

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (FUNCTIONS AND
RESPONSIBILITIES) (ENGLAND) (AMENDMENT No. 2)
REGULATIONS 2008

2008 No. 744

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Regulations amend the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853) (“the 2000 Regulations”) to correct a drafting error made by S.I. 2008/516 for the purposes of local authority functions relating to local area agreements under Part 5 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”)¹.

2.2 The error is made by regulation 6(2)(c) and (d) of S.I. 2008/516 which amends the 2000 Regulations to provide that functions relating to local area agreements are not to be the sole responsibility of an executive. The intended position is as set out in the amendment made by regulation 7(b) of S.I. 2008/516, i.e. that an authority should be able to decide how responsibility for the functions should be allocated within the authority. The Regulations amend the 2000 Regulations so that the changes made by regulation 6(2)(c) and (d) are omitted but those made by regulation 7(b) remain in place.

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

3.1 The instrument breaches the 21 day rule. The Secretary of State issued a direction on 5 March 2008 for authorities to prepare draft local area agreements and to submit these to the Secretary of State by 30th May 2008. These agreements will be the only process by which local authorities will agree targets with central government and as such are key to setting the future direction of local services.

3.2 Until the error has been corrected, authorities will be unable to decide who should be responsible for taking the steps needed to ensure compliance with the direction. This is likely to delay the preparation

¹ 2007 c. 28.

and submission of the draft agreements and therefore to give authorities less time to comply with the direction.

3.3 For the above reasons, we consider that it will be detrimental to authorities if the Department were to delay the Regulations in order to comply with the 21 day rule. The Department apologises for the breach of the Parliamentary convention.

3.4 The Regulations are issued free of charge to all known recipients of S.I. 2008/516 because they have been made to correct a defect in the latter.

4. Legislative Background

4.1 The 2000 Regulations, which have been amended in relevant respects by S.I. 2008/516, 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 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 which amend the 2000 Regulations are those relating to local area agreements under Part 5 of the 2007 Act.

4.4 The Regulations come into force on 1st April 2008 which is the day after that on which S.I. 2008/516 comes into force (except for regulation 7(a) of that instrument which comes into force on 1st April 2008).

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 correct a drafting error in S.I. 2008/516 in respect of functions relating to local area agreements. They omit from Schedule 3 to the 2000 Regulations the duty under section 106 of the 2007 Act to prepare and submit to the Secretary of State a draft local area agreement. The duty is inserted into Schedule 3 by regulation 6(2)(c) and (d) of S.I. 2008/516. Normally, the result would be that the duty is not to be the sole responsibility of the executive.

7.2 Regulation 7(b) inserts into Schedule 2 to the 2000 Regulations functions under sections 106, 110, 111 and 113 of the 2007 Act so that the functions may be (but need not be) the responsibility of an authority's executive. Were it not for the amendment made by regulation 6(2)(c) and (d), the effect of the amendment would be that it is for the authority to decide how responsibility should be allocated.

7.3 The original policy was that the functions should not be the sole responsibility of the executive and that actions such as approving a draft local area agreement for submission to the Secretary of State should rest with the authority. This policy is reflected in regulation 6(2)(c) and (d).

7.4 However, whilst regulation 7(b) was added to S.I. 2008/516 to reflect the current policy, regulation 6(2)(c) and (d) was inadvertently left in the final version of that instrument when it ought to have been removed. As a consequence, it is not certain that authorities can decide who should be responsible for functions relating to local area agreements. The purpose of the Regulations is to make the amendments that are needed to clarify the position, to provide certainty to authorities that it is for them to decide on the allocation of responsibility and to give full and proper effect to the policy intention.

7.5 The errors relate only to the amendment made to the 2000 Regulations by regulation 6(2)(c) and (d) of S.I. 2008/516. For this reason, and for reasons of cost, a short instrument is used to make the necessary change, rather than a lengthier one which revokes and replaces the latter instrument. The amendment made by regulation 7(b) of S.I. 2008/516 is not affected by the Regulations and remains in place.

7.6 As mentioned in paragraph 4.4, the Regulations come into force on 1st April 2008 which is the day after that on which S.I. 2008/516 comes into force (with the exception of regulation 7(a) of the latter which also comes into force on 1st April 2008). This is the earliest date on which the Regulations can be brought into force – they could only be brought into force on the same day as S.I. 2008/516 if they were to both revoke and replace that instrument.

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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andrew.jordan@communities.gsi.gov.uk can answer any queries regarding the instrument.

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