



Department
for Education

Consultation

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**Consultation on Changes to the Delegation and
Inspection of Functions for Looked After Children and
Care Leavers**

Consultation on Changes to the Delegation and Inspection of Functions for Looked After Children and Care Leavers

Under pilot arrangements certain local authorities in England can at present delegate certain care functions in relation to both children who are looked after and care leavers. Such delegation is achieved by contract with a provider of social work services, and cannot extend to functions in relation to independent reviewing officers, or to functions as an adoption agency except where the provider is a registered adoption society.

A "sunset provision" under the Children and Young Persons Act 2008 (CYPA) means that local authorities will be unable to discharge their functions in this manner after November 2013.

The Department for Education proposes to commence part 1 of the of the CYPA to allow all local authorities in England to delegate relevant care functions in this manner, preventing disruption in those areas where such arrangements are in place and offering greater flexibility elsewhere.

We also propose to remove the requirement envisaged in the CYPA for providers of social work services to register with and be inspected separately by Ofsted. Instead, Ofsted proposes to include consideration of the experiences of children receiving services under delegated arrangements as part of its new arrangements for inspection of LA services for children looked after and care leavers from April 2013¹

¹ <http://www.ofsted.gov.uk/resources/arrangements-for-inspection-of-services-for-children-looked-after-and-care-leavers>

Consultation on Changes to the Delegation and Inspection of Functions for Looked After Children and Care Leavers

A Consultation

To All interested parties, including local authorities and LA representative bodies, (potential) providers of social work service e.g. fostering/adoption agencies, social workers and representative bodies, children in care/care leavers and representative bodies

Issued 15 January 2013

Enquiries to If your enquiry is related to the policy content of the consultation you can contact the Department on 0370 000 2288 or email SocialServiceFunctions.CONULTATION@education.gsi.gov.uk

Contact Details

If you have a query relating to the consultation process you can contact the CYPFD Team by telephone: 0370 000 2288 or via the Department's ['Contact Us'](#) page.

1 Summary of Proposals

1.1 The Department is seeking views on;

- its proposal to allow all local authorities in England to delegate relevant care functions to providers of social work services. This will avoid disruption where such arrangements are currently in place as part of the Social Work Practices pilot, and extend flexibility to other local authorities; and
- the Department's related proposal to remove requirements for separate registration and inspection of providers of social work services in England, so that the experiences and outcomes of children looked after under such arrangements are evaluated through Ofsted's framework for the inspection of LA services for children looked after and care leavers, and not through a separate system of registration and inspection requirements as envisaged in the CYPA.

1.2 Both proposals would apply in relation to England only. The Welsh Government have indicated that they are content for Part 1 of the CYPA to cease to have effect in Wales in accordance with the sunset provision contained in that Act.

1.3 We propose to lay an order to bring Part 1 of the CYPA fully into force in England at the end of the current piloting period in November 2013. This will allow all LAs in England to delegate relevant care functions in the way the CYPA currently allows certain LAs to do for the purposes of piloting arrangements until November 2013.

1.4 We propose to make a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 to remove the requirement that following commencement of Part 1 organisations delivering such functions on behalf of a local authority in England should register with Her Majesty's Chief Inspector. This change would be made prior to the proposed commencement of Part 1 of the CYPA. This will mean that the experiences and outcomes of children receiving services under delegated function arrangements will be evaluated through Ofsted's arrangements for the inspection of LA services for children looked after and care leavers, but not through a separate regime of registration and inspection as originally envisaged in the CYPA.

2 Background to the Policy and Legislation at Issue

2.1 The Children and Young Persons Act 2008 (CYPA), has allowed certain local authorities in England to delegate relevant care functions through a contract with a provider of social work functions for a 5-year pilot period until November 2013. This has allowed these LAs a degree of flexibility in deciding how best to discharge their responsibilities to the children in their care, and to consider a range of innovative approaches to service delivery.

2.2 The relevant care functions which can be delegated under Part 1 are a local authority's social services functions in relation to a child who is looked after by it; and its advice and assistance functions under the Children Act 1989². There are a number of restrictions on the delegation of such functions³, including:

- Local authority functions in relation to independent reviewing officers may not be delegated;
- Functions as an adoption agency may only be delegated where the other party is a registered adoption society;
- Any restrictions that apply to a local authority as regards geographical operation apply also to the contracted party.
- Delegated functions must be discharged by, or under the supervision of, a registered social worker.

²The advice and assistance functions under sections 23B to 24D of the Children Act 1989.

³See section 2 of the CYPA for the restrictions on delegation arrangements.

2.3 Those local authorities that have been allowed to delegate functions since 2008 have been supported by Government to develop a Social Work Practice model of service delivery under the devolved functions allowed by the CYPA. Under this model a small, autonomous, social worker led "professional practice", often based on a social enterprise, a co-operative, or a voluntary or private organisation operates outside the hierarchy of LA decision making, has greater autonomy budgetary control, and is able to work more closely and innovatively with looked after children and care leavers.

2.4 The independent evaluation of the pilots⁴ reported mixed findings with stronger evidence in relation to some aspects of the pilots' work than in

others and some pilots emerging as stronger performers than others. Despite this variety, the evaluation concluded that there was evidence of positive change for children, parents/carers and the workforce. For example, "carers looking after SWP children were significantly more likely than carers looking after local authority children to view the support they received from their child's social worker positively. They also felt better supported by SWP staff in assisting children and young people in the areas of health, education or leisure activities." The evaluation summarised the achievements of the SWP pilots as "increased opportunities for direct work with children and young people; good quality support for carers and small integrated teams offering a personalised service and in some cases creative work with birth parents and/or the use of accessible and user-friendly premises. In most pilots, but not in all, a reduction in the rate of placement change was achieved." On this basis the Department believes it is appropriate to give all LAs the flexibility to consider whether delegation arrangements in their areas might help realise similar benefits.

⁴<https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-RR233>

3 The Proposals – Discussion

- 3.1 Proposal 1: The Government proposes to allow all local authorities in England to delegate relevant care functions to providers of social work services. This will avoid disruption where such arrangements are currently in place as part of the Social Work Practices pilot, and extend flexibility to other local authorities.**
- 3.2** Current arrangements allow certain local authorities in England important flexibility in the discharge their functions and have indicated potential opportunities and benefits in the creation of a more diverse and innovative market in public services in line with the agenda for Open Public Services. The Social Work Practice model through which authorities have been supported to delegate functions gives professionals a degree of independence and autonomy in the delivery of public services that is in tune with wider efforts to encourage the establishment of public sector mutuals. We expect at least six social work practices to be operating at the time the changes proposed in this consultation come into force.
- 3.3** The proposed change will offer this additional flexibility to all local authorities in England. It will enable them to consider whether delegated arrangements might help realise some of the benefits identified in the evaluation of social work practices (see paragraph 2.4) in their areas. It will also create an opportunity for new providers to offer local authorities a range of different approaches to service delivery.
- 3.4** If we do not take action, the "sunset provision" in the CYPA will mean that the pilot local authorities will lose the ability to delegate social service functions to providers of social work services in November 2013.
- 3.5** This would mean that those areas that have participated in the Social Work Practices pilot scheme will face disruption to established services that would need to be taken back under local authority auspices. The providers of social work services themselves would be forced to wind up their operations.
- 3.6** We therefore propose to commence Parts 1-3 and Part 5 of the CYPA to ensure that all local authorities in England continue to be able to delegate social service functions beyond November 2013.

- 3.7** **Proposal 2: The Government proposes to remove requirements for separate registration and inspection of providers of social work services in England. The experiences and outcomes of children looked after under such arrangements will be evaluated through Ofsted's framework for the inspection of LA services for children looked after and care leavers, but not also through a system of separate registration and inspection requirements as envisaged in the CYPA.**
- 3.8** For the duration of the pilot period until November 2013 there are no regulatory or inspection requirements associated with functions delegated to providers of social work services. Thereafter, the CYPA envisages that, should the ability to delegate be continued, such providers would need to register with and be inspected by Her Majesty's Chief Inspector.
- 3.9** We believe that such a requirement is unnecessary on the following grounds:
- where functions are delegated the LA remains the corporate parent and is responsible for their discharge through their management of the contract with the provider of social work services;
 - Ofsted's new inspection framework for services for children looked after and care leavers makes provision to take a relevant sample of looked after children cases where functions have been delegated to a provider of social work services when they carry out local authority inspections, and to consider the experiences of these children as they would any others in the care system; and
 - The Secretary of State remains able to specify that an inspection be conducted that would look in detail at such arrangements should there be cause for concern.
- 3.10** We consider that in this context, necessary protections are retained and a requirement for separate registration and inspection risks duplication of activity across local authority, provider and regulator and represents an unnecessary additional administrative and financial burden on both regulator and provider. Indeed, the move to formal inclusion in local authority inspection arrangements might be considered to afford additional protection when set against the lack of specific inspection requirements during the current piloting phase.
- 3.11** We therefore propose to use a Legislative Reform Order (LRO) to remove the requirement for separate registration and inspection under Part 4 of the

CYPA.

3.12 Who these proposals will affect and how?

It is not envisaged that any person will be adversely affected by the proposals. Instead the proposals will maintain current arrangements in those authorities where functions are already delegated to providers of social work services, and open the possibility for other authorities and providers to develop similar arrangements as appropriate.

3.13 The proposals also remove administrative and financial burdens on providers of social work services and the regulator, and avoid the risks of duplication of effort for these two and local authorities.

3.14 Local Authorities

Those local authorities who currently delegate functions to providers of social work services under pilot arrangements will be able to continue such arrangements beyond November 2013 if they wish to do so. All other local authorities in England will also be able to take advantage of such arrangements as they consider the most appropriate means of discharging their functions.

3.15 Providers of social work services

Where local authorities involved in the social work practices pilot wish to continue with delegation arrangements, those providers already engaged in the discharge of functions will be able to continue these roles beyond the end of the pilot period in November 2013.

3.16 The proposals further allow for new providers of social work services to form and contribute to the discharge of functions in these and other local authorities.

3.17 The proposal to remove the burden of registration with Her Majesty's Chief Inspector will benefit existing providers of social work services as well as potential future organisations who enter into delegation arrangements with a local authority in England. Such organisations will not be subject to the costs and administrative burden of registration and of separate inspection by Ofsted.

3.18 The Department's view is that the registration requirement would also act as an obstacle to the government's aim of increasing the range of persons who

are in a position to deliver these public services.

3.19 Her Majesty's Chief Inspector

Removing the requirement for providers of social work services to register with Ofsted and be subject to individual inspections will avoid imposing a new administrative and financial burden on Ofsted from 2013. It will also avoid the risk of duplication of effort in its inspection of LA services given that its proposed new framework makes provision to consider the experiences of children cared for under delegated functions.

3.20 Children looked after and care leavers

In those authorities where existing delegated arrangements continue we expect these proposals to avoid unnecessary disruption of services and continuity of relationships for looked after children and care leavers.

3.21 Additional flexibility for other local authorities in the discharge of their functions will enable them to explore a fuller range of options to secure the most appropriate arrangements for the children in their care.

3.22 The proposed new Ofsted inspection arrangements will consider the experiences of children and young people in the same way regardless of whose auspices services are delivered under. The proposals in this consultation will not, therefore, reduce the level of care or degree of protection to which children receiving services under delegated arrangements might be entitled.

Questions - proposal 1

1. Do you agree that the proposal will help prevent disruption in areas where delegation arrangements are already in place?
2. Do you agree that the proposal will give local authorities additional flexibility in considering how best to discharge their functions?
3. Do you agree with the proposal to commence part 1 of the CYPA to allow all local authorities to delegate relevant care functions?

Questions - proposal 2

NB. Question 4 in the consultation response document concerns disclosure of representations regarding proposal 2 as part of the Legislative Reform

Order process.

5. Do you agree that the proposal will avoid burdens?
6. Do you agree that the proposal avoids the risks of duplication of effort in inspection arrangements for LA services and separate arrangements for providers of social work services?
7. Do you agree that necessary protections are retained through Ofsted's proposed framework for the inspection of services for children looked after and care leavers, without the need for separate registration and inspection?
8. Do you agree with the proposal to remove the requirement for separate registration with and inspection by Ofsted?

4 Proposal 2: information about Legislative Reform Orders, proposed procedure for the order, and legal analysis against requirements of the legislative and regulatory reform act 2006

4.1 **This chapter relates solely to proposal 2:** The use a Legislative Reform Order (LRO) to remove the requirement that providers of social work services in England be separately registered and inspected by Ofsted as specified in section 4 of the CYPA.

4.2 **Legislative Reform Orders**

The Legislative and Regulatory Reform Act 2006 enables burdens from legislation to be reduced or removed, and regulatory functions to be carried out in a way that is transparent, accountable, proportionate, consistent and targeted, by means of a Legislative Reform Order.

4.3 We intend to introduce proposal 2 by means of a Legislative Reform Order (LRO) under section 1 of the Legislative and Regulatory Reform Act 2006 (LRA). This consultation is being conducted in accordance with the provisions of section 13 of the LRA and in accordance to the government's consultation principles <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

More details on the LRO process can be found at <http://www.parliament.uk/business/committees/committees-archive/regulatory-reform-committee/regulatory-reform-orders>

4.4 **Parliamentary Scrutiny**

Both Houses of Parliament scrutinise draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords. Each Committee may take oral or written evidence to help them evaluate a LRO, and will produce a report on their decision.

Copies of Committees' reports are available on the Parliament website at

- [Regulatory Reform Committee](#) in the Commons; and
- [Delegated Powers and Regulatory Reform Committee](#) in the Lords

4.5 **Proposed Procedure for the LRO**

The Minister can recommend one of three alternative procedures for Parliamentary scrutiny of an LRO dependent on its size and importance. Although the Minister will recommend a procedure, the Parliamentary Scrutiny Committee has the final say about which procedure will apply.

- **Negative Resolution Procedure** - This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made.
- **Affirmative Resolution Procedure** - This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.
- **Super-Affirmative Resolution Procedure** - This is a two-stage procedure during which there is opportunity for the draft LRO to be revised by the Minister. This allows Parliament 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO. If, after the expiry of the 60 day period, the Minister wishes to make the LRO with no changes, he must lay a statement. After 15 days, the Minister may then make a LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament. If the Minister wishes to make material changes to the draft LRO he must lay the revised draft LRO and a statement giving details of any representations made during the scrutiny period and of the revised proposal before Parliament. After 25 days, the Minister may only make the LRO if it is approved by a resolution of each House of Parliament. Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.

4.6

The Department for Education (DfE) considers that the **affirmative resolution** procedure should apply to this LRO. This is because we consider that questions of regulation of services for children in care are of sufficient importance to require explicit consideration and approval but we are satisfied that Ofsted's proposals for new local authority inspection arrangements from April 2013 ensure that appropriate safeguards will be retained and for the reasons set out in 3.2 we consider that our proposals will achieve an appropriate level of protection in this area

Questions - proposed procedure for LRO

9. Do you agree that the affirmative resolution procedure is appropriate in this instance?

4.7

Analysis against the legal requirements of the legislative and regulatory reform act 2006

Non-Legislative Solutions

We believe the policy objective cannot be achieved by non-legislative means. The removal of the registration requirement in Part 1, section 4 of the CYPA

can be done only through primary legislation or through a Legislative Reform Order.

Questions

10. Are there any non-legislative means that would remedy the difficulty this proposal intends to address?

4.8 Proportionality

The proposed LRO is a proportionate mechanism to achieve the policy objective. The only effect would be to remove the requirement for providers of social work services to register with Ofsted. This relieves administrative and financial burdens on both parties, without imposing any elsewhere in the system. We believe the proposed change is thus proportionate.

Questions

11. Do you agree that the proposal is proportionate to the policy objective?

4.9 Fair Balance

If the LRO receives Parliamentary approval providers of social work services will not need to register with Her Majesty's Chief Inspector or be inspected separately from the local authority with which they enter into delegation arrangements. In this way, the proposal will enable existing and new providers of social work to offer a wider choice to LAs in deciding appropriate arrangements for the discharge of functions. We believe this offers potential benefits to LAs, independent and voluntary providers of services, their staff, and children in care without adversely affecting any party.

Questions

12. Does the proposal strike a fair balance between the public interest and adverse impact on any party?

4.10 Necessary protection

We have considered the effect of the proposed removal of the registration requirement in section 4. Subject to the outcome of our consultation, we consider that Ofsted's proposed arrangements for the inspection of services for children looked after and care leavers will achieve all necessary

protections in relation to delegated arrangements without the burdens associated with direct registration

Necessary protections will be maintained:

- The current legislation already envisages that inspections can cover any related activity, such as arrangements put in place by the local authority with another person to carry out functions which would otherwise be carried out by the local authority. Accordingly it is clear that the conduct of inspections in relation to third parties (such providers of social work services) is within the scope of Her Majesty's Chief Inspector's existing powers and not novel (section 135 of the Education and Inspections Act 2006).
- In addition, section 136(3) of the Education and Inspections Act provides that the Secretary of State can specify that an inspection should be conducted in relation to a particular local authority or particular matters. So the Secretary of State could make a specific request for inspection of a particular local authority's commissioned services (including an SWP) where appropriate.
- We have worked closely with Ofsted who have confirmed that, under the proposals for the new Children Looked After Inspections, where a local authority has delegated functions to a provider of social work services, during inspections, the individual experiences of a sample of children will be inspected. Children being supported by providers of social work services in the sample will be treated in exactly the same way as those whose support comes from the local authority.
- Where the local authority has entered into arrangements with a provider of social work services, inspectors will evaluate the quality of the local authority's oversight and performance management of their work as part of the "Leadership and Governance" judgement.

Questions

13. Do you believe the proposal removes any necessary protections?

4.11 Rights and Freedoms

As the change we propose is beneficial/deregulatory we do not believe that they would prevent anyone from exercising an existing right or freedom.

Questions

14. Does the proposal prevent anyone from continuing to exercise an

existing right or freedom? If so, please provide details.

4.12 Constitutional Significance

We do not consider that the provisions of the proposed reform order is constitutionally significant.

Questions

15. Do you consider the proposal to be constitutionally significant?

5 How to Respond

- 5.1** Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You can respond to the consultation by completing the response form and emailing it to SocialServiceFunctions.CONULTATION@education.gsi.gov.uk or sending it by post to:

Department for Education, Social Work Reform Unit, Ground Floor, Sanctuary Buildings, Great Smith Street, London, SW1W 3BT

- 5.2** If the Minister seeks to pursue proposal 2 by laying a legislative reform order before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

The Scrutiny Committees contact details are below:

Delegated Powers and Regulatory Reform Committee House of Lords London SW1A 0PW Tel: 0207 219 3103 Fax: 0207 219 2571 mailto: DPRR@parliament.uk	Regulatory Reform Committee House of Commons 7 Millbank London SW1P 3JA Tel: 020 7219 2830/4404/2837 Fax: 020 7219 2509 mailto: regrefcom@parliament.uk
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6 Additional Copies

- 6.1** Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website at:
<http://www.education.gov.uk/aboutdfe/departmentalinformation/consultations>

7 Plans for making results public

- 7.1** The results of the consultation and the Department's response will be published on the Department for Education e-consultation website in Spring 2013.

