

**EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (COMMITTEE SYSTEM) (ENGLAND)
REGULATIONS 2012**

2012 No. 1020

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. **Purpose of the instrument**

The Local Authorities (Committee System) (England) Regulations 2012 (“the Regulations”) apply to local authorities which operate the committee system form of governance under Part 1A of the Local Government Act 2000 (“the 2000 Act”). They set out the functions of such local authorities which are non-delegable and make provision for overview and scrutiny in those authorities choosing to appoint one or more overview and scrutiny committees. The Regulations also revoke the Local Authorities (Alternative Arrangements) (England) Regulations 2001, which made provision about the operation of alternative arrangements, a governance model that has been abolished by the Localism Act 2011 (“the 2011 Act”).

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

None.

4. **Legislative Context**

4.1 Sections 21 and 22 of, and Schedules 2 and 3 to, the 2011 Act inserted a new Part 1A (Arrangements with respect to local authority governance in England) into the 2000 Act, to apply to England only, and limited existing Part 2 of the 2000 Act to Wales. Under section 9B of the 2000 Act, one of the permitted forms of governance which a local authority in England may operate is the committee system. Local authorities operating the committee system must ensure their internal arrangements are compliant with existing legislation relating to local authorities, in particular Parts 5A and 6 of the Local Government Act 1972, but they must also comply with Part 1A, or Regulations made under Part 1A, of the 2000 Act.

4.2 Chapter 3 of Part 1A of the 2000 Act makes provision for local authorities choosing to operate the committee system. The Regulations are made under section 9J of the 2000 Act and specify the local authority functions which cannot be delegated to an officer, committee, or sub-committee of that authority. Instead these functions must be discharged by all the councillors of the authority or “the full council”. In other words, section

101 of the Local Government Act 1972 does not apply to the discharge of the specified functions.

4.3 In a committee system local authority, the decision to appoint one or more overview and scrutiny committees is optional (this is in contrast to the position in relation to authorities operating executive arrangements under section 9F of the 2000 Act – executive arrangements are defined in section 9B of the 2000 Act). The local authority must pass a resolution if it wishes to appoint a committee as its scrutiny committee (section 9JA(1) of the 2000 Act). The Regulations make provision for the functions and composition of any committee appointed as the overview and scrutiny committee. To a significant degree they replicate the position for overview and scrutiny committees in local authorities operating executive arrangements.

5. Territorial Extent and Application

This instrument applies to local authorities in England.

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

- *What is being done and why*

7.1 The Government believes that local authorities and the communities they represent are best placed to reach decisions on how their local authority should operate and be governed. The 2011 Act, which received Royal Assent on 15 November 2011, implemented the Government's policy on allowing local authorities in England to adopt the committee system model of governance.

7.2 The 2011 Act extends the options available to local authorities, including by adding the committee system to the existing executive models set out in the 2000 Act. As a result, local authorities now have the freedom to choose and operate one of the following governance models:

- a) the mayor and cabinet executive;
- b) the leader and cabinet executive (England);
- c) the committee system; or
- d) prescribed arrangements (i.e. prescribed in regulations by the Secretary of State).

7.3 The Government believes that certain functions, such as the approval of the local authority's budget and policy framework, should solely be discharged by the full council of a committee system local authority. This approach is to ensure that every member of the local authority is afforded the opportunity to have their say on these significant matters.

7.4 The Government recognises that in those local authorities operating executive arrangements, overview and scrutiny plays an important role in holding the executive to account and contributing to policy development. However, the role of overview and scrutiny committees may not be as important in those local authorities which choose to operate the committee system. This is because decisions under the committee system will not be taken by individual, or several, executive members, as is the case under executive arrangements, but by full council or committees or a sub-committee of the council, which will reflect the political composition of the local authority – enabling a wide spectrum of views to be heard when the decision is being made. Accordingly, the 2011 Act does not prescribe how committee system local authorities should organise themselves, but allows them the choice over whether it would be appropriate for them to have an overview and scrutiny committee.

7.5 Section 9JA of the 2000 Act allows local authorities intending to operate a committee system to exercise this choice. However, if the local authority decides to have an overview and scrutiny committee, the Regulations make provision to ensure that, as appropriate, such overview and scrutiny committees have the same powers as their counterparts in local authorities operating executive arrangements.

- *Consolidation*

7.6 This is the first exercise of the enabling power.

8. Consultation outcome

8.1 In drafting the Regulations, the Department has drawn on existing legislation in relation to the discharge of local authority functions, with which local authorities are familiar, including the Local Government Act 1972, the Local Authorities (Alternative Arrangement) (England) Regulations 2001, which are revoked, and the Local Authorities (Functions and Responsibilities)(England) Regulations 2000. The scrutiny provisions in the Regulations also mirror closely the provisions in the 2000 Act in relation to overview and scrutiny committees under executive arrangements. The Department has not therefore undertaken any formal consultation on the Regulations.

8.2 However, the Regulations have, as drafts, been the subject of an informal soundings exercise with external partners - the Local Government Association, the Society of Local Authority Chief Executives, the Centre for Public Scrutiny and the Association of Council Secretaries and Solicitors.

8.3 The Department received responses from the Centre for Public Scrutiny and the Association of Council Secretaries and Solicitors, in which they raised a number of drafting points, and certain policy queries to which the Department has had regard. In particular, the Association of Council Secretaries and Solicitors queried the practicality of including a specific

provision excluding decision-makers from becoming members of overview and scrutiny committees, given the possible range of members who may be involved in taking decisions as members of committees, sub-committees, or in full council. Having regard to this question, the Regulations make no such specific provision.

8.4 The Centre for Public Scrutiny referred to changes that may need to be made to references to the National Health Service as a result of the Health and Social Care Act 2012. The Government will review the need for consequential amendments on commencement of the Health and Social Care Act 2012.

8.5 The Department has had regard to the responses it has received when finalising the Regulations.

9. Guidance

These Regulations are considered to be self explanatory and there is no intention to produce separate guidance.

10. Impact

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

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

It is not intended to put in place any formal mechanism for monitoring and reviewing the Regulations. The Department maintains close dialogue with the Local Government Association, the Society of Local Authority Chief Executives, the Centre for Public Scrutiny and the Association of Council Secretaries and Solicitors. Any issues relating to these Regulations will be identified and addressed through these channels.

13. Contact

Tayo Peters at the Department for Communities and Local Government can answer any queries regarding the instrument (Tel: 0303 444 2551 or Email: tayo.peters@communities.gsi.gov.uk).