

**EXPLANATORY MEMORANDUM TO THE
LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES)
(AMENDMENT) (ENGLAND) REGULATIONS 2005**

2005 No. 714

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.

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

None.

4. **Legislative Background**

The Regulations are concerned with new functions conferred on local authorities under Part 8 of the Anti-Social Behaviour Act 2003 in respect of complaints about high hedges. They are made under sections 13 and 105 of the Local Government Act 2000. Under section 13 of that Act, a function of a local authority operating executive arrangements is the responsibility of its executive subject to any provision made by the Local Government Act 2000 or by an enactment passed after 28 July 2000. This is unless the relevant function is specified in regulations made under that section. The current regulations are the 2000 Regulations as amended.

5. **Extent**

This instrument applies to local authorities in England only.

6. **European Convention on Human Rights**

Not applicable

7. **Policy background**

7.1 Part 2 of the Local Government Act 2000 provides for the responsibility for local authority functions to be allocated between the executive and the full council where an authority is operating executive arrangements. The general approach to the division of functions between the executive and the full council is as follows:

- i. the determination of the local authority's policy framework and budget and other constitutional and quasi-legislative functions are the responsibility of the full council;
- 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 the responsibility of the full council; and
- iii. all other functions are the responsibility of the executive.

7.2 Given the above, where functions are conferred on local authorities under new legislation it is necessary to consider whether or not those functions should be the responsibility of the executive and to make specific provision where they are not to be the executive's sole responsibility.

7.3 The 2000 Regulations specify in Schedule 1 certain miscellaneous functions which are not to be the responsibility of the executive. These include functions relating to the direct regulation of a person which in accordance with the policy referred to in paragraph 7.1 are specified in that Schedule as being the responsibility of the full council.

7.4 Part 8 of the Anti-Social Behaviour Act 2003 confers new functions on local authorities (i.e. district councils, county councils in areas where there are no district councils, London borough councils and the Common Council of the City of London and the Council of the Isles of Scilly, in relation to England) to deal with complaints by the owners/occupiers of domestic property adversely affected by evergreen or semi-evergreen hedges that are over 2 metres high. The local authority are able to charge a fee for this service, to be paid by the complainant. They may reject the complaint if they considered that insufficient effort has been made to resolve the matter amicably, or that the complaint was frivolous or vexatious. The local authority must, if they consider the complaint well-founded and that all reasonable steps have been taken to resolve it, issue a notice requiring the owner or occupier of the neighbouring land to undertake action to remedy the problem and to prevent it from recurring (a 'remedial notice').

7.5 Both complainants and the owners and occupiers of the land where the hedge is situated have rights of appeal against the local authority's decision. The requirements of a remedial notice can be enforced through criminal prosecutions and/or by the local authority entering the land and carrying out the necessary work if the owner or occupier fails to do so.

7.6 Such a complaints system was favoured by the majority of respondents to the 1999 consultation paper *High Hedges: possible solutions*.

7.7 As these functions relate to the direct regulation of a person, in line with the general policy set out above, it is considered that their discharge should not be the responsibility of the executive. It is particularly important

that authorities are seen to act as impartial and independent arbiters in relation to such functions.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies or the public sector.

9. Contact

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