

**EXPLANATORY MEMORANDUM TO THE
LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES)
(AMENDMENT) (No. 2) (ENGLAND) REGULATIONS 2005**

2005 No.929

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**

These Regulations amend the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853) (“the 2000 Regulations”) for the purposes of local authority functions relating to local development and temporary stop notices (“TSNs”).

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

None.

4. **Legislative Background**

4.1 Part 2 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) confers on local planning authorities new functions relating to local development. Section 171E of the Town and Country Planning Act 1990, which was inserted by section 52 of the 2004 Act, confers on authorities the function of issuing TSNs. These Regulations amend the 2000 Regulations so as to specify all of these new functions in them.

4.2 Under section 13 of the Local Government Act 2000 (“the 2000 Act”), a function of an authority operating executive arrangements is the responsibility of an executive of that authority subject to any provision made by the 2000 Act or by any enactment passed or made 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.

4.3 The 2000 Regulations may be used to specify a function:

(a) to be a function which is not to be the responsibility of an authority’s executive;

(b) to be a function which may be (but need not be) the responsibility of such an executive;

(c) to be a function which:

(i) to the extent provided is to be the responsibility of such an executive;

(ii) to the extent provided is not to be the responsibility of such an executive.

4.4 The functions which are the subject of these Regulations are currently the sole responsibility of the executive by virtue of section 13 of the 2000 Act as no provision to the contrary has been made in any enactment.

4.5 S.I. 2005/714 has recently been made to amend the 2000 Regulations. That instrument is part of a package of legislation which relates to the high hedges provisions contained in Part 8 of the Anti-social Behaviour Act 2003 and which will not come into force until 1 June 2005.

5. Extent

This instrument applies to local authorities in England.

6. European Convention on Human Rights

Not applicable

7. Policy background

7.1 The policy relating to the allocation of responsibility for functions in an authority operating executive arrangements is set out in paragraphs 7.2 to 7.5 below.

7.2 Functions which are not to be the responsibility of an executive are functions which involve:

- (a) constitutional and quasi-legislative matters;
- (b) the determination of an application for a licence, approval, consent, permission or registration;
- (c) the direct regulation of a person together with any related enforcement actions.

7.3 Functions which may be (but need not be) the responsibility of an executive fall into two categories:

- (a) locally-derived functions (i.e. those conferred by local acts, other than those specified in the 2000 Regulations);
- (b) functions which, depending on the circumstances, may be appropriate for either the full council or an executive.

7.4 It is for the authority concerned to determine the extent to which such functions are to be the responsibility of an executive. The authority may also specify actions in connection with the discharge of those functions which are to be the responsibility of an executive.

7.5 Functions which are to be the shared responsibility of the full council and the executive are those relating to the council's policy framework and budget. The 2000 Regulations provide that the executive is responsible for making proposals to the full council in relation to the budget and statutory plans and strategies, such as those listed in Schedule 3 (functions not to be the sole responsibility of an authority's executive) to those Regulations.

7.6 All other functions are to be the responsibility of an executive.

Local development

7.6 Part 2 of the 2004 Act:

- (i) replaces local and unitary development plans with local development documents; and
- (ii) provides for the preparation, revision and adoption of local development documents by (a) joint committees constituted by order under the 2004 Act and (b) by two or more local planning authorities jointly.

7.7 By virtue of section 13 of the 2000 Act, functions relating to local development documents, and also joint committees, are currently the responsibility of a local planning authority's executive.

Development plan documents

7.8 Local development documents which are development plan documents are equivalent to the plans and alterations which together comprised the development plan under the previous planning system. As development plan documents form part of the authority's policy framework, these Regulations amend the 2000 Regulations so that, in accordance with the policy set out in paragraph 7.5 above, they specify functions relating to development plan documents as the shared responsibility of the full council and the executive.

7.9 Thus, the following actions, in connection with the discharge of functions relating to development plan documents, are, by virtue of these Regulations, specified in the 2000 Regulations as the responsibility of the full council:

- (a) the giving of instructions requiring the executive to consider any draft development plan document submitted by the executive for the authority's consideration;
- (b) the amendment of any draft development plan document submitted by the executive for the authority's consideration;

(c) the approval, for the purpose of its submission to the Secretary of State for independent examination under section 20 (independent examination) of the 2004 Act, of a development plan document;

(d) the approval, for the purpose of its submission to the Secretary of State for his approval, of any development plan document of which any part is required to be so submitted;

(d) the adoption (with or without modification) of the development plan document.

7.10 The function of modifying, revising, revoking or withdrawing a development plan document is, by virtue of these Regulations, specified in the 2000 Regulations as the responsibility of the executive to the extent that the modification, revision, revocation or withdrawal:

(a) is required for giving effect to a direction of the Secretary of State under section 21 (intervention by Secretary of State) or 26 (revision of local development documents);

(b) is recommended by the person carrying out an independent examination of a development plan document under section 20 of the 2004 Act;

(c) is authorised by a determination made by the authority when approving or adopting the development plan document.

7.11 Development plan documents are, by virtue of these Regulations, specified in Schedule 3 (functions not to be the sole responsibility of the executive) to the 2000 Regulations.

Joint development plan documents

7.12 The action of agreeing to prepare with two or more authorities one or more joint development plan documents is, by virtue of these Regulations, specified in the 2000 Regulations as the responsibility of the full council and the executive.

Joint committees

7.13 In addition, the functions of agreeing to establish joint committees to be local planning authorities, and of agreeing to confer additional functions on such committees, are, by virtue of these Regulations, specified in the 2000 Regulations as the responsibility of the full council.

Arrangements for discharge of functions

7.14 The full council will be prevented, by virtue of the amendments made to the 2000 Regulations by these Regulations, from discharging the above

functions under arrangements made under section 101 (arrangements for discharge of functions) of the Local Government Act 1972 (e.g. discharge by committee, sub-committee or an officer of the authority).

Temporary stop notices

7.15 TSNs are a new planning enforcement measure. A local planning authority is empowered to issue a TSN if they think:

- (a) that there has been a breach of planning control in relation to any land; and
- (b) that it is expedient that the activity (or any part of the activity) which amounts to the breach is stopped immediately.

7.16 A TSN ceases to have effect at the end of 28 days, starting on the day on which a copy of the TSN is displayed in accordance with the 1990 Act. During this period, we would expect the local planning authority to consider whether further enforcement action is appropriate. The 1990 Act prevents an authority from issuing a subsequent TSN unless they have taken some other enforcement action.

7.17 The contravention of a TSN is a criminal offence attracting large fines on conviction. Compensation is payable in certain cases in which a TSN has been issued, for instance, where the authority withdraws the notice.

7.18 As the function of issuing a TSN involves the direct regulation of a person (see paragraph 7.2(c)), it should not be the responsibility of the executive and so these Regulations amend the 2000 Regulations to give this effect. Provision along these lines is already made in the 2000 Regulations in relation to such functions as the serving of a planning contravention notice, breach of condition notice or stop notice or issuing an enforcement notice.

8. Impact

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

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.

21 March 2005