

**EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES)
(AMENDMENT) ENGLAND REGULATIONS 2006**

2006 No. 886

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 under the Gambling Act 2005 and functions relating to the enforcement of byelaws and certain statutory plans.

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. 2004/2748, were made under sections 13 and 105 of the Local Government Act 2000. Under section 13 of the Local Government Act 2000 (“the 2000 Act”), a function of a local 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.

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

4.3 The functions which are the subject of these Regulations are:

- (a) the power to resolve not to issue a casino licence resolution under section 166 of the Gambling Act 2005;
- (b) the function of enforcing byelaws made under various enactments;
- (c) functions in relation to the preparation and publication of the following plans:
 - (i) the Children's Services Plan
 - (ii) the Community Care Plan
 - (iii) the Early Years Development Plan
 - (iv) the Education Development Plan
 - (v) the Children and Young People's Plan
 - (vi) the Statement of Licensing Policy

5. Extent

This instrument applies to local authorities in England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

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

7.1.1 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 action.

7.1.2 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;

7.1.3 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.

7.1.4 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.

7.1.5 All other functions are to be the responsibility of the executive.

Power to resolve not to issue a casino premises licence

7.2 The power to resolve not to issue a casino premises licence under section 166 of the 2005 Act is not to be the responsibility of the executive which accords with paragraph 7.1.1(b). As a consequence, by virtue of these Regulations, this function is specified in Schedule 1 to the 2000 Regulations.

Functions relating to enforcement of byelaws

7.3 The function of enforcing byelaws is, in accordance with the policy specified in paragraph 7.1.1, to be the responsibility of the authority. By virtue of these Regulations, this function is therefore also specified in Schedule 1 to the 2000 Regulations.

Functions relating to Children's Services Plan, Community Care Plan, Early Years Development Plan, Education Development Plan

7.4 The requirement for local authorities to prepare and publish certain plans has been removed by various enactments and therefore these Regulations amend the 2000 Regulations by removing the references to those plans from Schedule 3 to the latter Regulations. More information is provided in the following paragraphs:

Community Care Plan

7.4.1 The requirement for local authorities to prepare and publish a community care plan under section 46 of the National Health Service and Community Care Act 1990 has been removed by virtue of the Community Care Plans (Disapplication) (England) Order 2003 (S.I. 2003/1716).

Children's Services Plan

- 7.4.2 Local authorities are no longer required to prepare, consult upon, publish or review a children's services plan, the requirement to do so in paragraph 1A of Schedule 2 to the Children Act 1989 ("the 1989 Act") having been removed by section 64 of, and Part 1 of Schedule 5 to, the Children Act 2004 ("the 2004 Act").

Early Years Development Plan

- 7.4.3 Part 1 of that Schedule also removed the requirement under section 120 of the School Standards and Framework Act 1998 ("the 1998 Act").for local authorities to prepare an early years development plan.

Education Development Plan

- 7.4.4 Part 1 of the same Schedule removed the requirement for local authorities to prepare an education development plan which they had been required to do by section 6 of the 1998 Act.

Functions relating to Children and Young People's Plan and Licensing Authority Policy Statement

- 7.5 These regulations amend the 2000 Regulations so that functions relating to certain plans are to be the shared responsibility of the authority and the executive in accordance with the policy specified in paragraph 7.1.4. The plans concerned are, by virtue of these Regulations, specified in Schedule 3 to the 2000 Regulations to which regulation 4 of the 2000 Regulations applies. More information is given below:

Licensing Authority Policy Statement

- 7.5.2 Licensing Authority Policy Statement under section 349 of the Gambling Act 2005 ("the 2005 Act") are to be the shared responsibility of the full council and the executive. The three year licensing policy is therefore, by virtue of these Regulations, specified in Schedule 3 to the 2000 Regulations to which regulation 4 of those Regulations applies.

Children and Young People's Plan

- 7.5.3 Functions relating to the children and young people's plan under the Children and Young People's Plan (England) Regulations 2005 are also to be the shared responsibility of the full council and the executive. Accordingly, this plan is also specified in Schedule 3 to the 2000 Regulations to which regulation 4 of those Regulations applies.

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.