DRAFT STATUTORY INSTRUMENTS

2005 No.

LOCAL GOVERNMENT, ENGLAND

The Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005

Made - - - -

Coming into force in accordance with article 1

The First Secretary of State ("the Secretary of State"), in accordance with section 9(1) of the Local Government Act 2000(**1**), has consulted such local authorities, representatives of local government, and other persons as appear to him likely to be affected by this Order;

Following that consultation, the Secretary of State has laid a document before Parliament in accordance with section 9(3) of that Act;

The period specified in section 9(4) of that Act has expired, and, in preparing a draft of this Order and in accordance with section 9(6) of that Act, the Secretary of State has considered all representations made during that period;

The draft so prepared has been approved by a resolution of each House of Parliament;

The Secretary of State considers that it is not appropriate for certain enactments (which require local authorities to prepare their plans and strategies) to apply to a particular description of local authority, and that such enactments should be modified so as to operate more effectively in relation to that particular description of authority;

The Secretary of State further considers it expedient to make supplemental provision in relation to the application of such enactments to local authorities which cease to be of that particular description;

Therefore, in exercise of the powers conferred by sections 6(1) and 105 of the Local Government Act 2000, and by section 100(1) and (2) of the Local Government Act 2003(**2**), the Secretary of State makes the following Order:

Citation and commencement

1. This Order may be cited as the Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005 and shall come into force on the day after the day on which it is made.

(**1**) 2000 c. 22. Section 9 is amended by the Local Government Act 2003 (c. 26), section 100 and Schedule 3.
(**2**) 2003 c. 26.

Interpretation

2. In this Order—

"English local authority" has the meaning given by section 99(7) of the Local Government Act 2003; and

"excellent authority" means an English local authority categorised as excellent by reason of an order made by the Secretary of State under section 99(4) of the Local Government Act 2003.

Disapplication of duty to publish new homelessness strategies

3.—(1) Section 1(4) of the Homelessness Act 2002(**3**) shall not apply to local housing authorities(**4**) which are excellent authorities.

(2) Paragraph (3) applies where a local housing authority cease, by reason of an order made by the Secretary of State under section 99(4) of the Local Government Act 2003, to be categorised as excellent.

(3) Where this paragraph applies the authority shall be treated as an excellent authority for the purpose of paragraph (1), for a period—

(a) of such length, no shorter than one year and not exceeding two years, as the Secretary of State may specify in writing to the authority, and

(b) beginning with the date on which the order mentioned in paragraph (2) comes into force.

Disapplication of duty to submit home energy conservation reports

4.—(1) Section 2 of the Home Energy Conservation Act 1995(**5**) (in this article, "the Act"), and the power of the Secretary of State to give directions under section 5 of the Act, shall not apply to energy conservation authorities(**6**) which are excellent authorities.

(2) Where, at the date on which this Order comes into force, an excellent authority have prepared a report and published and sent it to the Secretary of State in accordance with section 2(6) of the Act, section 3(2) of the Act shall not apply in relation to that authority.

(3) Paragraph (4) applies where an energy conservation authority cease, by reason of an order made by the Secretary of State under section 99(4) of the Local Government Act 2003, to be categorised as excellent.

(4) Where this paragraph applies the authority shall be treated as an excellent authority for the purposes of paragraph (1), for a period of one year beginning with the date on which the order mentioned in paragraph (3) comes into force.

Disapplication of duty to prepare youth justice plans, and amendment of provisions relating to such plans

5.—(1) Section 40(1) of the Crime and Disorder Act 1998(**7**) shall not apply to local authorities(**8**) which are excellent authorities.

(2) In consequence of paragraph (1), sections 39 to 42 of the Crime and Disorder Act 1998 shall apply, in relation to local authorities which are excellent authorities, subject to the modifications set out in Schedule 1 to this Order.

(**3**) 2002 c.7.
(**4**) For the relevant definition of "local housing authority", *see* section 4 of the Homelessness Act 2002.
(**5**) 1995 c.10.
(**6**) For the definition of "energy conservation authority", *see* section 1(1) of the Home Energy Conservation Act 1995.
(**7**) 1998 c.37.
(**8**) For the relevant definition of "local authority", *see* section 42(1) of the Crime and Disorder Act 1998.

(3) Notwithstanding paragraph (1)—

(a) an excellent authority who, at the date on which this Order comes into force, have formulated a youth justice plan for the current year, may implement that plan, and

(b) an excellent authority other than one described in sub-paragraph (a) may formulate and implement a youth justice plan,

and in either case sections 39 to 42 of the Crime and Disorder Act 1998 shall apply in relation to the authority as though unmodified by this Order.

(4) Paragraph (5) applies to a local authority who—

(a) have not formulated a youth justice plan, and

(b) by reason of an order made by the Secretary of State under section 99(4) of the Local Government Act 2003, cease to be categorised as excellent.

(5) Where this paragraph applies the authority shall be treated as an excellent authority for the purpose of paragraph (1), for a period of one year beginning with the date on which the order mentioned in paragraph (4)(b) comes into force.

Disapplication of duties to prepare and publish rights of way improvement plans, and amendment of provisions relating to such plans

6.—(1) Subject to paragraphs (2) to (4), section 60 of the Countryside and Rights of Way Act 2000(**9**) (in this article, "the CROW Act") shall not apply to local highway authorities(**10**) which are excellent authorities.

(2) An excellent authority may prepare and publish a rights of way improvement plan in accordance with section 60(1) and, if they do so, section 60(2) to (5) and section 61 of the CROW Act shall apply to the authority.

(3) Where, at the date on which this Order comes into force, an excellent authority have prepared a rights of way improvement plan under section 60(1), but have not published it—

(a) the authority may publish the plan and, if they do so, section 60(2) to (5) and section 61 of the CROW Act shall apply to the authority, or

(b) the authority may decide not to publish the plan and, if they do so, they shall publish a report of their decision and of the reasons for it in two or more local newspapers circulating in their area.

(4) Where, at the date on which this Order comes into force, an excellent authority have prepared and published a rights of way improvement plan under section 60(1)—

(a) the authority may implement the plan and, if they do so, section 60(2) to (5) and section 61 of the CROW Act shall apply to the authority, or

(b) the authority may decide not to implement the plan and, if they do so—

(i) the plan shall be of no effect, and

(ii) the authority shall publish a report of their decision and of the reasons for it in two or more local newspapers circulating in their area.

(5) Paragraphs (6) and (7) apply in a case where an excellent authority—

(a) by virtue of paragraph (1), do not prepare and publish a rights of way improvement plan,

(b) by virtue of paragraph (3)(b), decide not to publish such a plan, or

(c) by virtue of paragraph (4)(b), decide not to implement such a plan.

(**9**) 2000 c.37.

(**10**) For the relevant definition of "local highway authority", *see* section 45 of the Countryside and Rights of Way Act 2000, referring to section 329(1) of the Highways Act 1980 (c.66).

(6) Notwithstanding paragraphs (1) to (4) of this article, where this paragraph applies the authority shall remain under a duty—

(a) to take action for the management of local rights of way and for securing an improved network of local rights of way, with particular regard to the matters specified in section 60(2) of the CROW Act, and

(b) before doing so to consult the bodies and persons specified in section 61(1)(a) to (h) of the CROW Act.

(7) Where this paragraph applies and the authority cease, by reason of an order made by the Secretary of State under section 99(4) of the Local Government Act 2003, to be categorised as excellent, the authority shall be treated as an excellent authority for the purposes of paragraph (1), for a period—

(a) of such length, no shorter than one year and not exceeding two years, as the Secretary of State may specify in writing to the authority, and

(b) beginning with the date on which the order comes into force.

(8) In paragraph (6)(a), "local rights of way" has the meaning given by section 60(5) of the CROW Act.

Disapplication of duties to prepare local transport plans and bus strategies, and amendment of provisions relating to such plans

7.—(1) Sections 108(3) and 110(1) (duties to prepare local transport plan and bus strategy) of the Transport Act 2000(**11**) shall not apply to local transport authorities(**12**) which are excellent authorities.

(2) In consequence of paragraph (1)—

(a) the provisions of Part 2 of the Transport Act 2000 mentioned in Part 1 of Schedule 2 to this Order shall apply in relation to excellent authorities subject to the modifications set out in that Part of that Schedule;

(b) the provisions of the Transport Act 1985(**13**) mentioned in Part 2 of Schedule 2 to this Order shall apply in relation to excellent authorities subject to the modifications set out in that Part of that Schedule.

(3) An excellent authority who, at the date on which this Order comes into force—

(a) have prepared a local transport plan or

(b) are taken by the operation of section 109(5) of the Transport Act 2000 to have a local transport plan,

may at any time decide that they will cease to exercise their powers under Part 2 of that Act by reference to the plan and, if they do so, the plan shall cease to have effect from the date of their decision.

(4) Notwithstanding paragraphs (1) and (3), an excellent authority may prepare a local transport plan and, if they do so, the Transport Act 2000 and the Transport Act 1985 shall apply in relation to the authority as though unmodified by this Order.

(5) Paragraph (7) applies where a local transport authority—

(a) by virtue of paragraph (1), do not have a local transport plan, or

(b) by virtue of paragraph (4), decide not to implement a local transport plan.

(**11**) 2000 c.38.
(**12**) For the relevant definition of "local transport authority" in relation to England, *see* section 108(4) of the Transport Act 2000 .
(**13**) 1985 c.67.

(6) Where this paragraph applies and the authority cease, by reason of an order made by the Secretary of State under section 99(4) of the Local Government Act 2003, to be categorised as excellent, the authority shall be treated as an excellent authority for the purposes of paragraph (1), for a period—

(a) of such length, no shorter than one year and not exceeding two years, as the Secretary of State may specify in writing to the authority, and

(b) beginning with the date on which the order comes into force.

Disapplication of duty to prepare action plans in relation to air quality

8.—(1) Section 84(2)(b) of the Environment Act 1995(**14**) (duty to prepare an action plan) shall not apply to local authorities(**15**) which are excellent authorities.

(2) Notwithstanding paragraph (1)—

(a) an excellent authority may prepare an action plan and, if they do so, the provisions of Part 4 of the Environment Act 1995 shall apply in relation to the authority as though unmodified by this Order; and

(b) an excellent authority who do not prepare an action plan shall remain under a duty to exercise their powers in pursuit of the achievement of air quality standards and objectives in the designated area.

(3) In consequence of paragraph (1), section 85 of the Environment Act 1995 shall apply in relation to excellent authorities with the modifications shown in paragraph (4).

(4) In section 85 (reserve powers)—

(a) in subsection (4)—

(i) after the word "above" in the first place in which it occurs, insert "and subject to subsection (5B) below";

(ii) for the words "that subsection" substitute the words "subsection (3) above";

(b) in subsection (5), at the beginning insert "Subject to subsection (5B) below,";

(c) after subsection (5A)(**16**), insert—

"(5B) The powers to give directions under subsections (3), (5) and (5A) above may not be exercised so as to require a local authority which is an excellent authority to prepare an action plan for a designated area.

(5C) But directions given to an excellent authority by the Secretary of State under subsections (5) or (5A) above may require the authority to exercise its powers in pursuit of the achievement of air quality standards and objectives in a designated area.

(5D) In subsections (5B) and (5C) above, "excellent authority" has the meaning given to that term by the Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005.".

(5) Paragraph (6) applies where a local authority cease, by reason of an order made by the Secretary of State under section 99(4) of the Local Government Act 2003, to be categorised as excellent.

(6) Where this paragraph applies the authority shall be treated as an excellent authority for the purposes of paragraph (1), for a period of one year beginning with the date on which the order mentioned in paragraph (5) comes into force.

(**14**) 1995 c.25.
(**15**) For the relevant definition of "local authority", *see* section 91(1) of the Environment Act 1995.
(**16**) Subsection (5A) was inserted by SI 2001/3719, article 2 and Schedule, paragraph 6(1), (3).