

## Power to test different ways of working – policy statement

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Clauses 29-31 of the Children and Social Work Bill will introduce a new power to allow local authorities to apply for exemptions or modifications to children's social care legislation to enable them to test new ways of working.

This briefing note provides further information about why the power to innovate is needed, detail of how applications will be considered and examples of how it could be used. If you have any questions please contact [caitlin.devereux@education.gov.uk](mailto:caitlin.devereux@education.gov.uk)

### 1.1 Why the power to test different ways of working is needed

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The legislative framework is the bedrock of children's social care services, providing a crucial framework to protect the rights of children and young people. Government believes that the framework as it stands is essentially correct; however this does not mean it is perfect. There is a consensus stemming from the Munro Review that over-regulation gets in the way of good social work practice and prevents social workers and other staff from putting children's needs and wishes first. In many cases we have legislated in response to failure, with laws that are focused on achieving the right outcome, but have unintended consequences on the ground. Too often legislation sets out not just what local authorities need to do to protect children, but also gives a significant level of detail about how they should do it. Where automatic process prevails, it can get in the way of local authorities tailoring their services to the individual needs and wishes of children.

There is a constant need to test and evaluate new and better ways of doing things if we are going to provide the best outcomes for children. We are already seeking to do this through the Innovation Programme, our Partners in Practice and the establishment of a What Works Centre. These programmes have generated an appetite for innovation and radical reform, but they are also testing the limits of the current framework. For example Leeds and their changes to their whole social care system to embed restorative practice and Munro, Turnell and Murphy for the Signs of Safety initiative, which involves rethinking processes, reporting structures and systems so that social workers can work more intensively with families.

For both these projects, innovations could be achieved through relaxations to statutory guidance, and we will continue to explore this route wherever possible. However in some cases local authorities are telling us that it is legislation and regulation that is standing in the way of doing something differently – section 1.3 explores some of these examples in more detail.

When a local authority comes to us with a proposal for how things can be done better, Government is left with a dilemma as currently the process of legislative change is all or nothing. Either we change the law for all 152 local authorities, with no evidence of how it will work in practice, or we refuse the request. The power to innovate helps solve this problem, allowing us to test new approaches in a carefully controlled and monitored way. We will rigorously evaluate the trials to build our understanding of how changes to legislation would work in practice and, where they are successful, how they can be spread and scaled. If following a trial it's decided that the change should be applied more widely, this would be subject to the full parliamentary scrutiny process.

The power to innovate signals a crucial step towards a statutory framework that is truly based on what works. However, there need to be careful safeguards on the use of the power, as legislation provides a crucial guarantee of the support offered to some of the country's most vulnerable children. This is why there will be rigorous scrutiny of its use to ensure that applications are only granted when children's outcomes are at their heart. The next section sets out in detail the rigorous scrutiny and monitoring process for using the power, and the Government amendments we will be making at report stage to strengthen this further.

#### **Support for the power to test different ways of working**

*"I welcome the introduction of the power to innovate set out in the Children and Social Work Bill. This is a critical part of the journey set out in my Independent Review of Child Protection towards a child welfare system that reflects the complexity and diversity of children's needs. Trusting professionals to use their judgement rather than be forced to follow unnecessary legal rules will help ensure children get the help they need, when they need it. Testing innovation in a controlled way to establish the consequences of the change, before any national roll out, is a sensible and proportionate way forward."*

**Professor Eileen Munro**

*'SOLACE has argued for some time that the tight regulation and inspection regimes applied to Children's Social Care provide little opportunity for innovation. The proposed power to innovate does provide for Local Councils to try different approaches with appropriate safeguards. It is not aimed at diluting hard-won rights for children now enshrined in other legislation, but rather at developing evidence based approaches for meeting the needs of vulnerable children better than the system does at present. The power will be available to Councils which have proven leadership capacity and as such ought to be trusted with testing new approaches over a time-limited period, subject to both the approval of the Secretary of State and Parliament.'*

### **Society for Local Authority Chief Executives**

*“At Achieving for Children we are always keen to enable the workers serving our children and families to regain the passion that brought them into this work. The power to innovate will allow us to have the chance to safely test new approaches and remove barriers to effective work. We look forward to working with others to identify and develop the ideas that our frontline workers come up with.”*

### **Achieving for Children**

*“In the Tri-borough authorities we are excited about the ‘power to innovate’ clauses within the Children and Social Work bill. We believe this builds on the Munro Review of Child Protection in helping us to reduce unnecessary bureaucracy and to enable social workers on the front line to spend more time working with families and less time sitting in front of their computers and filling in forms.”*

### **Tri-borough Children’s Services**

## **1.2 How the power will work in practice**

Every application to use the power will be rigorously scrutinised to ensure that children’s wishes and feelings are at their heart and that unnecessary risk does not occur. The high level process for requesting the use of the power is set out in legislation, however this section sets out in more detail how it will work in practice.

### **1. Local consultation and application**

Where a local authority decides it wants to trial a new way of working that requires a change in legislation, it must first consult locally on the changes it wants to make. The clauses set out that the local authority must consult with local safeguarding partners, such as the police and CCG. However we will also look for evidence in applications of consulting with other relevant parties, including affected families and children in care councils where relevant.

Once local authorities have consulted locally, they can then make an application to the Secretary of State to use the power. We intend to start by inviting our Partners in Practice local authorities, who have a strong track record in innovation, to apply. However, we will then look at opening up the power more widely to other local authorities who would like to apply.

The table below outlines the high level principles of what we will expect applications to contain.

| <b>Feature of applications</b> | <b>What will we look for</b> |
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| Outline of local consultation process   | Evidence of strong engagement across local partners. This should include stakeholders who will be most affected by a proposal, e.g. families who will be affected by a proposal and children in care councils.  |
| Explanation of how the exemption will bring about better outcomes or the same outcomes more efficiently | A clear demonstration of using the power to work in new ways to provide a more child centred process. Where an exemption is to remove a requirement, evidence of strong alternative arrangements with consideration of how to accommodate children and families who would prefer to continue with existing arrangements. Evidence that use of the power is needed and the same effect cannot be achieved in other ways. |
| Local capability  | Whilst the clause does not restrict which areas can apply to use the power, we would need to have confidence in the local authority's leadership and capacity to deliver reforms.   |
| Assessment of risk to children, including mitigations and safeguards                                    | Thorough assessment, which carefully considers possible risks to children, particularly vulnerable groups. Robust safeguards in place to mitigate risks and ensure that children's wishes are central.  |
| Proposed monitoring and local accountability arrangements.  | Evidence of strong local governance, monitoring and accountability arrangements, such as regular case audits and scrutiny through elected members. A proposal for how DfE will monitor the trial, which will be refined and agreed through the application process.   |
| Outline evaluation process  | Proposal for evaluation of the trial, including expected learning and how it could be applied to other areas. DfE will work closely with applicants to refine this and ensure that learning is transferable.  |



## **2. Advisory panel and Secretary of State decision**

The Secretary of State will assess applications based on the criteria set out above, and then if she decides to proceed will consult an expert advisory panel.

The decision to include the requirement for the Secretary of State to consult an expert advisory panel was based on feedback from peers and other stakeholders about the need for more robust scrutiny arrangements. The panel will include the Children's Commissioner and Her Majesty's Chief Inspector as permanent members of the panel, and the Secretary of State will appoint further members to the panel with expertise relevant to a given application. We expect this to include a representative from the voluntary sector, local government and social work practice.

The panel will receive the full details of an application and will provide advice on the following questions:

- How children's outcomes are likely to be affected by an application
- Whether there are sufficient monitoring arrangements in place

The Secretary of State must ask the panel for advice at least 6 weeks ahead of making regulations. The advice of the panel will be published before the regulations are laid in parliament.



### **3. Parliamentary Process**

A statutory instrument (SI) is laid in parliament and passes through both houses. Exemptions to primary legislation and secondary legislation made through the affirmative resolution procedure will follow the affirmative procedure (meaning it would be debated in both Houses of Parliament), whilst secondary legislation originally passed through the negative procedure would itself follow the negative procedure (meaning it would be subject to annulment if there is sufficient parliamentary support for a vote). An explanatory report will be published alongside the SI, to inform peers about the context surrounding an exemption. This alongside the published advice of the expert panel will inform debate. We expect the report will contain the following information:

- Clear explanation of how exemption or modification of legislation will lead to improved outcomes – e.g. what would replace a provision from which there is an exemption
- Assessment of the impact on children, particularly vulnerable groups
- Appropriate safeguards to ensure that no child's outcomes are harmed by the trial
- Clear proposal for local and central monitoring of the trial
- Plan for evaluation and proposed learning

**We would welcome suggestions from peers and other stakeholders on what else explanatory notes should contain to best inform parliamentary scrutiny.**



#### 4. Trial period and monitoring

If the power is passed by Parliament the local authority can commence their pilot. Trials will be monitored locally, with local governance arrangements in place as agreed in the application process. In addition DfE will monitor use of the power to ensure that the intent of the application is being fulfilled and children are not being adversely affected. The details of DfE's monitoring will be agreed through the application process, but might include tracking relevant metrics, undertaking regular case audits or visits to local authorities.

If at any point during the pilot the department believes there is adverse impact on the outcomes of children, the exemption can be revoked through a negative statutory instrument. Evaluation will also be in place for the duration of the trial and will aim to bring about a deeper understanding of how the exemption worked and what the conditions of success would be for the same change to work in other local authorities.



#### 5. Decision to end trial

Trials will come to an end automatically after the specified period (maximum 3 years). An evaluation of the pilot will be published.



#### 6. Decision to extend trial

A pilot can be extended by the Secretary of State for a maximum further period of three years. Before an extension is granted the Secretary of State would need to lay a report in parliament about the extent to which the regulations have achieved their purpose. We expect extensions would happen in instances where the pilot has been successful but more work was needed to understand how it would apply to other local authorities.

### 1.3 Examples of how the power could be used

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This sections sets out two areas where the power to innovate could potentially be used to test more flexible approaches to care planning and adoption and fostering approvals. These examples are intended to be purely illustrative, to outline how the power could be used and with no automatic presumption they would be granted. Before any trial was allowed, applications would need to go through a rigorous scrutiny process, as set out in the previous section.

## **Care planning**

Care planning is an area where children and young people consistently tell local authorities that the process doesn't work for them. The timescales, frequency, and processes associated with reviews are specified in detail in the Children Act 1989, the Care Planning, Placement and Case Review Regulations 2010, amongst other legislation. A number of our Partners in Practice are interested in testing flexibilities in these regulations, as they feel the standardised approach does not always fit the specific needs of children.

In looking at applications for flexibilities in this area we will look for safeguards that ensure that children's needs and wishes are put first, and that there is always a mechanism to bring children back into the full review process if needed. DfE will carefully monitor any pilots in this area, for example monitoring numbers of cases that are not subject to full review and undertaking random case audits.

### **Steve Crocker, Director of Children's Services Hampshire County Council**

'One area we think there is great potential to use the power is to get better outcomes is Independent Reviewing Officers. We want to explore applying the IRO role in a much more targeted way. Children and young people in stable placements consistently tell us they don't want to have someone they don't know at their review and that they are happy for their social worker to chair it or they want to chair it themselves.

This means in many cases IROs, who are highly skilled professionals, are attending reviews when they are neither wanted nor needed by the young person. At the same time there are other cases where there are young people who would benefit much more significantly from additional scrutiny and oversight. We want to revise the function of our IRO service to ensure the wishes of children are at its core.

We are not talking about removing entitlement to an IRO, but acknowledging that for many children in stable, long term placements their role can be more light touch. We would ensure that there was a mechanism to give a child a link back into having IRO oversight where circumstances changed or the child requested it.

Scrutiny and checks would also be absolutely essential in this kind of trial, which is exactly what we intend to do. We would step up our existing process of regular case reviews and deep dives to ensure that the exemption was working. Hampshire is a safe place to trial this and the learning can feed into a wider conversation about how we improve the role of the IRO.

Another area where we think there is scope for change in the planning process is for disabled children receiving intensive short break provision. If a child uses these breaks for more than 17 days at a time or the short breaks account for more than 75 days of the year, then by law the child must have the full care planning and review process for looked after children. This can be difficult for parents, who want to make use of short breaks, but do not want their child to be considered looked after and find the statutory reviewing process quite intrusive. We are interested in working with families to look at flexibilities in these cases where there is no safeguarding concern, to look at how we can make it work better.'

### **Adoption and fostering assessments**

Another area where our Partners in Practice are interested in is testing flexibilities is around the approval and review requirements for foster carers. The timescales and processes for considering, approving and reviewing foster care placements are set out in detail in various pieces of legislation including the Children Act 1989 and the Fostering Services (England) Regulations 2011. Our Partners in Practice tell us that these regulations, whilst important, are not always proportionate and can slow down approvals and provide barriers to people becoming foster carers.

In considering applications for flexibilities in this area we will look closely at what the alternative process for assessing foster carers would be, in particular looking for assurance that there will still be a robust process in place for ensuring that children are placed with the best possible carers and safeguarding is observed. Where local authorities were interested in varying assessment processes for kinship carers, we would look to ensure that this would not affect carers getting the level of support they need. We would also carefully monitor how local authorities were using the power, for instance undertaking case audits to understand how the power is being used.

### **Pete Dwyer, Corporate director, Children and young people's services, North Yorkshire County Council**

'I'm a great defender of the Children Act and it has done a huge amount to improve services for children and young people. However I think there is scope in some specific areas, to trial working differently.

One we'd like to explore is around Fostering and Adoption panels. Whilst these add real value in many cases, particularly those that are more complex, the requirement to use them for all cases can feel disproportionately intrusive to carers and can delay progress. Ultimately the decision making lies with the local authority anyway, and we feel that despite the excellence of individual members, the process can add little collective value. At present legislation is



very prescriptive and sets out in detail how panels should work including the specific members and the number needed to be quorate.

We would like to use the power to innovate to develop more agile methods for making sure the agency decision is transparent and of high quality, without always using a panel. We would still use specialist expertise to assess applications in areas such as health and legal advice, but in a more dynamic and cost effective way. Advances in technology also create new opportunities for their contribution to be included without the time currently taken in the diaries of key advisory staff.

Another area we would like to look at trialling freedoms is around friends and family carers for looked after children. At the moment legislation doesn't distinguish between the way we assess foster carers who are joining the fostering workforce and commit to many placements over a considerable period of time, and friends and family carers who are being approved in the same way to look after one young person who they have a relationship with. We want to review the processes to make sure that the specific and valued contribution our friends and families carers make are thoroughly and proportionately assessed without being subject to unnecessary processes.'

## 1.4 Frequently asked questions

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### **Could multiple authorities be granted the same exemption?**

Concerns have been raised that an application from one local authority could result in the same exemption being automatically granted to others without going through the application process. This would not be the case. Each local authority would have to submit an individual request, which would be individually assessed and granted (or rejected). That said, our initial conversations with our Partners in Practice authorities, who we anticipate being the first to apply for exemptions, do show some commonality between the areas that they are thinking about. Where local authorities do test a different way of working in a similar space we will make sure that the evaluation is coordinated across them so that learning is maximised.

### **Will this lead to a two tier system?**

We whole heartedly believe there should be a single statutory legal framework for children's services operating across the whole of England. It is the bedrock of the child protection system. The aim of trials will be to test provisions to create the evidence base for changes to the law across the system. This is the reason that all trials are time limited and can only be extended once – there is no scope to use the power to create a permanent

difference in approach across the country.

### **Why does the power apply to such a broad range of legislation?**

We want to keep the legislation broad to ensure that we do not restrict the areas that local areas can potentially test. This matches our bottom up approach and we believe that restricting the legislation would make the power unnecessarily complex. Each request would need to be to test an exemption from a very specific piece of legislation in a controlled environment with agreed safeguards. We would not allow a local authority to have freedoms from large swaths of the current legislation. This power is not intended to be used for questioning the fundamentals of the current system, but enabling flexibility in how it is delivered.

### **Will this open the door for profit-making in child protection services, which is currently ruled out under regulations set out in 2014?**

We have no intention of revisiting the settled position on profit making in children's social care, or of using the power to innovate of this Bill to circumvent that position. To make the point absolutely clear we are tabling an amendment at report stage to explicitly rule out the use of the power to revisit restrictions on profit making in children's social care.

### **Can't local authorities already achieve the aims of the clause under existing legislation?**

Section 1 of the Localism Act 2011 (which replaced section 2 of the Local Government Act 2000 in England) allows local authorities to do anything which an individual can do – where there is no particular power allowing them to act in a certain way. This allows local authorities to undertake some kinds of innovation, where they want to provide innovative services in addition to what they are required to do by law, or where the law is otherwise silent. It does not, however, allow local authorities to exempt themselves from specific legislative requirements. The power to innovate goes further than this by allowing local authorities to test exemptions and modifications to the legislative framework itself. This is important to help us build the evidence base for how we might make changes in the future.