



Department
for Education

The Legislative Reform (Annual Review of Local Authorities) Order 2012

Explanatory Document

Contents

Chapter 1: Introduction	3
Chapter 2: Background to the Order	4
Chapter 3: The Order.....	7
Power to remove burdens under section 1 of the 2006 Act	7
Compliance with conditions in section 3 of the 2006 Act	7
Other Ministerial duties under the 2006 Act	8
Chapter 4: Consultation	10
Annex A: Impact assessment	13
Annex B: List of respondents to the consultation	14
Annex C: List of relevant statutes	15

Chapter 1: Introduction

1.1 This explanatory document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) together with the draft of the Legislative Reform (Annual Review of Local Authorities) Order 2012 (“the draft Order”) which we propose to make under section 1 of that Act. The purpose of the draft Order is to repeal section 138 of the Education and Inspections Act 2006, which imposes a duty on the Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector”) to annually review and rate local authority children’s services.

1.2 The Government is satisfied that Ministerial duties have been met under the relevant sections of the 2006 Act. This includes that the order serves a purpose under section 1(2) of the 2006 Act, that the pre-conditions under section 3 of the 2006 Act have been met, and that the appropriate consultation has been carried out in accordance with section 13 of the 2006 Act.

Chapter 2: Background to the Order

2.1 The Chief Inspector is statutorily required under section 138 of the Education and Inspections Act 2006 to undertake, in each financial year, a review of the performance of each top tier local authority in England in relation to certain children’s services functions and related activities (as set out in section 135 of that Act). After conducting such a review The Chief Inspector must award each local authority a performance rating. The Chief Inspector fulfils this duty through Ofsted’s annual rating process, otherwise known as its annual children’s services assessment.

2.2 As part of the children’s services assessment process, Ofsted assesses each top tier local authority in England using their “performance profile”, which sets out the quality of services and outcomes for children and young people in each local authority. The performance profile draws together relevant findings from across Ofsted’s inspection and regulation of education, care and skills, and puts this evidence alongside published performance data. Evidence in the performance profile is arranged into the following three main Blocks.

- Block A: the findings from regular and ongoing inspection and regulation of services, settings and institutions.
- Block B: findings from the safeguarding and looked after children services inspections, unannounced inspections of contact, referral and assessment arrangements for children in need and children who may be in need of protection, evaluations of serious case reviews and, if a full inspection of safeguarding and looked after children services has not taken place, the findings from the joint area review inspections.¹
- Block C: educational performance outcomes and other published data including any impact indicators established by the Department for Education.

2.3 Although not included in the performance profile, any substantiated complaints received by Ofsted, including through whistle-blowing, will also be considered alongside Block B evidence in determining the assessment, along with other relevant information from local authority self-evaluation, local council scrutiny reports and other such sources.

2.4 Inspectors pull all of this information together and award an overall performance rating for each local authority’s children’s services on a four-point scale: “performs poorly” (1); “performs adequately” (2); “performs well” (3); and “performs excellently” (4).

2.5 Following the determination of an overall rating, Ofsted send a draft children’s services assessment letter to each top tier local authority. Local

¹ Where the full inspection of safeguarding and looked after children services has not taken place, inspectors will consider the evidence of the joint area review where it took place after 1 April 2007 (joint area review blocks 12 to 21).

authorities then have the opportunity to raise any factual inaccuracies with Ofsted and to appeal against their overall rating before the children's services assessments are finalised.

2.6 The children's services assessment is a remnant of a more centralised local government performance management framework which is not consistent with the current Government's direction of travel: away from central regulation and bureaucracy, in favour of localism and local democratic accountability. The children's services assessment formed part of the previous Government's Comprehensive Area Assessment (CAA), which was introduced in April 2009 and sought to assess how well communities were being served by their local public services, including councils, police, health, and fire and rescue services. The CAA process was led by the Audit Commission, which drew together separate assessments from other inspectorates including the Care Quality Commission, HM Inspectorate of Constabulary, HM Inspectorate of Prisons, HM Inspectorate of Probation and Ofsted. The CAA was abolished by the current Government in May 2010, and a few months later, on 9 December, the Parliamentary Under-Secretary of State for Children and Families announced the intention to repeal the requirement on Ofsted to conduct an annual assessment of local authority children's services (under section 138 of the Education and Inspections Act 2006), stating that Government would "seek to repeal this legislation at the earliest opportunity".

2.7 The repeal of section 138 and the resulting removal of the requirement to undertake annual children's services assessments will eliminate an unnecessary regulatory burden on both Ofsted and local authorities. The repeal would bring a cost saving to the public purse of between £1.3m and £1.7m per annum and there are also likely to be some small cost savings in local authorities which will no longer have to verify that they agree with Ofsted's annual assessment and enter into an appeals process, if necessary.

2.8 The repeal would not affect Ofsted's other inspection activity. Ofsted is putting in place new, universal, child focussed inspection regimes for local authority services for the protection of children and local authority fostering, adoption and looked after children's services between May 2012 and early-mid 2013². These new regimes will focus more closely on frontline practice than previous inspection frameworks and, particularly in relation to adoption services, will raise the bar on what constitutes good or outstanding practice, which will help to more effectively drive improved services for vulnerable children.

2.9 Ofsted also has a separate duty to make an annual report to the Secretary of State under section 121 of the Education and Inspections Act 2006. Such annual reports must also be laid before Parliament. Ofsted annual reports summarise the overall results of inspections conducted under the various different frameworks that span their remit. The 2010-11 annual report included coverage of early years and childcare, children's centres,

² <http://www.ofsted.gov.uk/resources/new-inspection-arrangements-for-inspection-of-local-authority-childrens-services-letter-sent-all-dir>

maintained schools, initial teacher education, independent schools, non-maintained special schools and boarding schools, learning and skills, and children's social care.

Chapter 3: The Order

Power to remove burdens under section 1 of the 2006 Act

3.1 The Government is committed to reducing bureaucratic burdens and making inspection more streamlined and proportionate. In line with this aim, the Comprehensive Area Assessment process, which drew together various different individual service assessments and with which Ofsted's annual ratings were linked in 2009, has now been abolished.

3.2 The purpose of the Order is to remove burdens, as required by section 1(1) of the Act. The Order would primarily reduce burdens on Ofsted by freeing up resources within the inspectorate to be used for other, higher priority, inspection activity and to help meet the 30% reduction to their budget put in place through the spending review.

Compliance with conditions in section 3 of the 2006 Act

Non-legislative solutions

3.3 The only way to remove the Chief Inspector's duty to carry out the annual review and rating of local authority children's services is to repeal section 138 of the Education and Inspections Act 2006, which prescribes that duty.

3.4 The Minister is satisfied that the policy objective in this case could not be secured satisfactorily through non-legislative solutions.

Proportionality

3.5 The Minister is satisfied that the proposed change is proportionate to the policy objective, namely to remove the requirement on the Chief Inspector to carry out the annual assessment.

3.6 The only effect of the repeal of section 138 of the Education and Inspections Act 2006 would be to remove the requirement on the Chief Inspector to carry out the annual assessment. Other inspection activity would continue, for example under section 136 of the same Act. Under section 136 Ofsted currently undertake annual inspections of local authority contact, referral and assessment arrangements (child protection) and a three year rolling programme of safeguarding and looked after children's services inspections. From May 2012, Ofsted will introduce a more streamlined and proportionate framework for the inspection of local authority arrangements for the protection of children, followed by a multi-inspectorate framework covering the same arrangements in 2013. A new framework covering local authority adoption, fostering and looked after children's services will also be introduced

3.7 The requirement on Ofsted to make an annual report to the Secretary of State, and for this annual report to be laid before Parliament (under section 121 of the Education and Inspections Act 2006), is unaffected by the proposed repeal of section 138.

Fair balance

3.8 The Minister is satisfied that the proposals strike a fair balance between the wider public interest and the interests of those people likely to be adversely affected by it.

3.9 The annual assessment was originally intended to provide the general public with an independent judgement of the performance of their local council in respect of children's services. However, there is no evidence to suggest the general public engage with the annual ratings and the assessments are not valued by local authorities themselves, with the Local Government Association (LGA) suggesting their termination and Directors of Children's Services making it clear that they do not find the process helpful.

Necessary protection

3.10 The Minister does not consider that the proposal will remove any necessary protection. Wider local authority children's services inspection will be unaffected by the repeal of the annual assessment requirement; Ofsted will continue to inspect and make judgements on the quality of local authority child protection, safeguarding, early intervention and looked after children's services. Ofsted will also continue to inspect other services that are covered within the children's services assessment process, for example fostering and adoption services, schools and early years provision.

Rights and freedoms

3.11 The Minister does not believe that these proposals would prevent anyone from exercising an existing right or freedom.

Constitutional significance

3.12 The Minister does not consider that the provisions of the draft order are constitutionally significant.

Other Ministerial duties under the 2006 Act

Consultation

3.13 The Minister conducted an eight week "limited" consultation exercise on its proposals between January and March and is satisfied that it has carried out its consultation in accordance with section 13 of the 2006 Act.

3.14 The details of the consultation and the responses received are covered in more detail in chapter 4.

Parliamentary procedure

3.15 The Minister recommends that the draft Order and the Explanatory Document should be laid in Parliament under the negative resolution procedure³ for which provision is made by section 16 of the 2006 Act.

3.16 The repeal of section 138 of the Education and Inspections Act 2006 is a small and straightforward piece of regulatory reform that has widespread support and is non-contentious.

Compatibility with the European Convention on Human Rights

3.17 The Minister does not believe that the proposed amendment would interfere with any rights or freedoms protected by the European Convention on Human Rights.

Compatibility with the legal obligations arising from membership of the European Union

3.18 The Minister is satisfied that the proposals are compatible with the legal obligations arising from membership of the European Union.

Territorial extent

3.19 Section 138 of the Education and Inspections Act 2006 applies to England only. The proposed repeal of this section would therefore be restricted to England only. The Government is satisfied that there are no implications for the devolved administrations resulting from the repeal of section 138 of the Education and Inspections Act 2006.

Binding the Crown

3.20 The Minister is satisfied that the proposed repeal of section 138 of the Education and Inspections Act 2006 will not bind the Crown.

³ Following consideration by the House of Lords Delegated Powers and Regulatory Reform Committee and the House of Commons Regulatory Reform Committee, this LRO was upgraded from negative to affirmative resolution procedure.

Chapter 4: Consultation

4.1 Given that the impact of the repeal of section 138 of the Education and Inspection Act 2006 is solely on public sector organisations, predominantly Ofsted and also local authorities, a “limited” consultation exercise targeted at key stakeholder groups (local government sector and third sector organisations) started on 23 January. This consultation exercise ran for eight weeks and closed on 18 March. The consultation document was sent to both the House of Commons Regulatory Reform Committee and the House of Lords Delegated Powers and Regulatory Reform Committee.

4.2 27 responses to the consultation were received. 21 responses were received from local authorities, with a further 3 from local authority representative bodies and 2 from children’s charities. The remaining consultation response was from Ofsted.

4.3 The Minister is satisfied that it has carried out the consultation in accordance with section 13 of the 2006 Act.

The policy proposal

4.4 The consultation document asked whether consultees agreed with the proposal to repeal section 138 of the Education and Inspections Act 2006 (the statutory requirement on the Chief Inspector to undertake, in each financial year, a review of the performance of each top tier local authority in England in relation to certain children’s services functions and related activities).

4.5 26 out of 27 consultation responses answered this question directly. 100% of these responses agreed with the proposed repeal of section 138 of the Education and Inspections Act 2006.

Reducing burdens

4.6 The consultation document asked whether the proposals would remove or reduce burdens.

4.7 26 out of 27 consultation responses answered this question directly. 24 (92%) of these responses agreed that the proposed repeal of section 138 of the Education and Inspections Act 2006 would remove or reduce burdens. The remaining two responses (8%) weren’t sure.

Expected benefits

4.8 The consultation document asked for views on the expected benefits of the proposals.

4.9 23 out of 27 consultation responses answered this question directly. 15 responses set out their views on the expected benefits of the repeal of section 138 of the Education and Inspections Act 2006, agreeing with the

Non-legislative means of securing the policy objective

4.10 The consultation document asked whether there are any non-legislative means of achieving the policy objectives.

4.11 All 27 consultation responses answered this question directly. 15 responses (56%) thought that there were no non-legislative means of securing the policy objective. A further 10 responses (37%) answered “don’t know” to this question. The remaining 2 responses (7%) answered that they thought that there were non-legislative means of securing the repeal, but the narrative text in support of these answers indicates that the question may have been misunderstood.

Proportionality

4.12 The consultation document asked whether the proposals are proportionate to the policy objectives objectives.

4.13 All 27 consultation responses answered this question directly. 26 of the 27 responses (96%) agreed that the proposals are proportionate to the policy objective. The other response answered “No”, but there was no supporting narrative to support this response, which was also inconsistent with the other answers given by that respondent.

Fair balance

4.14 The consultation document asked whether the proposals strike a fair balance between the public interest and any person adversely affected by it.

4.15 All 27 consultation responses answered this question directly. 25 of the 27 responses (93%) felt that the proposals did strike a fair balance between the public interest and any person adversely affected by it. Of the remaining 2 responses to this question, 1 respondent answered “Don’t know”, with the other answering “No”. The supporting narrative of the single negative response to this question indicates that the question may have been misunderstood.

Removal of protection

4.16 The consultation document asked whether the proposals remove any necessary protections.

4.17 26 out of 27 consultation responses answered this question directly. 23 (88%) of these responses said that the proposals would not remove any necessary protection. 2 responses (8%) answered “Don’t know”, while the single remaining response answered “Yes”, but the supporting narrative indicates that the question may have been misunderstood.

Infringement of rights or freedoms

4.18 The consultation document asked whether the proposals prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise.

4.19 26 out of 27 consultation responses answered this question directly. 100% of these responses thought that the proposals would not infringe on any rights or freedoms.

Constitutional significance

4.20 The consultation document asked whether consultees considered the proposals to be constitutionally significant.

4.21 All 27 consultation responses answered this question directly. 24 of the 27 responses (89%) thought that the proposals were not constitutionally significant. The remaining 3 responses answered “Don’t know”.

Parliamentary procedure

4.22 The consultation document asked whether consultees agreed with the Government’s proposed use of the negative resolution parliamentary procedure for the draft Order.

4.23 26 out of 27 consultation responses answered this question directly. 21 (81%) of these responses agreed with the proposed negative resolution parliamentary procedure for the LRO. The remaining 5 responses answered “Don’t know”. There were no consultation responses that suggested that a different parliamentary procedure should be used.

Annex A: Impact assessment

An Impact Assessment has not been prepared for this Legislative Reform Order. The repeal of section 138 of the Education and Inspections Act 2006 does not impact on the private or civil society sectors in any way. The impact is solely on public sector organisations, predominantly Ofsted and also local authorities. The impact on the public sector has been assessed initially, and the Government can confirm that it does not breach any of the public sector thresholds set out by the Better Regulation Executive for which a formal Impact Assessment would be required. The proposed Order would not result in any new administrative costs, unfunded policy costs or information obligations, any of which would trigger the threshold for an impact assessment.

Equality and diversity

The Government has also had due regard to its obligations under the Public Sector Equality Duty to eliminate discrimination, advance equality of opportunity and foster good relations and can confirm that the repeal of section 138 of the Education and Inspections Act 2006 will not have any negative impact on equality or diversity.

Annex B: List of respondents to the consultation

Association of Directors of Children's Services (ADCS)
Bracknell Forest Council
Central Bedfordshire Council
Children England
City of Bradford Metropolitan District Council
Cumbria County Council
Durham County Council
East Riding of Yorkshire Council
Hartlepool Borough Council
Lancashire County Council
Local Government Association (LGA)
London Borough of Barnet
London Borough of Brent
London Borough of Hackney
London Borough of Islington
Middlesbrough Council
Milton Keynes Council
National Society for the Prevention of Cruelty to Children (NSPCC)
North Somerset Council
Nottinghamshire County Council
Office for Standards in Education, Children's Services and Skills (Ofsted)
Rotherham Metropolitan Borough Council
Sefton Metropolitan Borough Council
Society of Local Authority Chief Executives and Senior Managers (SOLACE)
Staffordshire County Council
Torbay Council
Warrington Borough Council

Annex C: List of relevant statutes

Education and Inspections Act 2006

Safeguarding Vulnerable Groups Act 2006