**EXPLANATORY MEMORANDUM TO**

**THE LOCAL EDUCATION AUTHORITIES AND CHILDREN'S SERVICES AUTHORITIES (INTEGRATION OF FUNCTIONS) ORDER 2010**

**2010 No [DRAFT]**

**1.** This explanatory memorandum has been prepared by Department for Children Schools and Families and is laid before Parliament by Command of Her Majesty.

## 2. Purpose of the instrument

2.1 This order removes the terms 'local education authority' and 'children's services authority' from primary legislation and replaces them with the single term 'local authority'. If this draft order is approved a further order, making similar changes to local and secondary legislation will be made, but that order will be subject to negative resolution.

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

3.1 None

## 4. Legislative Context

4.1 This is the first use of section 162 of the Education and Inspections Act 2006. The purpose is to provide greater clarity by bringing the terminology used in primary legislation into line with current practice and policy, where the education functions of the local authority have become integrated with its social services functions as they relate to children. This was confirmed by section 18 of the Children Act 2004 which required (from 1 January 2008) local authorities to appoint a single Director of Children's Services with responsibility for the local authority's functions relating to children, including the functions of the local education authority and the local authority's social service functions which relate to children.

## 5. Territorial Extent and Application

5.1 This instrument generally applies to England and Wales.

5.2 As far as Wales is concerned the amendments to primary legislation cover Wales as well as England and, as required by section 162 of the Education and Inspections Act 2006, the order will be made with the consent of the Welsh Assembly Government; the Welsh Assembly Government will also be making a similar order to amend Welsh Assembly Measures. In addition there is one provision which amends legislation which extends to Scotland.

## 6. European Convention on Human Rights

The Minister of State for Children, Young People and Families has made the following statement regarding Human Rights:

In my view the provisions of the draft Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 are compatible with the Convention rights

## 7. Policy background

- ***What is being done and why***

7.1 The objective is to create greater clarity and reduce the scope for confusion by bringing the terminology used in primary legislation into line with current policy and practice. The order does not in itself change the meaning of the legislation except where necessary to, as far as possible, recreate the original intention, or, if it is no longer relevant, to repeal the legislation. For example the Children Act 2004 promoted the creation of a children's services department within local authorities under a single Director of Children's Services, but before that there had been an enduring problem where the separate education and social care departments in the local authority were failing to communicate. As a result some earlier legislation required the local education authority to consult 'the local authority' (i.e. the social services department) to ensure that those connections were made. Simply amending 'local education authority' to read 'local authority' in this case would be nonsensical, so in those circumstances the order repeals the provision, the original aim having been achieved through the 2004 Act. The 2004 Act also created the term 'children's services authority' , but this has only served to add to the confusion, so Government policy has been to use the single term 'local authority' for both and this has been common practice for the past four years.

- ***Consolidation***

7.2 None is proposed.

## 8. Consultation outcome

8.1 The Local Government Association has been consulted on this instrument over a period of at least 12 weeks and they support it. Their view is that the terms 'local education authority' and 'children's services authority' have been unhelpful because they limit an understanding of the authority–wide nature of working that has evolved since the Children Act 2004. They say that the changes will aid the effective delivery of all services to children and the *Every Child Matters* agenda

## 9. Guidance

9.1 The changes made by this order are technical and as there is no substantive change to the legislation beyond terminology the publicity will be low key and aimed primarily at local authorities through the regular departmental channels of communication. Its main interest will be to legal teams working within the local authority.

## 10. Impact

10.1 There will be no impact on business, charities or voluntary bodies. The change does not affect them beyond the need to update their stationery and documentation etc, which could be left as part of an ongoing routine process they would do anyway.

10.2 The impact on the public sector is minimal. The change will not affect how the sector does its business, but should be beneficial in helping avoid confusion.

10.3 An Impact Assessment has not been prepared for this instrument.

## 11. Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & review

12.1 The intended outcome is to remove a potential cause of confusion and unnecessary complication. This can be expected to facilitate more efficient and effective communications between local authorities and their partners but does not lend itself to robust quantitative monitoring. The situation will be kept under review through ongoing dialogue with the LGA and further action will be taken if needed.

## 13. Contact

Sandra Cullen at the Department for Children, Schools and Families Tel: 020 7340 7386 or email: sandra.cullen@dcsf.gsi.gov.uk can answer any queries regarding the instrument.