EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES' PLANS AND STRATEGIES (DISAPPLICATION) (ENGLAND) (AMENDMENT) ORDER 2009

2009 No 714

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

The Order amends the Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005 (SI 2005/157) ("the 2005 Order") to alter exemptions for local authorities from requirements to produce certain statutory plans. The exemptions depend on the Audit Commission's categorisation of the particular authority's performance. The amendments are made as a result of changes to the system of categorisation.

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

3.1. None

4. Legislative Context

4.1. Under Section 6 of the Local Government Act 2000 ("LGA 2000") the Secretary of State may by order amend, repeal, revoke or disapply any enactment which requires a local authority to prepare, produce or publish any plan or strategy relating to a particular matter. The power may be exercised only if the Secretary of State considers that it is not appropriate for such an enactment to apply to the authority or that such an enactment should be amended so that it operates more effectively in relation to the authority.

4.2. Orders under section 6 are made by a form of affirmative resolution procedure except in certain situations detailed at section 9(8) of the LGA 2000, namely where the order is made only for the purpose of amending an earlier order –

- so as to extend the earlier order or any provision of that order to a particular authority or to authorities of a particular description, or
- so that the earlier order or any provision of it ceases to apply to a particular authority or to authorities of a particular description.

This Order is made only for the purpose of amending the 2005 Order to extend certain exemptions to authorities of a particular description and to cease the application of certain exemptions to other authorities of a particular exemption

4.3. Under Section 99(1) of the Local Government Act 2003 ("LGA 2003"), the Audit Commission must from time to time produce a report ("the section 99 report") on its findings in relation to the performance of English local authorities in exercising their functions. The section 99 report must categorise each authority according to how the authority has performed in exercising its functions

4.4. Where the Secretary of State receives a section 99 report from the Audit Commission, section 99(4) of the LGA 2003 enables him to make an order categorising the English local authorities in accordance with their categorisation in the report. An order under section 6 of the LGA 2000 may be made in relation to a particular description of local authorities. By virtue of section 100 of the LGA 2003 that description may be framed by reference to categorisation of performance under section 99(4) of the LGA 2003. The categorisation of local authorities is part of the Comprehensive Performance Assessment ("CPA") framework. Councils were, prior to 2006, placed in one of five categories - excellent, good, fair, weak or poor.

4.5. The 2005 Order disapplied seven statutory plans and strategies requirements for local authorities categorised as "excellent" in a categorisation order made under section 99(4) of the LGA 2003. The seven statutory requirements are:

1) the duty to publish new homelessness strategies under section 1(4) of the Homelessness Act 2002

2) the duty to submit home energy conservation reports under section 2 of the Home Energy Conservation Act 1995

3) the duty to prepare youth justice plans under section 40(1) of the Crime and Disorder Act 1998

4) the duty to prepare and publish rights of way improvement plans under section 60 of the Countryside and Rights of Way Act 2000

5) the duties to prepare local transport plans and bus strategies under sections 108(3) and 110(1) of the Transport Act 2000 and

6) the duty to prepare action plans in relation to air quality under section 84(2)(b) of the Environment Act 1995.

4.6. In December 2005 The Audit Commission published a revised CPA framework (CPA – The Harder Test) ("CPA 2005") for England's 150 single tier (i.e. unitary district, unitary county and London borough) councils and county councils. Under CPA 2005, councils receive an overall performance category ranging from 0 to 4 stars, with 4 stars being the highest. The last categorisation order under section 99(4), the Local Authorities (Categorisation) (England) Order 2006[1], which gave effect to the Audit Commission's section 99 report of 31st August 2006, reflects that harder test for single tier and county councils, as set out in the Explanatory Memorandum accompanying that Order. A further Categorisation Order is to be made after this Order to reflect the last CPA results due in March 2009.

4.7. This Order amends the 2005 Order by restricting the application of some of the exemptions to produce plans and strategies. The requirements in respect of rights of way improvement plans and local transport plans, listed in paragraph 4.5 (4) and (5)above is limited to 4 stars authorities. This Order extends the application of the 2005 Order in other respects. 4 stars and 3 stars authorities, as well as excellent

[1] SI. 2006 No.3096.

authorities will be exempt from the duties to publish new homelessness strategies and submit home energy conservation reports The exemption from the duty to prepare action plans in relation to air quality is extended to 4 stars as well as excellent authorities. No reference is made in this Order to the requirement to produce a bus strategy as this requirement was ended with effect from 9th February 2009 by an amendment to the Transport Act 2000 made by section 10 of the Local Transport Act 2008. The Order does not make any change in respect of the duty referred to in paragraph 4.5 3 and the exemption from producing youth justice plans. In 2008, up to 18 different youth justice plans required by the Youth Justice Board were merged into a requirement for one youth justice plan under section 40(1) of the Crime and Disorder Act 1998. The policy decision has therefore been taken that this exemption should not be extended.

4.8. This Order makes consequential amendments to modifications to the Transport Act 2000 and the Environment Act 1985 made by the 2005 Order, in order to include references to the correct categories of authority which are excepted from a requirement to prepare plans under those Acts .

4.9. In the case of each disapplication of a duty to produce plans or strategies, there is a transitional provision in the Order, which gives an exempted authority who ceases to be within a specified CPA category a period of time before which the obligation to produce the report or plan is revived. Such transitional provisions will allow for an orderly transition to any new proposal for freedoms and flexibilities under the new Comprehensive Area Assessment (CAA) (as referred to in paragraph 12.1) when CPA categorisations will not apply.

5. Territorial Extent and Application

This instrument applies in relation to English local authorities only.

6. European Convention of Human Rights

As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is needed.

7. Policy Background

- **What is being done and why**

7.1. This Order extends freedoms from producing –

7.1.1. 2 of the statutory plans and strategies to 3 stars and 4 stars authorities,

7.1.2. 1 of the statutory plans to 4 stars authorities, and

it provides that the 2005 Order no longer applies to excellent authorities in respect of 2 other plans but applies to 4 stars authorities. This takes into account the CPA framework revised in December 2005.

7.2. The background to the 2005 Order is the Local Government White Paper "Strong Local leadership – Quality Public Services" (2001) which announced a new CPA framework to assess local authorities' delivery of national and local priorities. The White Paper promised that the highest performing local authorities would be given greater freedom and flexibilities than other authorities, including more freedom from requirements to produce plans. It recognised that such high performing authorities had the capacity to plan their services without the need for centrally prescribed plan requirements.

7.3. The Audit Commission independently carried out assessments, which placed councils into one of five categories - excellent, good, fair, weak and poor. The Government's stated policy was that authorities categorised as excellent would have almost all plan requirements removed. The 2005 Order gave effect to this policy.

7.4. Following the publication of CPA 2005 and the harder test, there was no direct read across from the old named categorisations to the new star ratings. It was therefore necessary to consider how to apply freedoms under CPA 2005 and to amend the 2005 Order.

Consolidation

7.5. This Order is the first amendment to the 2005 Order. There are no plans to consolidate the amendments and there is no free marked up copy of the 2005 Order.

8. Consultation Outcome

8.1. The Office of the Deputy Prime Minister launched a consultation exercise seeking views on the handling of freedoms and flexibilities under the Harder Test, in January 2006. The Government's preferred option was to extend freedoms and flexibilities downwards across star categories. This would mean that freedoms from plans currently available to excellent single and upper tier authorities in the 2005 Order would be given to 4 stars and 3 stars authorities. The exception was five year Local Transport Plans ("LTPs"), including bus strategies, which were completed provisionally in 2005, with the final versions due for completion in March 2006. The proposal was that the statutory freedoms related to these plans for excellent authorities would be retained for the March 2006 plans.

8.2. A total of 55 responses were received from: Local Authorities, Fire and Rescue Services, a Regional Authority, a functional body of a Regional Authority, Local Government representative bodies, Non-Departmental Public Bodies, a special interest group, a professional body and a non-statutory committee. 47 respondents (85%), including the Local Government Association (LGA) and Audit Commission, supported the Government's preferred option to extend the application of freedoms downwards across star categories. Further details of the consultation, and the Government's response in September 2006, are given on CLG's website at http://www.communities.gov.uk/publications/localgovernment/proposedchanges

8.3. The extension of exemptions from plan requirements was generally welcomed, although the Chartered Institute of Housing put the case that the requirement to produce a strategy or plan should be dependent upon the need for and usefulness of the strategy or plan, rather than on the performance of the authority.

8.4. The Countryside partners of Natural England requested that Rights of Way Improvement Plans (ROWIPs), like LTPs, be exempted for this current round from the new proposals to extend freedoms to 3 stars authorities, as work is already being done with DEFRA and DfT to align and integrate ROWIPs with LTPs. The British Horse Society also strongly objected to proposals to increase the number of authorities exempted from producing ROWIPs and LTPs. They were concerned that the money received for completion of LTPs appeared to be the main source of funding to implement improvements to and the provision of new local rights of way. They were concerned that local authorities would miss out on funding opportunities. The British Horse Society and also the Rights of Way Review Committee felt that even the best performing authorities should not be exempted from producing these plans until they have been assessed as being excellent in implementing their ROWIP statement of actions. The Committee also stated that there was no explanation of how parish and community councils and local access forums would be engaged in the improvement of public rights of way in the absence of the structure provided by the duty to prepare plans.

8.5. The Government response is that Authorities have, since the second round of LTPs, been able to integrate both the ROWIP and Air Quality Action Plan into the LTP, so we are proposing to treat these in the same way as LTPs. This means that the freedom from the requirement to produce these plans will be made available to 4 stars authorities. Freedom from the requirement to produce a Homelessness strategy and Home Energy Conservation Report will be made available to 4 stars and 3 stars authorities.

9. Guidance

9.1. No additional guidance is considered necessary.

10. Impact

10.1. There is no impact on business, charities or voluntary bodies.

10.2. The impact on the public sector is expected to bring some savings for local authorities, who have welcomed the additional freedoms and flexibilities.

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

10.4. We consider that Plans rationalisation is of low relevance for impact on equalities, so an Equalities Impact Assessment has not been produced.

11. Regulating small business

11.1. The regulation does not apply to small business**.**

12. Monitoring and review

12.1. The future of Freedoms and Flexibilities under Comprehensive Area Assessment (CAA) is currently under consideration and an announcement on its

future will be made after the final CAA framework is published. Transitional provisions in this Order will allow for an orderly transition to any new proposal for freedoms and flexibilities under CAA when CPA categorisations will not apply.

13. Contact

Melvin Hughes, at the Department of Communities and Local Government, can answer any queries regarding this Statutory Instrument. (Tel: 020 7944 4147 or e-mail: Melvin.Hughes@communities.gsi.gov.uk.