

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (FUNCTIONS AND
RESPONSIBILITIES) (ENGLAND) (AMENDMENT No. 3)
REGULATIONS 2007

2007 No. 1950

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government 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 certain local authority functions under the Gambling Act 2005.

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

None.

4. Legislative Background

4.1 The 2000 Regulations, which have been amended in relevant respects by S.I. 2004/2748, S.I. 2006/886 and S.I. 2007/1284, were made under sections 13 and 105 of the Local Government Act 2000 (“the 2000 Act”). Under section 13 of 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 28th 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; and

(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 duty to comply with a requirement to provide information to the Gambling Commission under section 29 of the Gambling Act 2005;
- (b) functions relating to the exchange of information under section 30 of that Act;
- (c) functions relating to occasional use notices under section 39 of that Act;
- (d) the power to make an order disapplying section 279 or 282(1) of that Act in relation to specified premises under section 284 of that Act;
- (e) functions relating to the prosecution of offences under any of the provisions specified in section 346 of that Act. (Prior to the amendments made by these Regulations, provision was made by S.I. 2007/1284, by way of amendment to the 2000 Regulations, in relation to the prosecution of offences under section 342 only, rather than under all of the provisions specified in section 346 because some of those provisions had yet to be commenced); and
- (f) functions relating to the registration and regulation of small society lotteries under Part 5 of Schedule 11 to that Act.

4.4 These Regulations also make changes to the 2000 Regulations in relation to functions which are specified as functions which are to be the responsibility of the authority under the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976. These Acts are to be repealed but certain of their provisions are to continue in force to allow applications made under them immediately before the repeals to be determined and granted, including allowing for appeals. The 2000 Regulations are therefore amended to reflect the saving provisions made.

4.5 The Regulations come into force, in relation to the function listed in paragraph 4.3(d) on 1st August 2007, which is when the provision in the Gambling Act 2005 which provides for that function is to be commenced. In relation to all other functions listed in paragraph 4.3 and 4.5, on 1st September 2007, which is also when the provisions in the 2005 Act which provide for those functions are to be commenced.¹

5. Territorial Extent and Application

This instrument applies to local authorities in England only.

¹ The relevant provisions are commenced by the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 (S.I. 2006/3272), as amended by S.I. 2006/3361 and S.I. 2007/1157.

6. European Convention on Human Rights

As the instrument is subject to the 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, where the function involves a matter referred to below, is that the function should not be the responsibility of the authority's executive.

7.2 The matters are:

- (a) constitutional and quasi-legislative matters;
- (b) the determination of an application for a licence, approval, consent, permission or registration; or
- (c) the direct regulation of a person together with any related enforcement action (other than cases where there is only limited discretion in the discharge of the function).

Gambling Act 2005

7.3 The majority of licensing authority functions under the 2005 Act are to be discharged by the authority's licensing committee. This mirrors the position in relation to licensing authority functions under the Licensing Act 2003.

7.4 To the extent that a function under the 2005 Act (a) is not delegated to the licensing committee or (b) is referred back to the licensing authority in cases where that committee is unable to discharge the function, the function is not to be the responsibility of the executive. This is along the lines of the provision made in relation to the discharge of licensing functions under the 2003 Act and we see no reason to depart from that approach.

7.5 These Regulations amend the 2000 Regulations so that they specify the functions which are mentioned in paragraphs 4.3 as functions which are not to be the responsibility of the executive.

8. Impact

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

9. Contact

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karl.holden@communities.gsi.gov.uk can answer any queries regarding the instrument.