

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (FUNCTIONS AND
RESPONSIBILITIES) (ENGLAND) (AMENDMENT No. 4)
REGULATIONS 2007

2007 No. 2593

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 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. 2001/2212, S.I. 2004/1158, S.I. 2004/2211, S.I. 2004/2748, S.I. 2005/714, S.I. 2005/929, S.I. 2006/0886, S.I. 2007/1284, 2007/1557 and S.I. 2007/1950, 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:

(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) functions relating to listed buildings and conservation areas under the Planning (Listed Buildings and Conservation Areas) Act 1990 and regulations made under it;

(b) the enforcement of legislation relating to smoke-free premises, etc under Chapter 1 of the Health Act 2006 and regulations made under section 10(3) of that Act;

(c) the authorising of officers under section 10(5) of, and paragraph 1 of Schedule 2 to, the 2006 Act;

(d) functions relating to fixed penalty notices under paragraphs 13, 15 and 16 of Schedule 1 to that Act and the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 (S.I. 2006/760);

(e) the transfer of enforcement functions to another enforcement authority under the Smoke-free (Premises and Enforcement) Regulations 2006 (S.I. 2006/3368);

(f) the provision of assistance at European parliamentary elections under section 6(7) and (8) of the European Parliamentary Elections Act 2002 (c.24);

(g) the division of constituencies into polling districts and designation of polling places under sections 18A to 18E of the Representation of the People Act 1983; and

(h) the determination of fees and conditions for the supply of copies of, or extracts from, elections documents.

4.4 The Regulations also correct the following drafting errors contained in amendments made to the 2000 Regulations by regulations 2(2)(g), (h) and (o) of S.I. 2007/1950.

4.5 In column (2) of Schedule 1 to the 2000 Regulations, entry relating to item 14AA now refers to section 30 of the 2005 Act (exchange of information) rather than section 30 of the Gambling Act Order.

4.6 In column (1) of the same Schedule, the words “for offences under section 342 of the 2005 Act” are omitted from the entry relating to item 14D rather than the one relating to item 14E. 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.

4.7 The Regulations come into force on ^{xx} September 2007.

5. Territorial Extent and Application

This instrument applies to local authorities in England only.

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 Regulations make the following changes to the 2000 Regulations. The allocation of responsibility for the discharge of functions to which the changes relate is unaffected.

References to legislation relating to listed buildings and conservation areas

7.2 The references to “the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990” in items 24 to 31 of paragraph A (functions relating to town and country planning and development control) of Schedule 1 (functions not to be the responsibility of an authority’s executive) to the 2000 Regulations should be to “the Planning (Listed Buildings and Conservation Areas) Act 1990.”

7.3 Also, in item 24, the reference to section 27(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 should be omitted as this provision has been repealed.

7.4 In item 26, the reference to “the Planning (Listed Buildings and Buildings in Conservation Areas) Regulations 1990” should be to “the Planning (Listed Buildings and Conservation Areas) Regulations 1990”.

7.5 The Department of the Environment Circular 14/97 which is also referred to in item 26 has been replaced by the Department of the Environment, Transport and the Regions Circular 01/01.

7.6 In item 28, reference is made to the demolition of an unlisted building rather than of a listed building.

7.7 The 2000 Regulations are amended accordingly.

Functions under the Gambling Act 2005

7.8 Regulation 2(3)(h) of S.I. 2007/1950 inserted the words “Section 29 of the Gambling Act Order” into column (2) of paragraph

B (licensing and registration functions) of Schedule 1 to the 2000 Regulations in relation to item 14AA. The reference to the “Gambling Act Order” should be to “the 2005 Act” (i.e. the Gambling Act 2005) section 29 of which imposes a duty on local authorities to comply with a requirement to provide information to the Gambling Commission.

7.9 Regulation 2(3)(o) of the same instrument omitted the words “for offences under section 342 of the 2005 Act” in the entry in column (1) relating to item 14E of the same paragraph. These words should instead be omitted from item 14D, rather than item 14E.

7.10 These Regulations make the necessary changes to the 2000 Regulations.

Functions relating to smoke-free premises, etc

7.11 S.I. 2007/1284 inserted item FA into paragraph B of Schedule 1 to the 2000 Regulations in relation to functions relating to smoke-free premises. This item should have appeared instead as paragraph FA in the Schedule. The necessary change is made by these Regulations.

7.12 In addition, amendments are made to more clearly identify the local authority functions that are conferred by Chapter 1 of the Health Act 2006 and regulations made under it, which came into force on 1 July 2007. The above functions remain the responsibility of the full council, rather than the executive of a local authority.

Functions relating to elections

7.13 In paragraph D (functions relating to elections) of Schedule 1, reference is made in item 7 to paragraph 4(3) and (4) of Schedule 1 to the European Parliamentary Elections Act 1978 which imposed a duty to provide assistance at European Parliamentary elections. This Act was repealed by the European Parliamentary Elections Act 2002 (c.24) (“the 2002 Act”). The relevant sub-paragraphs have been re-enacted as sub-sections (7) and (8) of section 6 of the 2002 Act and as a consequence the reference in paragraph D to the repealed legislation is replaced with a reference to those subsections.

7.14 Section 18 of the Representation of the People Act 1983 imposed a duty on authorities to divide parliamentary constituencies into polling districts. This provision, which is referred to in item 8 of paragraph D, has been repealed by the Electoral Administration Act 2006 (“the 2006 Act”) and re-enacted as sections 18A to 18E of the 1983 Act. A reference to these sections is therefore substituted for the reference to section 18.

7.15 Item 16 of paragraph D relates to the power to determine fees and conditions for the supply of copies of, or extracts from, election documents under rule 48(3) of the Local Elections (Principal Areas) Rules 1986 and rule 48(3) of the Local Elections (Parishes and

Communities) Rules 1986. These enactments have been repealed¹. The regime for access to local election documents is now governed by sections 42 to 44 of the 2006 Act and Part 7 of the Representation of the People (England and Wales) Regulations 2001. Under the new regime the fees for providing copies of, or extracts from, election documents are determined by the Secretary of State rather than by authorities. Item 16 is therefore omitted by these Regulations.

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

Karl Holden at the Department for Communities and Local Government Tel: 020 7944 5962 or Email: karl.holden@communities.gsi.gov.uk can answer any queries regarding the instrument.

2 October 2007

¹ See S.I. 2006/3004 and S.I. 2006/3305.