

**EXPLANATORY MEMORANDUM TO THE
LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES) (AMENDMENT
NO. 3) (ENGLAND) REGULATIONS 2004**

2004 No. 2748

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

The Regulations amend the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853) (“the 2000 Regulations”) so as to specify certain functions of a local authority as functions which are not to be the responsibility of an authority’s executive and three particular education-related functions as functions which may be (but need not be) the responsibility of that executive.

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

None.

4. Legislative Background

4.1 The 2000 Regulations, which were amended in relevant respects by S.I. 2001/2212, were made under sections 13 and 105 of the Local Government Act 2000. Under section 13, a function of a local authority operating executive arrangements is presumed to be the responsibility of its executive subject to any provision made by that Act or by an enactment passed after 28 July 2000 unless the relevant function is specified in regulations made under that section, currently the 2000 Regulations.

4.2 The 2000 Regulations make provision for functions specified in them:

(a) to be a function which is not the responsibility of the executive;

(b) to be a function which may be the responsibility of the executive; or

(c) to be a function which -

(i) to the extent provided by those regulations is to be the responsibility of the executive; or

(ii) to the extent provided by those regulations is not to be the responsibility of the executive.

4.4 The Regulations to which this Memorandum relates amend the lists of specified functions in the 2000 Regulations, and concern additional functions of the descriptions specified in (a) and (b) of paragraph 4.2. The additional functions arise under the Licensing Act 2003, the Highways Act 1980, the Town and Country Planning Act 1990, the

Local Government Act 2000, the School Standards and Framework Act 1998 and the Education Act 2002.

5. Extent

This instrument applies to local authorities in England only.

6. European Convention on Human Rights

None.

7. Policy background

7.1 Part II of the Local Government Act 2000 provides for local authority functions to be allocated between the executive and the full council of an authority where the authority is operating executive arrangements. The general approach to the division of functions between the executive and the authority is as follows:

i. determination of the local authority's policy framework and budget and other constitutional and quasi-legislative functions are to be the responsibility of the authority;

ii. functions which involve either determining an application from a person for a licence, approval, consent, permission or registration or direct regulation of a person together with any related enforcement actions are also to be the responsibility of the authority; and

iii. all other functions are to be the responsibility of the executive.

7.2 In addition, local authorities are left to determine who within the authority should be responsible for certain specific functions. These are known as local choice functions and include functions conferred by local Acts and functions that may be appropriate for either the executive, the full council or a committee to be responsible for. All functions relating to the determination of any appeal against a decision made on or behalf of the local authority and of making arrangements for the determination of certain appeals are considered local choice functions.

7.3 There are also certain specific functions which may not be the sole responsibility of the executive. These are limited to matters where the executive will want to have an input but not have overall responsibility and includes development control functions.

Functions relating to licensing

7.4 In accordance with the general approach, functions relating to licensing under the Licensing Act 2003 are to be the responsibility of the authority. This is because licensing matters are generally quasi-judicial and fall into the criteria set out in 7.1 (ii) above.

Power to grant permission for provision, etc of services, amenities, recreation and refreshment facilities on highway, and related powers.

7.5 Similarly, functions relating to the grant of permission for the provision and maintenance of services and amenities and to the provision, maintenance and operation of

facilities for recreation on a highway, under sections 115E to 115G and 115K of the Highways Act 1980, and are also to be the responsibility of the authority. The powers under these sections include granting permission to a person to provide, maintain or operate facilities for recreation or refreshment as well as the execution of works and the use of objects on the highway generally. As these functions meet the criteria in 7.1 (ii) above they should be the responsibility of the full council. Due to an oversight, this was not the case and the amendment seeks to rectify the position.

Power to stop up or divert highway

7.6 The power to stop up or divert a highway under section 247 of the Town and Country Planning Act 1990 is of a quasi-legislative nature and therefore should be the responsibility of the authority. Due to an oversight, this was not previously the case and was inconsistent with a similar power in section 257 of that Act which was already specified as the responsibility of the full council. This amendment ensures consistency between the two similar powers.

Duty to provide staff, etc to person nominated by monitoring officer

7.7 Functions relating to the delegation of functions of a monitoring officer of a relevant authority (i.e. in relation to England, a county council, a district council a London borough council, or a parish council) under sections 82A(4) and (5) of the Local Government Act 2000 in relation to matters referred to him under sections 60(2), 64(2), 70(4) or 71(2) of that Act are to be the responsibility of the authority. This is because they relate to constitutional matters and, as the full council has responsibility for the authority's constitution, we would not want any such functions to reside with the executive.

Powers relating to the grant of voting rights to co-opted members of overview and scrutiny committees

7.8 The powers relating to the grant to a co-opted member of an overview and scrutiny committee of permission to vote at meetings of the committee under paragraphs 12 and 14 of Schedule 1 to the Local Government Act 2000 also relate to constitutional matters and so are to be the responsibility of the authority.

Functions relating to appeals against the exclusion of pupils from maintained schools

7.9 Section 67 of, and Schedule 18 to, the School Standards and Framework Act 1998 (“the 1998 Act”), which formerly dealt with appeals against the exclusion of pupils from maintained schools, has been repealed and replaced by section 52 of the Education Act 2002 and subordinate legislation made under that section. The functions relating to such appeals continue to be functions which may be (but need not) be the responsibility of the executive. This is because all functions relating to the determination of any appeal against a decision made on or behalf of the local authority and of making arrangements for the determination of certain appeals are to be considered local choice functions.

Functions relating to admissions appeals

7.10 Schedule 24 to the 1998 Act, which previously had effect in relation to the making and hearing of admission appeals under section 94 of that Act, has been repealed and the entry in paragraph 5 of Schedule 2 to the 2000 Regulations is to be amended to reflect this. Further, a new function relating to appeals in respect of a governing body’s refusal to grant admission to a sixth form is conferred by section 94(1A) of the 1998 Act. This function is to be specified

in paragraph 5 as it is also to be a function which may be (but need not be) the responsibility of the executive. This is because all functions relating to the determination of any appeal against a decision made on or behalf of the local authority and of making arrangements for the determination of certain appeals are considered to be local choice functions.

Functions relating to appeals by governing bodies

7.11 In relation to appeals by governing bodies in respect of children to whom section 87 of the 1998 Act applies, which is concerned with the admission of children who have been excluded from two or more schools, Schedule 25 to the 1998 Act has been repealed and replaced by subordinate legislation made under section 95(3A) of the 1998 Act. Paragraph 6 of Schedule 2 to the 2000 Regulations is therefore to be amended accordingly. The relevant function continues to be a function which may be (but need not be) the responsibility of the executive. Again this is because all functions relating to the determination of any appeal against a decision made on or behalf of the local authority and of making arrangements for the determination of certain appeals are considered to be local choice functions.

8. Impact

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities, voluntary bodies or the public sector.

9. Contact

Luke Scofield at the Office of the Deputy Prime Minister Tel: 020 7944 4275 or e-mail: luke.scofield@odpm.gsi.gov.uk can answer any queries regarding the instrument.