

**EXPLANATORY MEMORANDUM TO THE
LOCAL AUTHORITIES' PLANS AND STRATEGIES (DISAPPLICATION)
(ENGLAND) ORDER 2005**

2005 No. []

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty, and pursuant to section 9(3) of the Local Government Act 2000.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Order will be made under section 6 of the Local Government Act 2000, and is subject to affirmative resolution. The purpose of the Order is to remove seven statutory obligations to make plans or strategies, from local authorities categorised as “excellent” in orders made under section 99(4) of the Local Government Act 2003.

2.2 The duties disapplied by the Order are:

- the requirement to publish a new homelessness strategy under section 1(4) of the Homelessness Act 2002,
- home energy conservation reports required under sections 2 and 5(1) of the Home Energy Conservation Act 1995,
- the rights of way improvement plan required under section 60(1) of the Countryside and Rights of Way Act 2000,
- the youth justice plan required under section 40(1) of the Crime and Disorder Act 1998,
- the local transport plan, and bus strategy, required under sections 108(3) and 110(1) respectively of the Transport Act 2000 and
- the air quality action plan required under section 84(2)(b) of the Environment Act 1995.

2.3 Where an authority is categorised as excellent, it may wish to continue to implement a particular plan it has already prepared; or it may decide, for reasons of administrative convenience, to continue to produce a particular plan or strategy. The Order makes a variety of provisions permitting authorities to exercise such choice where it is feasible to do so.

2.4 The Order also makes consequential amendments to the Crime and Disorder Act 1998, the Transport Act 1985 and the Transport Act 2000, and the Environment Act 1995, and it makes

supplemental provision for the case in which an authority loses its “excellent” status.

2.5 In such a case it is expected that the authority will aim to regain such status. The Order therefore permits the reapplication of statutory plan requirements to be deferred, for either set periods or for periods to be specified by the Secretary of State within certain upper and lower limits. The provisions vary to take account of the length of individual plan cycles and whether the mechanism for requiring the plan is within the legislation itself or in statutory guidance.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Orders under section 6 of the Local Government Act 2000 are subject to unusual procedural requirements, which are laid down by section 9 of that Act. This explanatory memorandum is intended to comply with section 9(3) in explaining the Secretary of State’s proposals set out in the draft Order which it accompanies, and giving details of the consultation undertaken in relation to those proposals under section 9(1).

4. Legislative Background

4.1 Section 99(1) of the Local Government Act 2003 requires the Audit Commission to produce a report on its findings in relation to the performance of English local authorities in exercising their functions. Under section 99(4), the Secretary of State may by order categorise these authorities in accordance with the Audit Commission’s categorisation. To date, one order exercising these powers has been made, namely the Local Authorities (Categorisation) (England) Order 2004, SI 1704, and the next such order is expected to be made before the end of December 2004.

4.2 Section 100(2)(c) of that Act enables orders under section 6 of the Local Government Act 2000 (such as the present Order) to be made according to performance categories. The present Order is thus made in relation to excellent authorities, with supplemental provision under section 105 of the Local Government Act 2000 for authorities which may subsequently be recategorised as other than excellent.

4.3 Section 6 of the Local Government Act 2000 empowers the Secretary of State by order to amend, repeal, revoke or disapply any enactment (whenever passed or made) which requires a local authority to prepare, produce or publish any plan or strategy relating to any particular matter. By section 6(3) this power can only be exercised if the Secretary of State considers that it is not appropriate for any such enactment to apply, or that it should be amended so that it operates more effectively in relation to the authority. By section

105(3) of that Act, provision which may be made by order includes provision modifying any enactment.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State (Mr Phil Hope) has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 The Local Government White Paper 'Strong Local Leadership – Quality Public Services' (2001) promised that the highest performing local authorities would be given greater freedom from requirements to produce plans than other authorities. It recognised that such high performing authorities had the capacity to plan their services without the need for centrally prescribed plan requirements. The Government's stated policy is that authorities categorised as excellent would have almost all plan requirements removed.

7.2 To give effect to this policy, an order under section 6 of the Local Government Act 2000 is necessary to disapply those plans and strategies which are prescribed in primary legislation. Section 6 of the Local Government Act 2000 is a deregulatory power which was intended to be used to remove requirements for statutory plans which no longer serve a useful purpose, or to amend requirements on specific authorities so that they could work more efficiently with their local partners to plan how they would meet common priorities.

7.3 The Office of the Deputy Prime Minister undertook a consultation process seeking views on the removal of the plans covered by the Order. The consultation paper was sent to all English local authorities, the Local Government Association, the Environment Agency, English Nature, the Countryside Agency and English Heritage. Views were also sought from organisations suggested by the Departments responsible for the legislation relating to the plans and from selected voluntary organisations.

7.4 Over 70 responses were received. Most local authorities were in favour of the proposals. Other respondents expressed concerns. A summary document was laid with the draft order and on 30 June 2004.

7.5 There has been some attention directed to particular aspects of the proposals in specialist media, particularly in relation to local transport plans, and coverage of the wider proposals in the local government press, notably Local Government Chronicle and Municipal Journal.

7.6 Since the consultation and laying of the original draft order on 30 June 2004, it has been decided that provisions in Part 1 of Schedule 5 to the Children Act 2004 will repeal the duty to produce plans for adoption services under section 5 of the Adoption and Children Act 2002 (c. 38) for all relevant local authorities upon commencement. Therefore provisions relating to this plan have been removed from this order.

7.7 No representations were made during the sixty day period for which the document was laid before both Houses, as required by section 9(3) of the Local Government Act 2000.

8 Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is expected to bring some savings for local authorities.

9. Contact

Paul Whittlesea at the Office of the Deputy Prime Minister (Tel. 020 7944 3453) can answer any queries regarding the instrument.

Annex Document

Draft Order