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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order modifies primary and secondary legislation and makes other provisions for the purposes of, in consequence of, or for giving full effect to provisions in Part II of the Local Government Act 2000 (“the 2000 Act”). This Order and the modifications made by it apply to England only.

Articles 3 to 9 make modifications to the Local Government Act 1972. **Article 3** prevents a local authority or joint authority from promoting a Bill to form, alter or abolish executive arrangements or alternative arrangements or to alter arrangements for electing a mayor. **Articles 4 and 5** apply the qualifications and disqualifications for election and holding office as a member of a local authority to election and holding office as an elected mayor. **Article 6** extends to elected mayors and executive leaders provisions for the validity of acts done by unqualified persons. **Article 7** modifies the provisions for the vacation of office by failure to attend meetings so that they apply to members of the executive. **Article 8** modifies the provisions for members of local authorities not to be appointed as officers so that a person who is a member of a leader and cabinet executive (who will also be a member of the authority) may be appointed to paid office during the twelve month period after he ceases to be such an executive member. **Article 9** modifies the interpretation provision by inserting a definition of “alternative arrangements”.

**Article 10** modifies section 31A of the Local Government Act 1974 so that restrictions relating to consideration of a report from the Ombudsman apply equally to the executive, committees of the executive and members of the executive as they do to committees of and members of the authority.

**Article 11** modifies section 41 of the Local Government (Miscellaneous Provisions) Act 1976 so that records of decisions made by the executive, members of the executive and committees of the executive can be used as evidence in civil proceedings in the same way as minutes of meetings of the council and its committees.

**Article 12** modifies section 35 of the Local Government Act 1985 so that a member of a leader and cabinet executive is not disqualified from membership of a joint authority.

**Article 13** modifies section 74 of the Transport Act 1974 so that a member of the executive who is also a director of a public transport company cannot take part in meetings of the executive or a committee of the executive or make a decision acting alone where contracts concerning that company are being considered.

**Article 14** makes a consequential amendment to section 5 of the Weights and Measures Act 1985.

**Article 15** modifies section 6 of the Local Government Act 1986 so that the local authority publicity provisions in part II of that Act do not apply where access to information provisions apply to local authority executives by virtue of section 22 of the Local Government Act 2000.

**Article 16** modifies section 18 of the Airports Act 1986 so that a member of an executive who is also a director of a public airport company cannot take part in meetings of the executive, or a committee of an executive or make a decision alone where contracts or other matters concerning the airport company are being considered.

**Article 17** modifies section 3 of the Pilotage Act 1987 so that a harbour pilot who is a member of the executive of an authority is not prevented from taking part in a collective decision where knowledge of pilotage is material.

**Article 18** modifies the public supply or works contracts provisions in the Local Government Act 1988. Schedule 2 is modified so that a local authority executive is a public authority for the purposes

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

of section 17 of that Act (exclusion of non-commercial considerations when exercising functions in relation to a public authority's public supply or works contracts). Section 19 is modified so that section 17 applies to another local authority, which is discharging functions on behalf of a local authority's executive, and to another local authority's executive, which is discharging functions on behalf of local authority or a local authority's executive.

**Articles 19 to 21** modify the Local Government Finance Act 1988. **Article 19** adds further definitions to the interpretation section. **Article 20** modifies section 114 and inserts a new section 114A so that provisions for an authority's chief finance officer to make a report in cases of financial misconduct by a local authority are extended to a local authority's executive. Where a report has been made, the provisions in new section 115B (duties of executive as regards reports), inserted by **article 21**, apply, including a requirement for the executive to make a report after considering the chief finance officer's report. Section 116 is modified so that information about meetings of the executive under section 115B is sent to the authority's auditor.

**Articles 22 to 26** modify the Local Government and Housing Act 1989. **Article 22** modifies section 2 so that giving advice on a regular basis to an executive, executive committee or executive member is a duty of a post under a local authority for the purposes of that section. **Article 24** modifies section 5 and inserts a new section 5A so that provisions for an authority's monitoring officer to make a report in cases of a contravention of law, maladministration or injustice by a local authority are extended to a local authority's executive. The executive must prepare a report after considering the monitoring officer's report. **Article 23** extends the provisions relating to assistants for political groups so that a political assistant cannot discharge functions which are exercisable by or on behalf of a local authority's executive. **Article 25** inserts further definitions in section 21 (interpretation of Part I). **Article 26** modifies Part V (companies in which local authorities have interests) so that certain provisions which refer to members of an authority, or a committee or sub-committee of an authority, are extended to an executive, members of an executive or an executive committee, as appropriate.

**Article 27** modifies section 97 of the Water Industry Act 1991 so that where a sewerage undertaker has arranged for certain sewerage functions to be exercised by a local authority then such functions are treated as functions of the local authority for the purposes of section 13 of the 2000 Act.

**Article 28** modifies section 106 of the Local Government Finance Act 1992 so that an executive member who has not paid his council tax for at least two months shall not take part in executive decisions in respect of the council's budget, council tax or precept.

**Article 29** modifies section 70 of the Deregulation and Contracting Out Act 1994 (functions of local authorities) so that it applies in relation to a local authority's executive.

**Article 30** modifies section 50 of the Employment Rights Act 1996 so that employees have a right to time off work in order to undertake business as a member of a local authority executive.

**Article 31** modifies Schedule 1 to the Defamation Act 1996 so that records of public meetings of the executive or committees of the executive and records of decisions made by individual members of an executive are classified as information which is privileged subject to explanation or contradiction in defamation proceedings.

**Article 32** modifies Schedule 1 to the Education Act 1996 making consequential amendments to the Secretary of State's powers to make provision concerning management committees for pupil referral units.

**Article 33** modifies section 66 of the Justices of the Peace Act 1997 so that a justice of the peace who is a member of a local authority cannot act as a member of a Crown Court or magistrates court in any proceedings concerning decisions made by the executive or by any person on behalf of the executive.

**Article 34** modifies section 23 of the Teaching and Higher Education Act 1988 so that where the Secretary of State has arranged for certain functions relating to student support to be exercised by a local education authority then such functions are to be treated as functions of the authority for the purposes of section 13 of the 2000 Act.

**Article 35** modifies section 21 of the Greater London Authority Act 1999 so that disqualifications from being elected or being the Mayor of London are maintained for officers acting under the direction of the executive, a committee of the executive or a member the executive.

**Articles 36 and 37** modify sections 38 and 380 of the Greater London Authority Act 1999 so that where the Mayor of London has authorised a local authority to exercise functions on behalf of the Greater London Authority then such functions are to be treated as functions of the authority for the purposes of section 13 of the 2000 Act.

**Article 38** modifies section 137 of the Power of Criminal Courts Act 2000 so that this section applies where a local authority is operating executive arrangements.

**Article 39** modifies regulation 5 of the Adoption Agencies Regulations 1983 to provide that where a local authority operates executive arrangements and therefore has no social services committee from which to appoint a member to the adoption panel, the reference to the social services committee is to be treated as a reference to the authority's executive or an overview and scrutiny committee of the authority (where that committee's functions relate wholly or partly to the authority's social services functions).

**Article 40** modifies the Definition of Independent Visitors (Children) Regulations 1991. A person appointed by a local authority as an independent visitor is regarded as independent of the authority appointing him where, for example, the person appointed is not connected with the local authority by virtue of being a member of the authority. The modification extends this provision so that a person is also connected with the local authority by virtue of being a council manager and therefore a council manager is not to be regarded as independent of the authority.

Regulation 8 of the Children (Secure Accommodation) Regulations 1991 provides that applications to a court under section 25 of the Children Act 1989 (c. 41) (use of accommodation for restricting liberty) in respect of a child must be made only by the local authority which are looking after that child. This is subject to section 101 of the Local Government Act 1972. **Article 41** of this Order makes the provision in regulation 8 also subject to provisions in or under sections 14 to 20 of the Local Government Act 2000.

Regulation 4 of the Council Tax (Administration and Enforcement) Regulations 1992 enable a billing authority to request certain information for the purpose of its functions under Part I of the Local Government Finance Act 1992. There are exceptions to the information that can be requested. These exceptions are modified by **article 42** of this Order to include information that was obtained by an executive, or a committee or member of an executive, of a local authority in that local authority's capacity as a constituent council of a police authority.

**Article 43** modifies the definition of "local authority" in the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994 to reflect the fact that, where a local authority is operating executive arrangements, its executive has responsibility for exercising most of its social services functions.

**Article 44** modifies the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 so that where a local authority in England has an executive, and a joint committee is formed under those Regulations, a local authority member appointed to the joint committee by the executive need not be a member of the executive.

**Article 45** makes provision regarding prejudicial interests of a person, who is present at a meeting of an overview and scrutiny committee or sub-committee, where the matter considered at the meeting relates to action by another committee or sub-committee of which the person is a member.

**Article 46** makes various provisions in relation to members of an executive who cease to be members of the local authority.

**Article 47** makes provisions for an interim mayor and interim members where members of a mayor and cabinet executive are unable to act.