
STATUTORY INSTRUMENTS

2001 No. 2237

The Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001

Designation and reports of monitoring officer

- 23.**—(1) In section 5 of the 1989 Act⁽¹⁾ (designation and reports of monitoring officer)—
- (a) in subsection (1)(a), after “by this section”, there shall be inserted “and, where relevant, section 5A below”;
 - (b) in subsection (1)(b), after “those duties”, there shall be inserted “and, where relevant, the duties under section 5A below”;
 - (c) in subsection (2), at the beginning, there shall be inserted “Subject to subsection (2B),”;
 - (d) after subsection (2A), there shall be inserted—

“(2B) Where a relevant authority are operating executive arrangements, the monitoring officer of the relevant authority shall not make a report under subsection (2) in respect of any proposal, decision or omission unless it is a proposal, decision or omission made otherwise than by or on behalf of the relevant authority’s executive.”;
 - (e) in subsection (3), at the end of paragraph (b), there shall be added “and, in a case where the relevant authority have a mayor and council manager executive, to the council manager of the authority”; and
 - (f) in subsection (8), after “In this section”, there shall be inserted “and in section 5A”.
- (2) After section 5 of the 1989 Act, there shall be inserted—

“Reports of monitoring officer—local authorities operating executive arrangements

5A.—(1) Where a relevant authority are operating executive arrangements, the monitoring officer of that authority shall be responsible for performing the duties imposed by this section.

(2) It shall be the duty of the monitoring officer of a relevant authority that is referred to in subsection (1) above, if at any time it appears to him that any proposal, decision or omission, in the course of the discharge of functions of the relevant authority, by or on behalf of the relevant authority’s executive, constitutes, has given rise to or is likely to or would give rise to any of the events referred to in subsection (3), to prepare a report to the executive of the authority with respect to that proposal, decision or omission.

(3) The events referred to for the purposes of subsection (2) are—

- (a) a contravention, by the relevant authority’s executive or any person on behalf of the executive, of any enactment or rule of law; or

(1) Section 5 was amended by paragraph 35 of Schedule 4 to the Police and Magistrates' Courts Act 1994 (c. 29) and is to be amended by paragraph 24 of Schedule 5 to the Local Government Act 2000 on 28th July 2001, or a date to be appointed, whichever is the earlier (see section 108 of the Local Government Act 2000). There are other amendments to section 5 which are not relevant to this Order.

(b) any such maladministration or injustice as is mentioned in Part III of the Local Government Act 1974(2) (Local Commissioners).

(4) No duty shall arise by virtue of subsection (3)(b) above unless a Local Commissioner (within the meaning of the Local Government Act 1974) has conducted an investigation under Part III of that Act in relation to the proposal, decision or omission concerned.

(5) It shall be the duty of an authority's monitoring officer—

(a) in preparing a report under subsection (2) to consult so far as practicable with the person who is for the time being designated as the head of the authority's paid service under section 4 above and with their chief finance officer; and

(b) as soon as practicable after such a report has been prepared by him or his deputy, to arrange for a copy of it to be sent to each member of the authority and, where the authority has a mayor and council manager executive, the council manager.

(6) It shall be the duty of the authority's executive—

(a) to consider any report under this section by a monitoring officer or his deputy at a meeting held not more than twenty-one days after copies of the report are first sent to members of the executive; and

(b) without prejudice to any duty imposed by virtue of section 115B of the Local Government Finance Act 1988 (duties of executive as regards reports) or otherwise, to ensure that no step is taken for giving effect to any proposal or decision to which such a report relates at any time while the implementation of the proposal or decision is suspended in consequence of the report.

(7) For the purposes of paragraph (b) of subsection (6) above the implementation of a proposal or decision to which a report under this section, by a monitoring officer or his deputy, relates shall be suspended in consequence of the report until the end of the first business day after the day on which consideration of that report under paragraph (a) of that subsection is concluded.

(8) As soon as practicable after the executive has concluded its consideration of the report of the monitoring officer or his deputy, the executive shall prepare a report which specifies—

(a) what action (if any) the executive has taken in response to the report of the monitoring officer or his deputy;

(b) what action (if any) the executive proposes to take in response to that report and when it proposes to take that action; and

(c) the reasons for taking the action specified in the executive's report or, as the case may be, for taking no action.

(9) As soon as practicable after the executive has prepared a report under subsection (8), the executive shall arrange for a copy of it to be sent to each member of the authority and the authority's monitoring officer.

(10) The duties of an authority's monitoring officer under this section shall be performed by him personally or, where he is unable to act owing to absence or illness, personally by such member of his staff as he has for the time being nominated as his deputy for the purposes of this section."