating to community care services,
   (b) anyone engaged in caring for P or interested in P’s welfare, and
   (c) any representative or surrogate of P.

(6) In developing the support plan, the responsible authority must also, so far as they are ascertainable, consider—
   (a) P’s past and present wishes and feelings (and, in particular, any relevant written statement made by P when P had capacity to approve a support plan),
   (b) the beliefs and values that would be likely to influence P’s decisions in relation to the support plan if P had such capacity, and
   (c) the other factors that P would be likely to consider if P were able to do so.

(7) The responsible authority may arrange for a support plan under this regulation to be combined with a support plan developed in relation to any other right to control service.
Contents of support plan

10. The support plan must set out, in relation to the qualifying service to which it relates—

(a) the level of funding available and the basis on which the funding is provided,

(b) where agreement has been reached with P, or a suitable person acting under regulation 9, as to the outcomes intended to be achieved, what those outcomes are,

(c) the services that are to be provided by or on behalf of the responsible authority or whose provision is to be arranged by or on behalf of P,

(d) whether any direct payments are to be made by virtue of regulation 14 to 16 and, if so, to whom,

(e) the amount of any contribution payable by or on behalf of P, and

(f) the intervals (of not more than 12 months) at which the plan is to be reviewed by the responsible authority.

Right of beneficiary to control manner in which services are provided

11. —(1) Where outcomes have been agreed with P, the responsible authority must in preparing the support plan give effect to any request of P as to the manner in which any services are to be provided for the purpose of securing those outcomes, subject to the level of funding specified in the plan.

(2) Paragraph (1) does not require the responsible authority to give effect to P’s request if and to the extent that it appears to the responsible authority that one or more of the following apply—

(a) it is not reasonably practicable to provide the services in the manner requested by P,

(b) the provision of the services in the manner requested by P would not secure the agreed outcomes.

(3) Where the responsible authority refuses any request in reliance on paragraph (2), the authority must provide P with a written statement of the reasons for the refusal.
Duty to provide services in accordance with support plan

12. To the extent that a support plan provides for services to be provided by or on behalf of the responsible authority, the authority must provide them, or arrange for them to be provided, in accordance with the plan so far as it is reasonably practicable to do so.

Duty to review support plan

13. —(1) The responsible authority must work with P and any other person concerned to review P’s support plan.

(2) Reviews must be undertaken at the intervals specified in the plan, or more frequently if circumstances require.

Direct payments to beneficiary

14. —(1) Where outcomes have been agreed with P, the responsible authority must in preparing a support plan offer P the opportunity to receive payments ("direct payments") in respect of P securing the provision of services that secure one or more of those outcomes, but this is subject to paragraphs (2) and (3).

(2) Paragraph (1) does not apply if it appears to the responsible authority—

(a) that P is incapable of managing a direct payment, either alone or with such assistance as may be available to P,

(b) that P’s need for the qualifying service cannot be met by making a direct payment,

(c) that the making of direct payments would in the circumstances place an unreasonable financial burden on the authority,

(d) that the making of direct payments would have an adverse effect on the provision of qualifying services to or for the benefit of other persons, or

(e) that for any other reason the making of direct payments is not reasonably practicable in all the circumstances.

(3) Paragraph (1) does not apply if P is a person excluded by Schedule 1.

(4) If P’s support plan provides for direct payments to be made to P, the plan must include a statement by P confirming that P is aware of the obligation to repay any payment that has not been used as provided for by the plan.
(5) A direct payment under this Regulation is to be subject to the condition that the service in respect of which it is made must not be secured from a person mentioned in paragraph (6) unless the responsible authority is satisfied that securing the service from such a person is necessary to meet satisfactorily P’s need for that service.

(6) The persons referred to in paragraph (5) are—

   (a) P’s spouse or civil partner;

   (b) a person who lives with P as if P’s spouse or civil partner;

   (c) a person living in the same household as P who is P’s—

      (i) parent or parent-in-law,

      (ii) son or daughter,

      (iii) son-in-law or daughter-in-law,

      (iv) stepson or stepdaughter,

      (v) brother or sister,

      (vi) uncle or aunt, or

      (vii) grandparent;

   (d) the spouse or civil partner of any person mentioned in sub-paragraph (c) who lives in the same household as P; and

   (e) a person who lives with any person specified in sub-paragraph (c) as if that person’s spouse or civil partner.

(7) The responsible authority may make a direct payment subject to such other conditions (if any) as it thinks fit.

(8) The conditions referred to in paragraph (7) may, in particular, require that the person to whom the payment is made—

   (a) must not secure the service from a particular person; and

   (b) must provide such information to the responsible authority as the authority consider necessary in connection with the direct payment.
**Direct payments in case of person lacking capacity to request them**

15. —(1) Where a person falls within paragraph (2) or is believed by the responsible authority to fall within that paragraph, this regulation applies instead of regulation 14.

(2) A person falls within this paragraph if the person lacks capacity to consent to the making of direct payments under regulation 14.

(3) Where outcomes have been agreed with P or a suitable person acting under regulation 9, the responsible authority must in preparing the support plan consider whether the conditions in regulation 16 could be met in relation to the making of payments ("direct payments") to a suitable person ("S") other than P in respect of S’s securing the provision for P of services that secure one or more of those outcomes.

(4) If S so requests, the conditions in regulation 16 are met and P is not a person excluded by the Schedule, the responsible authority may include in P’s support plan provision for direct payments to S.

(5) If P’s support plan provides for direct payments to be made under this regulation, the plan must include a statement by S confirming that S is aware of the obligation to repay any payment that has not been used as provided for by the plan.

(6) A direct payment under this Regulation is to be subject to the condition that the service in respect of which it is made must not be secured from a person mentioned in paragraph 14(6) unless the responsible authority is satisfied that securing the service from such a person is necessary to meet satisfactorily P’s need for that service.

(7) The responsible authority may make a direct payment subject to such other conditions (if any) as it thinks fit.

(8) The conditions referred to in paragraph (7) may, in particular, require that the person to whom the payment is made—

   (a) must not secure the qualifying service from a particular person; and

   (b) must provide such information to the relevant authority as the authority consider necessary in connection with the direct payment.
Conditions for direct payment to suitable person

16. —(1) This regulation sets out the conditions mentioned in regulation 15(4).

(2) Condition A is that the direct payments are made with the consent of the suitable person referred to in regulation 15(3) (“S”) and, where S is not a surrogate of P but there is at least one person who is a surrogate of P, the consent also of a surrogate of P.

(3) Condition B is that the responsible authority has consulted and taken into account the views of—

(a) anyone named by P as someone to be consulted on the matter of whether a payment should be made to S for the purpose of securing provision for P of community care services or on matters of that kind,

(b) anyone engaged in caring for P or interested in P’s welfare, and

(c) any representative or surrogate of P.

(4) Condition C is that the responsible authority has, so far as they are ascertainable, considered—

(a) P’s past and present wishes and feelings (and, in particular, any relevant written statement made by P when P had capacity to request the making of direct payments),

(b) the beliefs and values that would be likely to influence P’s decision if P had such capacity, and

(c) the other factors that P would be likely to consider if P were able to do so.

(5) Condition D is that the responsible authority has obtained a criminal record certificate issued under section 113B of the Police Act 1997—

(a) in respect of S where S is an individual and neither, in relation to P, a person mentioned in regulation 14(6) nor a friend of P who is involved in the provision of care for P, and

(b) where S is a body corporate or an unincorporated body of persons, in respect of the individual who will, on behalf of that body, have overall responsibility for the day-to-day management of P’s direct payments.
(6) Condition E is that the responsible authority is satisfied that—
   (a) P’s need for the qualifying service can be met by securing the provision of it by means of a direct payment,
   (b) S appears to be capable of managing a direct payment alone or with such assistance as may be available to S, and
   (c) S will act in the best interests, within the meaning of the Mental Capacity Act 2005, of P when securing the provision of services in respect of which the direct payment is made, and in all the circumstances it is appropriate for a direct payment to be made to S.

Termination of direct payments to beneficiary or other person

17. —(1) The responsible authority must terminate the making of payments under regulation 14 or 15 if—
   (a) P ceases to be eligible to receive the qualifying service to which the payments relate,
   (b) it appears to the responsible authority that P or, in a case within regulation 15, the other person to whom the payments are made (“S”) is not using the direct payments in accordance with P’s support plan,
   (c) in a case within regulation 14, it appears to the responsible authority that P is no longer capable of managing a direct payment, either alone or with such assistance as may be available to P,
   (d) in a case within regulation 15, it appears to the responsible authority that S is no longer capable of managing a direct payment,
   (e) it appears to the responsible authority that the outcomes specified in P’s support plan are no longer capable of being secured by means of a direct payment, or
   (f) P or, in a case within regulation 15, S asks the responsible authority to stop making direct payments.

   (2) Where paragraph (1) applies, the responsible authority must make the necessary changes to P’s support plan and notify P (or, as the case requires, S) in writing of those changes.
Review of decisions

18. The responsible authority must maintain arrangements under which a person (“A”) may apply for a review of—

(a) any decision to which regulation 11(3) relates made in respect of A,
(b) any decision under regulation 14 to refuse direct payments in respect of A,
(c) any refusal under regulation 9 or 15 to treat A as a suitable person for the purpose of that regulation,
(d) any decision under regulation 15 to refuse to make direct payments to A in a case where the responsible authority has informed A that it regards A as a suitable person for the purposes of that regulation, and
(e) any decision under regulation 17 to terminate the making of direct payments under paragraph 14 in respect of A or under paragraph 15 to A.

Arrangements for exercise of functions

19. —(1) The functions of the responsible authority under any of regulations 6 to 11 and 13 may be exercised by a person authorised by the responsible authority for the purpose or by employees of such a person.

(2) Anything done or omitted to be done by or in relation to an authorised person (or an employee of that person) in, or in connection with, the exercise or purported exercise of the function concerned is to be treated for all purposes as done or omitted to be done by or in relation to the responsible authority.

(3) But paragraph (2) does not apply—

(a) for the purposes of so much of any contract made between the authorised person and the responsible authority as relates to the exercise of the function, or

(b) for the purposes of any criminal proceedings brought in respect of anything done by an authorised person (or an employee of that person).

(4) In paragraphs (2) and (3) “authorised person” means a person authorised to exercise any function by virtue of paragraph (1).
Information sharing in relation to right to control services generally

20. —(1) Relevant authorities may disclose to each other information relating to individuals resident in pilot areas, for any of the following purposes in relation to right to control services—

(a) determining eligibility for right to control services;
(b) the development of support plans for individuals (including the assessment of their needs);
(c) monitoring the application of direct payments;
(d) measuring the performance of relevant authorities;
(e) ascertaining any of the matters mentioned in section 44(2) of the 2009 Act.

(2) In this regulation “direct payment” includes any equivalent payment made in respect of a right to control service that is not a qualifying service.

(3) This regulation does not authorise any disclosure in contravention of the Data Protection Act 1998(a).

Transitional provisions on expiry

21. Where a support plan developed in accordance with regulation 8 or 9 is current immediately before the expiry date, the duty of the responsible authority to provide services or direct payments in accordance with these Regulations continues—

(a) until the time when the support plan would otherwise fall to be reviewed, or
(b) if that time would fall after the end of the 12 months beginning with the expiry date and the responsible authority so determine, until the end of those 12 months.

(a) 1998 c. 29.
Disabled facilities grants

22. —(1) If the first, second and third conditions below are met in relation to an application for a grant under section 1(1) of the Housing Grants, Construction and Regeneration Act 1996 ("the 1996 Act") which is made after the commencement of these Regulations and before the expiry date, the provisions of Chapter 1 of Part 1 of that Act have effect subject to the provisions of Schedule 2.

(2) The first condition is that the premises to which the application relates are—

(a) in a pilot area other than the county of Essex, or

(b) in any of the non-metropolitan districts of Brentwood, Epping Forest, Harlow, Maldon and Uttlesford.

(3) The second condition is that the disabled occupant to whom the application relates is aged 18 or over.

(4) The third condition is that the applicant is—

(a) a person falling within section 19(1)(a) of the 1996 Act (person having or proposing to acquire an owner’s interest),

(b) a person falling within section 19(1)(b) of the 1996 Act (tenants) in a case where the landlord is—

(i) a local housing authority within the meaning of the Housing Act 1985(b), or

(ii) a registered provider of social housing, or

(c) a person falling within section 19(1)(c) of the 1996 Act (occupiers of houseboats and caravans).

Guidance

23. In exercising its functions under these regulations, a relevant authority other than the Secretary of State must have regard to any guidance given from time to time by the Secretary of State.

Signatory text

Name

Address Parliamentary Under Secretary of State

Date

(a) 1996 c. 53.
(b) 1985 c. 68.
The following persons are excluded by this Schedule from direct payments—

(a) a person who is subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003(a), imposed by a community order within the meaning of section 177 of that Act or by a suspended sentence of imprisonment within the meaning of section 189 of that Act;

(b) a person who is subject to an alcohol treatment requirement as required by section 212 of the Criminal Justice Act 2003 imposed by community order within the meaning of section 177 of that Act or by a suspended sentence of imprisonment within the meaning of section 189 of that Act;

(c) a person who is released on licence under Part 2 of the Criminal Justice Act 1991(b), Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997(c) subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug-related or alcohol-related behaviour;

(d) a person who is required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000(d) or a community punishment and rehabilitation order within the meaning of section 51 of that Act;

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(a) 2003 c. 44.
(b) 1991 c. 53.
(c) 1997 c. 43.
(d) 2000 c. 6.
(e) a person who is subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;

(f) a person who is required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a probation order within the meaning of sections 228 to 230 of the Criminal Procedure (Scotland) Act 1995 or is subject to a drug treatment and testing order within the meaning of section 234B of that Act;

(g) a person who is released on licence under section 22 or 26 of the Prisons (Scotland) Act 1989(a) or under section 1 or 1AA of the Prisoners and Criminal Proceeding (Scotland) Act 1993(b) and subject to a condition that they submit to treatment for their drug or alcohol dependency.

(a) 1989 c. 45.
(b) 1993 c. 9.
SCHEDULE 2  Regulation 22

MODIFICATIONS OF CHAPTER 1 OF PART 1 OF HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

1. In this Schedule “the 1996 Act” means the Housing Grants, Construction and Regeneration Act 1996, and expressions used in this Schedule and in Chapter 1 of Part 1 of that Act have the same meaning as in that Chapter.

2. Section 2 of the 1996 Act has effect as if it required the local housing authority, in any case where the authority has not given a direction that no estimates are required but an application under that section does not contain the estimates that would otherwise be required by subsection (2)(b) of that section, to obtain either or both of the estimates.

3. If the local housing authority notify the applicant under section 34(1) of the 1996 Act that the application is approved, it must provide the following information to the disabled occupant—

   (a) an explanation of the right of the disabled occupant, subject to the provisions of paragraph 5, to choose a contractor other than the contractor, or one of the contractors, whose estimate accompanied the application,

   (b) an explanation of the right of the disabled occupant, subject to the provisions of paragraph 6, to require the grant to be paid to the disabled occupant rather than to the contractor or the applicant (if not the disabled occupant),

   (c) information about the existence of other right to control services and the relevant authorities by which they are provided,

   (d) information about organisations which provide advice and assistance in connection with the exercise of the rights available by virtue of these Regulations.
4. — (1) If the local housing authority approves an application for a grant under section 1(1) of the 1996 Act, the authority must work with the disabled occupant to develop a support plan for the disabled occupant.

(2) The support plan must set out—

(a) the amount of the grant,

(b) the works to be carried out and the contractor by whom they are to be carried out,

(c) whether the grant is to be paid to the disabled occupant, to the applicant (if different) or to the contractor,

(d) whether the grant is to be payable in instalments and if so when they are to be payable, and

(e) the purpose falling within section 23(1) of the 1996 Act that the carrying out of the works is intended to achieve.

(3) If the applicant was a person other than the disabled occupant, the support plan requires the approval of the applicant.

(4) The support plan must be in writing and be signed by or on behalf of the local housing authority.

(5) The local housing authority must give a copy of the support plan to the disabled occupant and the applicant (if different).

(6) The local housing authority may arrange for a support plan under this Schedule to be combined with a support plan developed in relation to any other right to control service.

5. Section 38 of the 1996 Act (conditions as to contractors employed) does not apply unless it appears to the local housing authority—

(a) that the disabled occupant is incapable of managing a grant, either alone or with such assistance as may be available to the disabled occupant, or

(b) that the disabled occupant is incapable of managing the proposed works, either alone or with such assistance as may be available to the disabled occupant.
6. Section 39 of the 1996 Act (payment of grant to contractor) is not to be regarded as enabling the local housing authority to pay a grant or part of a grant as mentioned in subsection (1)(a) or (b) of that section unless—

(a) the disabled occupant so requests,

(b) it appears to the authority that the disabled occupant is incapable of managing a grant, either alone or with such assistance as may be available to the disabled occupant, or

(c) it appears to the authority that the disabled occupant is incapable of managing the proposed works, either alone or with such assistance as may be available to the disabled occupant, or

(d) where part of the grant has been paid, it appears to the authority that that part has not been applied in accordance with the support plan.

7.—(1) If the support plan so provides, the local housing authority must pay a grant or part of a grant to the disabled occupant, even if the disabled occupant was not the applicant for the grant.

(2) Paragraph (1) does not apply if the disabled occupant is a person excluded by Schedule 1 to these Regulations.

8. Section 52(1) of the 1996 Act (power to impose other conditions) has effect as if it enabled a condition imposed in accordance with that provision, in a case where the grant was paid to a disabled occupant other than the applicant, also to enable the amounts referred to be required to be paid by the person to whom the grant was paid.

9. The local housing authority must maintain arrangements under which disabled occupants affected by decisions of the local housing authority by virtue of paragraph 5 or 6 may apply for a review of those decisions.

10. Where an application for a grant has been approved before the expiry date, the provisions of this Schedule are to continue to apply on and after that date in relation to the works specified in the application.
EXPLANATORY NOTE
(This note is not part of the Regulations)

Section 41 of the Welfare Reform Act 2009 (“the 2009 Act”) enables the Secretary of State by regulations to make provision for the purpose of enabling disabled people aged 18 or over to exercise greater choice in relation to, and greater control over, the way in which certain services are provided to or for them by or on behalf of public bodies. Section 44 enables regulations under section 41 to make temporary provision as a pilot scheme.

These Regulations make temporary provision for the purpose mentioned above. They apply only in the pilot areas listed in regulation 3.

Regulations 4 to 19 relate only to the “qualifying services” specified in regulation 4. These include two programmes known as “Access to Work” and “Work Choice Specialist Disability Employment Programme”, which are administered by Jobcentre Plus. They also include certain housing-related assistance provided by local authorities.

Regulation 20, which relates to the sharing of information, is of wider application. It allows the sharing between authorities for specified purposes of information relating to the wider category of “right to control services” as defined by regulation 2.

Regulation 22 and Schedule 2 modify the provisions of Chapter 1 of Part 1 of the Housing Grants, Construction and Regeneration Act 1996, which relate to disabled facilities grants, in their application to certain cases relating to premises within certain of the pilot areas. The main effect of the modifications is to require the local housing authority to prepare a support plan and (subject to certain conditions) to give the disabled occupant a wider choice of contractors and enable the disabled occupant to require direct payment of the grant.

Regulation 21 contains transitional provisions relating to the expiry of the Regulations.
Annex D

Equality Impact Assessment – Right to Control Regulations 2010

Reason for the change in policy

Disabled people may not have the degree of choice and control over their lives that non-disabled people take for granted. This is partly explained by the fact that because of their support needs, many disabled people rely on resources made available by the State. As a result, public servants are more often in a position to decide what support will be provided. Too often, services are structured in a way that reinforces dependency, instead of providing support in a way that enables disabled people to achieve their aspirations and access the same opportunities as non-disabled people. ‘The Experiences and Expectations of Disabled People’ reported that level of choice and control is positively correlated with satisfaction with services but that a third of disabled people reported that they do not always or usually have choice and control over what happens in their lives.

In response to the concerns of disabled people, the government has committed to providing greater choice and control over the support they receive from the State. Through the Welfare Reform Act 2009, the government has legislated to provide disabled people with more choice and control over certain public funding. The Office for Disability Issues (ODI) now proposes to put in place regulations for Trailblazers to test the best ways to deliver the Right to Control to disabled people.

Background to the Right to Control policy

The Right to Control builds on the progress already made to transform adult social care services, by increasing the personalisation of services. To date a number of key policies have been implemented to test or support personalisation, these include:

- Direct payments legislation introduced in 1996 to allow adult social care recipients to take a cash payment in lieu of services.

- From 2005-2007 the Department of Health piloted Individual Budgets. The funding streams included in this pilot were Adult Community Care Services, Disabled Facilities Grants, Access to Work, ILF, Integrated Community Equipment Services and Supporting People. Adult Community Care Services were the gateway to accessing an Individual Budget. Disabled people could either take a direct payment, allow authorities to arrange services on their behalf or take a mixture of the two. These pilots were evaluated through the Individual Budgets Evaluation Network (IBSEN) and the findings have been used to inform this Equality Impact Assessment for the Right to Control.

- Building on the lessons learnt from Individual Budgets, the Department of Health has introduced Personal Budgets. Personal Budgets allow individuals entitled to social care funding to choose whether they take their budget as a direct payment, or allow councils to commission services for them, or a mixture of the two. Where necessary, recipients can be supported to make decisions on how to use the budget to which they are entitled. The Department of Health (DH) envisages that by 2011 the majority of people in receipt of social care will have the opportunity to have a Personal Budget.

- From 2010, the Department of Health is also piloting Personal Health budgets in the NHS. ODI is working closely with the Personal Health Budgets team to evaluate the interactions of the Right to Control Trailblazers and the Personal Health Budget Pilots.

- The Department for Children, Schools and Families are currently leading the pilot of Individual Budgets for disabled children.
In Control\textsuperscript{21} tested and evaluated a personalised budget pilot of social care support for disabled people in six local authority areas in England, between 2005 and 2007. Questionnaire responses of a relatively small number of budget users (196) were analysed for the evaluation. The evaluation found people were much more likely to report having a better quality of life (76 per cent reported a better quality of life in comparison with 1 per cent worse), feeling healthier (47 per cent feeling healthier in comparison with 5 per cent less healthy) and being more in control of their lives (72 per cent more in control in comparison with 1 per cent less) than before they had a budget\textsuperscript{22}. In addition there were financial benefits for local authorities: the cost of the care package was on average £2,700 a year lower when individuals had a personalised budget. Even though it is not possible to determine from this evidence whether these results actually reflect systematically different outcomes caused by the policy change, it does give an indication of users’ experiences.

**Learning lessons from the Individual Budget pilot**

The Department of Health-led Individual Budget pilot was a more systematic attempt to assess the costs and benefits of Individual Budgets, by covering a bigger sample of people and introducing a control group (960 people in total, of whom 510 individuals received an Individual Budget and 450 were in the control group). It also explored the effects of trying to integrate a number of funding streams into a single pot.

The IBSEN evaluation supported the direction of travel for increasing self-directed support. Overall, the evaluation found that 48 per cent of Individual Budget holders reported having choice and control compared to 41 per cent of the control group (a statistically significant difference). 67 per cent of Individual Budget holders reported that it had increased their aspirations of what they could achieve. There are some concerns over how representative the group receiving Individual Budgets were of adult social care users as a whole, and therefore to what extent their experiences can be used as a guide to the impact on the wider population. This is because a relatively high proportion of people in the sample had received direct payments in the past (26 per cent compared to 4 per cent of all adult social care users) and this means they may have been more receptive to self-directed support. However, the evaluation results provide some useful insights and lessons for the Right to Control.

\textsuperscript{21} In Control, an organisation set up by DH and Mencap in 2003, is an organisation supporting local authorities to deliver Self-Directed Support.

The Right to Control Trailblazers will be given time to develop implementation plans before they launch. This will ensure they have time to develop and integrate systems and processes to deliver the Right to Control and address the issues highlighted in the Individual Budget pilot for disabled people.

**Equality impact**

During the testing of the Right to Control we will monitor the access to and the impact of the Right on choice and control, independent living and empowerment to participate in social and economic life for all the different equality strands (disability, gender, ethnicity, age, sexual orientation and religious beliefs). We will also monitor to ensure the Right to Control does not create unlawful discrimination or harassment for any of the equality strands.

The Right to Control will change the delivery model for particular funding streams but will not change who is eligible to access those funding streams. This change to how services are delivered will apply to all eligible disabled adults, irrespective of their age, gender, race, sexual orientation or religious beliefs.

**Gender impact**

**Background and statistics**

There is no evidence to suggest that changing how funding streams are delivered would affect males or females differently. There is also currently no evidence to suggest that increasing choice and control over services will adversely affect transgender people. We will monitor and evaluate the impact of the Right to Control throughout the Trailblazer phase, including by gender. There will also be a need to consider the impact on carers who may also be affected by the Right to Control. Any impact on carers would have a disproportionate effect on women as they represent 73 per cent of the people receiving Carers Allowance\(^{23}\) and 62 per cent of informal carers\(^{24}\).
The Individual Budget pilot covered slightly more women, 56 per cent of the sample. Although older people and physically disabled people were more likely to be women, the quantitative results on outcomes were not broken down by gender and there was no qualitative evidence that gender affected these groups’ experiences of Individual Budgets.

Risks and mitigation

An evaluation of the impact of the Individual Budget pilot on carers, published in February 2009, found that the impact was generally positive and carers who looked after someone with an Individual Budget had a statistically significant higher quality of life.

The Individual Budget pilot involved additional roles for some carers in helping to plan what package of care a person required. The evaluation suggests that some carers, particularly those looking after people with learning disabilities, found the process more problematic, especially where there were delays in agreeing and implementing a care plan. The operation of the Trailblazers will attempt to mitigate any adverse impacts or additional burdens on carers by ensuring there is adequate support in place for disabled people at all stages of the process as they exercise their Right to Control.

As part of operating the Right to Control in the Trailblazer areas, we will monitor whether there is a differential gender impact and if necessary take steps to address any negative effects.

Opportunity to promote equality

The Right to Control will allow disabled adults of both genders the flexibility to choose between services provided by the public authority, services the disabled person can arrange or a mixture of both. This would allow disabled adults greater flexibility over the package of care. There was some qualitative evidence from the Individual Budget pilot that having an Individual Budget helped give disabled people more flexibility to pay or treat their informal carers and recognise the value of their support. This may represent an opportunity to promote gender equality.

Disability impact

Background and statistics

In the Life Chances report, the government set out a vision for disabled people to have equal opportunities and choices by 2025.\(^{26}\) A commitment to pursuing strategies that promote independent living, including moving towards Individual Budgets was a central pillar for achieving this. The cross-government Independent Living Strategy,\(^ {27}\) which was co-produced with disabled people, stated that choice and control over support is integral to disabled people’s access to equal opportunities.

Improving choice and control for disabled people is an overarching government commitment. Progress against this commitment is embedded in the Department for Work and Pensions’ (DWP) performance management framework in Public Service Agreement 15 and DWP’s Departmental Strategic Objective 5.\(^ {28}\)

The ‘Experiences and Expectations of Disabled People’ report found that choice and control is important to disabled people and is positively correlated with an individual’s overall satisfaction with services.\(^ {29}\) A third of disabled people who responded in the study (36 per cent) felt they did not always or usually have enough control over what happens in their lives. A quarter (26 per cent), of those that had aids or adaptations said they had no choice in deciding what support they received. A quarter (26 per cent and 25 per cent respectively) of those that received support from formal sources had no choice over which person provided their support and at what times.

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28 PSA Delivery Agreement 15: Address the disadvantage that individuals experience because of their gender, race, disability, age, sexual orientation, religion or belief.
DWP Strategic Objective 5 2008-11: To promote equality of opportunity for disabled people.

The Right to Control will help increase choice and control by giving disabled adults control over the package of support they receive. The disabled person can choose how they wish to exercise the Right.

In the Individual Budget pilot, younger physically disabled people and mental health service users tended to have better experiences of using Individual Budgets. For people with learning disabilities and older disabled people, Individual Budgets had a mixed impact on outcomes and some people found it more stressful. The design of the Right to Control Trailblazers will reflect these findings. Individuals will be able to choose to allow the public authority to arrange the support, or to receive a direct payment, or to use a mixed approach.

The Individual Budget pilot did not find any evidence that the different equality strands\(^3\) were differentially affected by this change, although the evaluation did not routinely break down the results by the equality strands. We will explore with the Trailblazer authorities and the researchers how best to design the sample and the evaluation of the initial phase of the Right to Control in order to provide further evidence on the differential impact on the different equality strands. An equality impact assessment will be undertaken after the evaluation, which will help identify if there were any unintended consequences for any of the groups.

**Risks and mitigation**

Disabled people in the Trailblazer areas and eligible for the Right to Control funding streams will be included in the Right to Control, regardless of their impairment. All groups will have fair and equal access to the Right to Control. We will monitor any adverse impacts on particular groups, for example people with learning disabilities.

The evidence from the Individual Budget pilot showed that some disabled people found the new process more stressful, we will therefore ensure that having a Right to Control does not discourage disabled people from participating in making decisions about their own lives. Some disabled people will need more support than others to decide how to exercise their Right to Control. That is why we have stipulated in our draft regulations that authorities must ensure disabled people are provided with the information and assistance they need to understand their choices and how to exercise their Right to Control.

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\(^3\) The equality strands are: disability, gender, ethnicity, age, sexual orientation and religious beliefs.
A 2009 evidence review\(^3\) looking at access to independent advocacy showed that disabled people using independent advocacy services regarded these services positively. However some disabled people reported the activities undertaken did not always result in the outcomes the disabled person wanted.

In the 2007 Concordat, Putting People First, the government committed to the provision, by 2011, of universal information, advice and advocacy service for people needing services and their carers.\(^3^2\)

The Department of Health is also committed to ensuring that each locality has a user-led organisation (ULO). These organisations will play an important role in providing the advice and support that some disabled people will need to exercise the Right to Control. In 2009/2010 the Office for Disability Issues has provided funding of around £730,000 to the English regions to build the capacity of user-led organisations in their localities.

Access to information is essential for ensuring that no eligible disabled person is excluded from the Right to Control. All information provided, beginning with notification of eligibility, will be in an appropriate, accessible format. This will be monitored during the Trailblazer period.

Where an eligible disabled person lacks legal capacity, we plan to put in place regulations to ensure that a suitable person can exercise choice and control on their behalf. This includes that a suitable person can put in place a support plan and/or take a direct payment on behalf of a disabled person. The Right to Control regulations plan to place a duty on local authorities to ensure the wishes and aspirations of the disabled person are taken into account in their support plan, and carers or representatives of the disabled person are fully consulted. This will be monitored in the Trailblazers to ensure disabled people without legal capacity are adequately supported.

**Opportunities to promote equality**

The Right enables disabled adults to be in charge of their own support. The Right will empower disabled people to make choices in their own lives and increase opportunities to take part socially and economically. We will monitor the impact of change on disabled adults’ participation as active citizens during our evaluation.

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Race impact

Background and statistics

In the Individual Budget pilot, people from Black and Minority Ethnic (BME) groups represented 8 per cent of the sample. This compares to 6 per cent of the population nationally who are from BME groups. The people from BME groups were spread evenly across the client groups covered.

Due to the small sample size, the report does not breakdown the results by ethnicity. There was no qualitative evidence that this group had different experiences of self-directed support.

Risks and mitigation

The Individual Budget pilot did not highlight any evidence that suggested a risk that people from BME groups will be adversely affected by the Right to Control, but we will monitor this during the pilot.

As part of designing how the Trailblazers operate and evaluating the impact of the Right to Control on outcomes, we will take steps to ensure that the needs of BME people are taken into account and we will monitor this during the testing phase. We will work with user-led organisations to develop culturally-sensitive advocacy and support services.

Information provided to disabled people accessing the Right to Control, including notification of eligibility, will also be culturally-sensitive and in an accessible format. For example, where English is not a disabled person’s first language, they will be notified in an appropriate format.

Opportunity to promote equality

The Right to Control will allow service users more choice and control over the support they receive. Users that have found traditional services not to their liking will have the opportunity to move to services that better achieve their outcomes. The increased choice and control may therefore promote equality. We will explore this in the Right to Control evaluation, seeking input from disabled people from other diversity groups during the development of the policy.
Age impact

Background and statistics

The Right to Control will be available to eligible adults (disabled people aged over 18 years and in receipt of an eligible funding stream). We will review the evaluation of the Department for Children, Schools and Families led Individual Budget pilots for disabled children to identify any implications for the Right to Control.

The Individual Budget pilots found that older people and people with learning disabilities fared less well with Individual Budgets and some found the process stressful. 45 per cent of older people who were Individual Budget holders were at risk of psychological ill health compared to 28 per cent of older people in the control group (a statistically significant difference) and the Individual Budget holders had systematically lower aspirations. Responses often highlighted that older people found taking control of money or employing staff an additional burden. Similarly, although people with a learning disability did report feeling more in control (a statistically significant difference), there was some evidence that both the individual user and their carers found the Individual Budgets process stressful, generally because support plans took time to implement.

The Individual Budget pilot also assessed the impact on social care recipients aged over 65. This group found the change most difficult. As outlined above, there was evidence that increased choice and control could reduce their psychological well-being, at least in the way that these new arrangements were introduced and implemented. The results suggest lower levels of well-being or higher anxiety levels might be more prevalent among older people able to respond in the interview. Higher levels of anxiety appear to have been systematically attributed to more vulnerable older people who had proxy respondents. The evaluation could not distinguish whether this reflected the concerns of more vulnerable older people, less able to respond on their own behalf, or of their relatives (the most frequent proxy).
Risks and mitigation
The Individual Budget pilot showed that there are potential risks that older people may be adversely affected by the Right to Control. The evaluation showed that many older people did not want the additional burden of planning and managing their own support. The Right to Control will allow people to choose how they want to exercise the Right over their own support. People who have the Right to Control will not have to take their support as a direct payment. They will be able to nominate a third party to manage the arrangements for them, or they can continue to receive services from their local authority, or take a mixture of both.

The Right to Control regulations will also require authorities to ensure that disabled people have adequate support to make informed decisions about the services they receive.

Sexual orientation and religious beliefs impact
There is currently no evidence that increasing choice and control over services for disabled people will adversely affect people with different religious beliefs or sexual orientations. We recognise that there are cultural issues associated with disability, and we expect Trailblazers to seek input from disabled people from other diversity groups to inform the implementation of the Right to Control.

Consultation
Throughout the development of the Right to Control policy and legislation we are involving an Advisory Group made up of disabled people, representatives from organisations with an interest in disability issues and officials from across central and local government. This includes a representative of Equality 2025, the UK advisory network on disability equality whose aim is to be the conduit for the voices of disabled people. In this way, we are ensuring that we feed in the views of disabled people, service providers and other stakeholders.

We also ran a national consultation entitled ‘Making choice and control a reality for disabled people: Consultation on the Right to Control’ from June 2009 to September 2009. This enabled all interested parties to give their views on how the Right to Control should be delivered.33

There were 176 written responses submitted by individuals, disabled people’s organisations, service providers, public bodies and relevant third sector organisations. We hosted two launch events where over 100 people attended each event and supported and/or attended 34 events held across the country during the consultation period. The feedback received has helped to shape development of the Trailblazers and legislation, ensuring that the views of all stakeholders have been considered. The government responded to this feedback in December 2009.34

**Monitoring and evaluation**

The effects of the Right to Control on participating disabled people will be monitored throughout the Trailblazer period. Monitoring information will be regularly reported back to the Trailblazer authorities, to ensure they are aware of any impacts which are specific to any particular group of people. If necessary, authorities will then be able to take appropriate steps to address any negative effects.

A comprehensive evaluation of the Trailblazers will be carried out by an independent research organisation to evaluate how the Right to Control impacts on disabled people’s lives. It will also examine how the Right was administered in each of the Trailblazer areas, what information and support was available to disabled people, and also the experiences of service providers and carers. Where possible, the evaluation will provide evidence of any impact on the equality strands which will be used to help inform future decisions about any wider roll-out of the Right to Control.

**Future steps**

The Equality Impact Assessment will continue to be developed further as the policy is developed and more evidence becomes available. We will review it twice yearly as a minimum and particularly at milestone dates within the Trailblazing phase.

Annex E

Glossary

**Align/aligned**
Alignment means delivering the flexibilities of the Right to Control to disabled adults in receipt of community care services.

**Commissioned services**
Services to support the disabled person, which have been purchased by the local authority or Department for Work and Pensions or Jobcentre Plus.

**Consultation**
This is when we ask people what they think about our plans.

**Co-production**
Working in partnership with disabled people at every stage of a project to ensure that their expertise and experiences inform the work.

**Devolved administrations**
The countries of Scotland, Wales and Northern Ireland.

**Direct payment**
This is when a disabled person is given money in lieu of services, so that they can pay for their own support rather than receiving commissioned services.

**Directions**
Directions support legislation by setting out instructions to authorities. They help to ensure consistency in delivery.

**Funding stream(s)**
The money that a public body spends to deliver a service
Guidance
Guidance is a detailed way of explaining to an authority how parts of the Right to Control must be delivered.

Non-statutory guidance
Guidance designed to ensure the best ways of doing things are recorded and shared across the Trailblazer areas. The guidance will be developed with Trailblazers and disabled people. Authorities may find such guidance helpful in understanding their duties and in deciding how they should implement statutory requirements.

Office for Disability Issues (ODI)
This is group of people who work for the government. They help other government workers learn more about disabled people and how to make things fairer for disabled people.

Pilot(s)
A process to test if and how something will work. In the regulations, the Trailblazers are called ‘pilots’. The term ‘pilot’ is used because this is the wording used to describe Trailblazers in the enabling powers in the Welfare Reform Act 2009.

Pilot areas
Selected local authority areas that will try out the Right to Control.

Qualifying service
The names of the services governed by the Right to Control Regulations. The qualifying services are Work Choice, Access to Work, and Supporting People.

Relevant authority
The authorities delivering the Right to Control Services.

Responsible authority
Term used in the Right to Control Regulations to refer to the relevant authorities providing qualifying services, eg Access to Work.
Regulations
Regulations set out the formal legal requirements and powers that an authority must do to deliver the Right to Control.

Representative
A person who has been appointed by a Court or a disabled person (while he or she still had capacity) to represent the interests of the disabled person who lacks capacity to act for him or herself. The appointment is made under the Mental Capacity Act 2005.

Right to Control
A Right that will allow disabled people to control how their own funding is spent on support to achieve their individual outcomes.

Right to Control Service
This term covers all of the Right to Control funding streams, both those provided by a qualifying service and those with their own legal frameworks that we are proposing to modify. The Right to Control Services are therefore Access to Work, Work Choice, Supporting People, Disabled Facilities Grants, Adult Community Care and the Independent Living Fund.

Schedule
An additional section at the end of the regulations, which contains more detailed provisions. Although these rules are not included in the main part of the regulations, they still form part of the regulations and are still law.

Service providers
Organisations that provide things like support workers, information and advice, and employment training and support.

Statutory
Required by law.

Statutory guidance
Guidance issued under the powers contained in the Welfare Reform Act 2009. The guidance gives responsible authorities greater detail about how the regulations should be applied. Authorities are obliged by the regulations to have regard to this guidance.
**Suitable person**
A surrogate, a representative, or a person deemed appropriate by the disabled person or the local authority.

**Surrogate**
A representative who has specific powers to act on behalf of a disabled person. They can make decisions about securing community care services or a qualifying service.

**Two tier authorities**
An authority which is comprised of a county council (the upper tier) and smaller district councils (the lower tier), and usually exists in rural areas.