

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (FUNCTIONS AND
RESPONSIBILITIES) (ENGLAND) (AMENDMENT)
REGULATIONS 2008

2008 No. 516

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

The 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 a number of enactments.

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. 2004/1158, S.I. 2005/929, S.I. 2006/886, 2007/1557, S.I. 2007/1950 and S.I. 2007/2593, 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 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 to be a function—

- (a) which is not to be the responsibility of an authority’s executive;
- (b) which may be (but need not be) the responsibility of such an executive;
- (c) 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.

4.3 The functions which are the subject of the Regulations that amend the 2000 Regulations are those relating to—

- mayor’s expenses and deputy mayor’s expenses in relation to London boroughs under paragraphs 2(4) and 5(4) of Schedule 2 to the Local Government Act 1972;
- electoral arrangements, namely, requests for single-member electoral areas, changes to schemes for elections and changes to the name of an electoral area under section 14A of the Local Government Act 1992 and Part 2 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”)¹;
- changing governance arrangements and, in relation to an authority operating the leader and cabinet (England) model and removing an executive leader under Part 2 of the 2000 Act²;
- community governance under Part 4 of the 2007 Act;
- the formulation of a plan or strategy for the determination of a local authority’s minimum revenue provision under regulation 28 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (“the 2003 Regulations”); and
- the duty to prepare and submit a draft local area agreement under Chapter 1 of Part 5 of the 2007 Act.

4.4 The effect of the Regulations is that none of these functions are to be the responsibility of an executive of an authority, with the exception of the functions of formulating a plan or strategy for the determination of a local authority’s minimum revenue provision and of preparing and submitting draft local area agreements which are to not to be the sole responsibility of the executive.

4.5 The Regulations also amend the 2000 Regulations with respect to the duty to conduct best value reviews under Part 1 of the Local Government Act 1999 (“the 1999 Act”). This duty is to be repealed from 1 April 2008 and will therefore no longer be specified in the 2000 Regulations.

4.6 The Regulations come into force on 31 March 2008, except in relation to duty to conduct best value reviews in respect of which they will come into force on 1 April 2008.

5. Territorial Extent and Application

This instrument applies to local authorities in England only.

6. European Convention on Human Rights

¹ Section 14A of the Local Government Act 1992 was inserted by section 55 of the Local Government and Public Involvement in Health Act 2007.

² Part 3 of the 2007 Act makes relevant amendments to Part 2 of the 2000 Act.

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 Regulations make the changes which are described below to the 2000 Regulations in respect of the following functions and responsibilities.

Expenses of mayor and deputy mayor of a London borough

7.2 The 2000 Regulations are amended to make clear that the functions of determining the amount of any allowance payable to a mayor or a deputy mayor of a London borough council under section 3 or 5 of the Local Government Act 1972 is the responsibility of the authority.

7.3 They are also amended to provide that section 101 of that Act does not apply to the discharge of these functions.

7.4 In order to provide consistency in relation to the function of determining allowances and expenses across local government, the 2000 Regulations are amended to make clear that the functions of determining the amount of any allowance payable to a mayor or a deputy mayor of a London borough council under paragraphs 2(4) and 5(4) of Schedule 2 to the Local Government Act 1972, are also not to be the responsibility of an executive of an authority. The 2000 Regulations are also amended to provide that section 101 of that Act does not apply to the discharge of these functions.

Electoral arrangements

7.5 Part 2 of the 2007 Act empowers district councils to change their scheme for elections by resolution, and to provide by order for consequential changes to be made to the years in which ordinary elections of parish councillors take place. It also enables district councils, county councils and London borough councils (“principal councils”) to change the names of electoral areas. Section 14A of the Local Government Act 1992, which is inserted by Part 2 of the 2007 Act, allows a principal council to make a request for single-member electoral areas.

7.6 Decisions on whether a change should be made to a district council’s scheme for elections affects the conduct of elections across the authority’s area as a whole and is therefore a matter on which all councillors should be able to vote on. In addition, these functions are concerned with constitutional matters and therefore are most appropriately discharged by the full council. Therefore, the Regulations provide that they are not to be the responsibility of a local authority’s executive.

7.7 The Regulations also amend the 2000 Regulations to provide that an authority may not delegate the function of changing its scheme for elections or making a request for single member electoral areas under section 101 of the 1972 Act.

7.8 Where the changes will affect the entire council area the Department does not believe they should be delegated to committees of the council as all members of the local authority should be able to vote.

Changing governance arrangements

7.9 Sections 33A and 33B of the 2000 Act, which are inserted by Part 3 of the 2007 Act, allow local authorities operating executive arrangements to change those arrangements. The 2000 Regulations are amended to specify functions relating to a change as the responsibility of the authority. We believe it would be inappropriate for an executive to take decisions on changes to the executive model, for example, the executive of an authority operating a leader and cabinet model should not be able to pass a resolution which would require the authority to move to a mayor and cabinet model without councillors being able to vote on the matter.

7.10 The 2000 Regulations are also amended so that section 101 of the 1972 Act does not apply in relation to the discharge of the functions of deciding whether to make proposals for a change in governance arrangements, deciding whether or not the proposals should be subject to approval in a referendum and passing a resolution to make the change. In relation to the function of passing a resolution to change governance arrangements, prior to the 2007 Act proposals for operating a different form of executive had to be approved by local people in a referendum. As the 2007 Act has removed this requirement, the Regulations are amended to provide that all the elected representatives on the council must be able to vote on such a change.

Removal of executive leader

7.11 Sections 44A and 44B of the 2000 Act, which are inserted by Part 3 of the 2007 Act, allow local authorities operating a leader and cabinet executive (England) model to elect an executive leader at the annual meeting of the council or at a subsequent meeting. Section 44C(1) enables an authority to include provision in their executive arrangements for the leader to be removed by a resolution of the council. The 2000 Regulations are amended to specify functions relating to the removal of an executive leader as the responsibility of the authority. Because sections 44A and 44B require the election of the leader to take place at a meeting of the council, it follows that the removal of the leader must be considered by the full council.

7.12 The 2000 Regulations are also amended so that section 101 of the 1972 Act does not apply in relation to those functions.

Community governance

7.13 The 2000 Regulations are amended to specify all of the functions relating to community governance under Chapter 3 of Part 4 of the 2007 Act as the responsibility of the authority. Functions relating to parishes and parish councils under Part 2 of the Local Government and Rating Act 1997 are the responsibility of the authority. The same approach is taken as regards functions relating to the reorganisation of community governance under Part 4 of 2007 Act. The 2000 Regulations are also amended so that the function of making a reorganisation order under section 86 of the 2007 Act must be exercised by the full council and cannot be delegated under [section 101 of the 1972 Act.

Minimum revenue provision

7.14 The 2000 Regulations are amended to specify the function of formulating a plan or strategy for determining a local authority's minimum revenue provision as the authority's responsibility.

7.15 The 2003 Regulations relate to authorities' capital financing transactions, including borrowing and debt management. Regulation 27 requires authorities to make annual provision out of their revenue resources to repay their debts and meet other kinds of credit liability. Regulation 28, as substituted by the Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2008³ ("the 2008 Regulations"), requires authorities to make an amount of MRP which the authority considers to be prudent. In parallel with the coming into force of the 2008 Regulations, guidance is being issued under section 21(1A) of the Local Government Act 2003 ("the 2003 Act") on how to determine the level of prudent provision. Authorities are required by section 21(1B) to have regard to this guidance. The new arrangements are explained in more detail in the Explanatory Memorandum to the 2008 Regulations.

7.16 Under regulation 28 of the 2003 Regulations, authorities have significant discretion in determining their MRP but, as a safeguard, the guidance issued under the 2003 Act recommends the formulation of a plan or strategy annually for the determination of MRP, which should be considered by the whole council. It is this which necessitates the amendment to the 2000 Regulations.

Sustainable Community Strategy

7.17 The 2000 Regulations are updated as a consequence of the renaming of a "community strategy" under section 4 of the 2000 Act as a "sustainable community strategy" by virtue of section 7 of the Sustainable Communities Act 2007.

³ S.I. 2008/414.

Best value

7.18 The 2000 Regulations are updated as a consequence of local authorities ceasing to be under a duty to conduct best value reviews under section 5 of the Local Government Act 1999 from 1 April 2008; the reference to this duty is omitted.

Local Area Agreements

7.19 The 2000 Regulations are amended to specify functions under sections 106, 110, 111 and 113 of the 2007 Act relating to Local Area Agreements (“LAA”) as functions which may be (but need not be) the responsibility of the executive. The functions concerned include those relating to the preparation, submission and modification of an LAA.

7.20 The purpose of the amendment is to reflect the strong representations made to the Secretary of State following consultation (held from 20 November 2007 to 12 February 2008) on the draft statutory guidance: Creating Strong, Safe and Prosperous Communities. The draft statutory guidance stated at paragraph 4.15 that: “It is our intention to amend the Local Authorities (Functions and Responsibilities) Regulations 2000 SI 2000/2853 to ensure that the LAA will need to be approved by full council. This requirement mirrors those procedures for similar local authority plans including the Sustainable Community Strategy.”

7.21 Respondents to the consultation, including the Local Government Association and the County Councils Network, argued convincingly that decisions as to who should be responsible for functions relating to LAAs should instead be a matter left to the discretion of the authority. This is on the basis that LAAs are the delivery agreement for the long term objectives identified in the Sustainable Community Strategy and as such, the objectives in the LAA should already have been subject to actions under regulation 4(3), including approval by full council. It is not therefore necessary to require that LAAs undergo the same procedures as are typically applied to other plans and strategies, because the objectives within them will have already undergone those procedures through the process of preparing and adopting the Sustainable Community Strategy. Furthermore, LAAs are subject to timetabling requirements set by central government. The flexibility of local discretion will enable local authorities to manage their own arrangements within those requirements as they see fit.

8. Impact

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

9. Contact

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answer any queries regarding the instrument.

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