



Department
for Education

Consultation on powers to delegate social care functions

Government response

June 2014

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Executive summary

The Department for Education consultation on extending the range of children's social care functions local authorities can delegate to third party providers attracted over 1300 responses.

The majority of responses raised concerns with the proposals. By far the most common reason given for this was an objection to the possibility of "privatisation" or "profit making" in children's services.

Having considered the responses, the Government has decided to amend the draft regulations so that the extended range of functions can only be delegated to non profit-making organisations.

The Government intends to lay the amended regulations before Parliament in summer 2014.

Introduction

Between 17 April and 30 May 2014 the Department for Education sought views on a set of draft regulations that would extend the range of children's social care functions that local authorities can delegate to third party providers.

The consultation was published on the Department for Education's consultation website and the GOV.UK website. In addition, a number of parties likely to have an interest in the consultation were notified directly. These included:

- Respondents to the January and September 2013 consultation on delegation of functions
- All Local Authorities (LAs) participating in the Social Work Practices pilot arrangements
- All LAs who had expressed an interest in participating in those pilot arrangements
- All providers participating in those pilot arrangements
- All providers who had expressed an interest in participating in pilot arrangements
- The Association of Directors of Children's Services
- The Local Government Association
- Social Worker Representative organisations
- Provider representative organisations
- Children's representative organisations
- Members of the pilot evaluation team
- Members of the expert group advising on pilot and evaluation arrangements
- Members of the Social Work Reform Board
- Ofsted.

Summary of responses received

A total of 1315¹ responses were received.

Those respondents who chose to identify their background did so as follows:

Background^{2 3}		
Options	Number	Percentage
Social worker	433	35%
Local authority	303	25%
Social work educator	90	7%
Providers of social work services	57	5%
Children representative body	21	2%
Social work representative body	16	1%
Local authority representative body	9	1%
Other	419	34%

The consultation asked two questions:

1. Whether consultees agreed that the proposed regulations would give local authorities freedom to explore a wider range of approaches to discharging their social care functions; and
2. Whether consultees agreed with the proposed regulations.

The headline responses to those questions break down as follows:

Question 1		
Options	Number	Percentage⁴
Yes	183	14%
No	1011	77%
Not sure	64	5%
Did not answer	57	4%

Question 2		
Options	Number	Percentage⁵
Yes	25	2%
No	1242	94%
Not sure	34	3%
Did not answer	14	1%

¹ An additional 8 responses were blank. These are not included in the analysis.

² Numbers add up to more than 1323/100% mainly because a number of respondents ticked more than one category (for example local authority and social worker).

³ The vast majority of respondents were responding as individuals rather than on behalf of their organisation (for example all but 19 of the 303 responses identifying themselves as local authorities appear to be local authority employees responding on their own behalf rather than for that authority).

⁴ May not add up to 100 due to rounding.

⁵ May not add up to 100 due to rounding.

Detailed analysis of responses

In addition to answering the consultation questions, respondents were invited to offer commentary and 556 (42% of respondents) chose to do so.

Although respondents were invited to offer detailed comments on each of the consultation questions, for the most part they used the opportunity to comment on the proposals in the round. The following analysis therefore looks at emerging positive and negative themes across the piece, rather than looking at each question individually.

Negative themes

A large number of negative comments were received. Many respondents simply restated whether or not they supported the consultation proposals. Among those offering more detailed explanation of their reasoning a number of common themes emerged.

By far the most common theme (cited 284 times - 22% of all respondents, or 51% of those making written comments) was the prospect of “privatising children’s services” and the introduction of a potentially contradictory profit making imperative to work with vulnerable children. This was the main or only stated concern of 179 respondents. This same concern was also the subject of three online campaigns/petitions with a total of 71,797⁶ participants/signatories.

A related point was made by 66 respondents (5% of all respondents and 12% of those commenting) who raised concerns that local authorities would be motivated in their choice of provision by questions of cost rather than quality.

Concern about the dilution of local authority accountability to service users and voters was the second most common theme (69 respondents – 5% of all respondents or 12% of those commenting).

47 respondents (4% of all respondents or 8% of those commenting) voiced concern about the break up or fragmentation of services that would result from delegation of functions.

Other recurring responses included:

- Complaints about a lack of evidence to support the proposals (39 respondents – 3% of all respondents or 7% of those commenting)
- A lack of social work expertise within providers/loss of social work expertise as work transfers from local authorities to providers (21 respondents – 2% of all respondents or 4% of those commenting)
- Potential for conflicts of interest – in a number of cases linked to profit-making – where decisions were taken about a child by an organisation that might subsequently provide services (16 respondents – 1% of all respondents or 3% of those responding).

⁶ At midday on 17/06/2014.

Other points made several times, but by fewer than 13 respondents (less than 1% of total consultation respondents) included:

- A clear philosophical position that children's social care should only ever be a function of and discharged by the state
- A lack of providers operating/able to operate in this field
- The introduction of additional bureaucracy through procurement and contract management arrangements
- Complaints that the consultation was inadequately publicised and/or explained, or that the consultation period was too short.

Positive themes

Recurring positive responses included:

- Scope for improvements to services resulting from increased freedom and ability to innovate.
- The scope to more closely involve those with a strong track record working with children/specific expertise – in particular effective third sector organisations
- The ability to rationalise disparate provision to create more joined up, holistic services
- Appropriate retention of local authority accountability
- Scope to improve value for money.

It is worth noting that the positive responses were disproportionately likely to be official responses on behalf of local authorities and their representative bodies and from providers.

Government response

The Government recognises the scale of concern in relation to the potential inclusion of a profit-making motive in the proposed range of additional delegable functions – in particular child protection.

The Government's intention in bringing forward these proposals was to allow local authorities to consider a broader range of delivery and reporting structures, enabling greater structural innovation and the harnessing of external expertise in pursuit of improved social work practice and better outcomes for children. The proposals were concerned with improving the quality of children's services rather than savings, "privatisation" or profit-making. Indeed the local authorities currently exploring possibilities in this space are considering mutualised and community-interest structures.

In this context, the Government is happy to respond directly to the primary concern raised in the consultation and is making an amendment to the draft regulations which would prevent profit-making bodies from carrying out the additional delegable functions on behalf of local authorities.

We believe that this response should also go a long way towards addressing concerns raised about potential conflicts of interest.

The Government has considered the other themes emerging from consultation carefully. The points made are important ones, but in the context of voluntary enabling powers, they are properly for local authorities to consider as and when they seek to put delegated arrangements in place. The degree of relevance and the appropriate response/mitigation will vary significantly depending on the precise nature of their plans.

Whatever arrangements a local authority chooses to pursue, Ofsted will continue to inspect all children's services, will look at arrangements with commissioned providers, and issue judgements on the local authority's performance in meeting its duties.

The Government is therefore not proposing any further changes to the regulations. Responses on the major issues raised are as follows:

- Accountability. It seems a number of respondents may have misunderstood the effect of the proposed regulations on accountability. They would make no change to the legal position, which is that the local authority remains accountable to service users and voters even where it delegates functions, and where Ofsted will continue to hold it to account for the quality of services however they are delivered.
- Fragmentation. Just as now, local authorities will need to ensure that arrangements facilitate effective communication/ information-sharing between the range of parties involved in supporting children's social care services. It is far from given that delegation would increase the numbers of such parties. We have heard plans to bring together a range of functions currently delivered separately within single structures.
- Loss of social worker expertise. The 2008 Children and Young Persons Act requires that any delegated functions must be carried out by, or under the supervision of, registered social workers. Local authorities will need to be

confident that delegated arrangements ensure appropriate expertise is deployed in the discharge of their functions. It remains for local authorities to make decisions about their own staffing arrangements, in the light of their needs and circumstances.

- Lack of evidence for the policy. The evaluation of Social Work Practices identified evidence of positive change through delegated arrangements for looked after children and care leavers. Local authorities will be able to apply to the Children's Social Care Innovation Programme for support to make use of any new freedoms introduced, and the impact of activities funded through the programme will be robustly evaluated.
- Lack of current providers. Naturally there are no independent providers operating in an area which is currently restricted by law to local authorities. Some local authorities may use the new powers to create mutualised or community interest structures. The Innovation Programme will also support local authorities and potential providers looking to build capacity in this area.
- Conflict of interest. The removal of the potential for providers to make a profit from newly-delegable decisions should significantly reduce concerns about conflict of interest. Local authorities will also need to ensure that contracts are set up in such a way as to ensure that any remaining conflicts can be managed.
- Bureaucracy/procurement issues. Any decision whether to delegate functions remains for the local authority and the local authority will need to take account of such issues when deciding how best to set up the arrangements.
- Consultation concerns. We do not consider that the handful of criticisms about the consultation arrangements is justified. The consultation was posted on both the DfE consultation website and the GOV.UK website. Direct notifications were sent to a wide range of interested parties. The proposals received coverage in the sector and national press, and a very high volume of responses was received, including a large number of detailed comments.

Next steps

A revised set of regulations taking account of consultation responses will be laid before Parliament in summer 2014.



Department
for Education

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Reference: DFE-00460-2014