

**EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES) (ENGLAND)
(AMENDMENT) REGULATIONS 2013**

2013 No. 2190

- 1.** This explanatory memorandum has been prepared by the Home Office (“the Department”) and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

- 2.1 These Regulations amend the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853) (“the 2000 Regulations”) in respect of the existing functions exercised by local authorities under the Licensing Act 2003 (“the 2003 Act”) and new functions exercised by such authorities in relation to the late night levy requirements under Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”).

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

- 3.1 The Department for Communities and Local Government will be consolidating the amendments that have been made to the 2000 Regulations into a new set of Regulations to come into force in late 2013.
- 3.2 These Regulations have been made to assist local authorities in the manner in which they may exercise certain new functions under the 2003 and 2011 Acts.

4. Legislative context

- 4.1 Part 1A of the Local Government Act 2000 (“the 2000 Act”) provides that the discharge of the functions of a local authority in England operating executive arrangements (in the form of an elected mayor and cabinet, or a leader and cabinet) must be discharged by the executive of the authority, unless those functions are specified as functions that are not to be the responsibility of the authority’s executive by virtue of Regulations made under section 9D of that Act. Section 9D makes provision which broadly reflects provision previously contained in section 13 of the 2000 Act. The 2000 Act was amended by the Localism Act

2011 to the effect that section 9D contains powers exercisable in relation to authorities in England whilst section 13 (along with Part 2 of that Act) relates only to authorities in Wales.

- 4.2 The 2000 Regulations, which have been amended in relevant respects by S.I. 2004/2748, were made under sections 13 and 105 of the 2000 Act. Under section 9D of the 2000 Act (which has replaced section 13 in relation to authorities in England), a function of a local authority which is the responsibility of an executive of the local authority under executive arrangements is the responsibility of the executive subject to any provision made by the 2000 Act or by any enactment passed or made after 28 July 2000 or if the relevant function is specified in regulations made under that section. The current regulations are the 2000 Regulations, as amended.
- 4.3 The 2000 Regulations may be used to specify a function of a local authority to be a function which, amongst other things, is not to be the responsibility of an authority's executive. These Regulations make provision in respect of existing functions exercised by authorities under the 2003 Act and new functions exercised by authorities in relation to the late night levy requirements under the 2011 Act. In each case, the provision reflects amendments to the 2003 Act by the 2011 Act, and new provision in the 2011 Act, which were brought into force on 31 October 2012.

5. Territorial extent and application

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

- 6.1 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 Regulations make provision which gives effect or relates to the measures which are described below.

The late night levy (“the levy”)

- 7.2 The levy was introduced by the 2011 Act and enables a local authority to impose a charge on the holders of licences in respect of premises in the authority's area

which sell alcohol late at night, dividing the revenue between the authority and the local policing body for that area.

7.3 Guidance on the levy can be found on GOV.uk at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118369/late-night-levy-guidance.pdf

7.4 These Regulations will enable a local authority to determine that the decision to introduce the levy in its area is a function of the authority's full council. All preceding steps relating to the proposal to introduce the levy may be delegated within the authority as it sees fit.

Early morning alcohol restriction orders ("EMROs")

7.5 An EMRO is a power that enables a local authority to restrict sales of alcohol in the whole or a part of its area for any specified period between 12 midnight and 6 am, if it considers that this appropriate for the promotion of the licensing objectives.

7.6 The 2011 Act extended the flexibility of an existing, uncommenced EMRO power in the 2003 Act to provide licensing authorities with an additional tool to shape and determine local licensing, and to address specific problems caused by late night drinking. Further guidance on EMROs can be found on GOV.uk at: <https://www.gov.uk/government/publications/section-182-of-the-licensing-act-2003-amended-guidance>

7.7 These Regulations amend the 2000 Regulations to provide that all functions under the 2003 Act are outside the scope of which functions may be discharged by an executive of an authority. These functions include all steps by the authority in relation to making, varying or revoking an EMRO. In particular, these Regulations confirm that an authority's functions relating to advertising the proposal to make an EMRO, holding a hearing to consider representations about the proposal and making a determination to be put to the authority's full council for its final decision are, as intended, matters for the authority's licensing committee (which may delegate these steps to a licensing sub-committee or a licensing officers as it sees fit).

- Consolidation

7.8 See paragraphs 3.1 and 3.2 above.

8. Consultation outcome

- 8.1 These Regulations have not been subject to a consultation because they relate solely to the internal processes in accordance with which a local authority may introduce a levy or make an EMRO. Both these measures were subject to substantial consultation and Parliamentary scrutiny. The Government's response to the consultation on the details of the levy and EMROs can be found online at GOV.uk at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157850/consult-response-late-drinking.pdf

9. Guidance

- 9.1 Guidance issued under section 182 of the Licensing Act 2003 provides further information about the procedure for making, varying or revoking an EMRO. It is available at GOV.uk at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209526/1167-A_Licensing_Act_2003_2_.pdf
- 9.2 Guidance on the late night levy is also available at GOV.uk at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118369/late-night-levy-guidance.pdf

10. Impact

- 10.1 There is no impact on businesses, charities or voluntary bodies.
- 10.2 The impact on the public sector is less than £5 million.
- 10.3 An Impact Assessment has not been prepared for this instrument. A full Impact Assessment was prepared for the levy and is available via the Government's legislation website:
<http://www.legislation.gov.uk/uksi/2012/2730/impacts>

11. Regulating small business

- 11.1 These Regulations do not apply to small businesses.

12. Monitoring and review

- 12.1 The Department will, in tandem with the Department for Communities and Local Government, monitor the effect of these Regulations.

13. Contact

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