

EXPLANATORY MEMORANDUM TO
THE EUROPEAN REGIONAL DEVELOPMENT FUND
(OPERATIONAL PROGRAMMES) REGULATIONS
2011 No. 1398

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**

This instrument changes arrangements for managing the European Regional Development Fund (ERDF) programmes approved by the European Commission for the English regions. Each programme is currently managed by the development agency for the region, which is answerable to the Secretary of State for Communities and Local Government (SSCLG). Except for the London programme, the instrument makes the SSCLG wholly responsible for management functions. For the London programme, the instrument gives the Greater London Authority the functions currently exercisable by the London Development Agency.

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

None

4. **Legislative Context**

4.1 Council Regulation (EC) No.1083/2006 (“the Council Regulation”) lays down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund (together known as the Structural Funds).

4.2. The ERDF may contribute towards achieving three objectives, namely:

4.2.1. speeding up the economic convergence of the least developed Member States and regions (the Convergence objective);

4.2.2. strengthening competitiveness and employment outside the least developed areas of the Community (the Regional competitiveness and employment objective); and

4.2.3. strengthening cross-border and trans-national co-operation (the European territorial co-operation objective).

4.3. The activities of the ERDF in each Member State are set out in operational programmes adopted by the Commission. Unless the Commission agrees otherwise, an operational programme covers a single objective of the ERDF. Disregarding programmes

covering the European territorial co-operation objective, the Commission has adopted for England:

4.3.1. a programme covering the Regional competitiveness and employment objective for each of the nine regions in England for which a regional development agency has statutory responsibilities; and

4.3.2. a programme covering the Convergence objective for Cornwall and the Isles of Scilly, which are part of the South West region.

4.4. The Commission adopted the first of these programmes on 3 December 2007 and the last on 17 December 2007.

4.5. The amount allocated from the ERDF for England is 3.2827 billion Euros of which 458.1 million Euros has been allocated to the Convergence programme for Cornwall and the Isles of Scilly, and 2.8246 billion Euros is the total for the Regional competitiveness and employment programmes (amounts in Euros are rounded to the nearest million).

4.6. Article 37.1(g) requires each programme to contain implementing provisions, which include, among other things, the designation of bodies under Article 59.

4.7. Article 59.1 obliges the Member State to designate a managing authority to manage the programme. The functions of the managing authority are specified in Article 60. The Secretary of State for Communities and Local Government is designated in the implementing provisions as the managing authority for every programme adopted by the Commission for England.

4.8. Article 59.2 authorises the Member State to designate one or more intermediate bodies to carry out some or all of the functions of the managing authority under the responsibility of that authority. For each programme the Secretary of State designated as intermediate body the regional development agency established for the region covered by the programme. In London, the regional development agency, the London Development Agency (LDA), is a functional body of the Greater London Authority (GLA), and the GLA was also designated for some functions. The designations were made by statutory instrument.

4.9 These regulations revoke the statutory instruments made for the programmes outside London. The effect of the revocation is that the managing authority will be solely responsible for managing the programmes concerned. These regulations amend the statutory instrument made for the London programme to give the GLA the management functions currently exercisable by the LDA.

5. Territorial Extent and Application

This instrument applies to 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

7.1 The regional development agencies are currently responsible for managing the ERDF programmes. As these are regional programmes, each agency manages its own programme, except that the GLA as well as the LDA has some responsibility for the London programme, and the agency for the South West region also has responsibility for the Convergence programme for Cornwall and the Isles of Scilly.

7.2 The agencies carry out their management functions under the responsibility of the Secretary of State for the Department of Communities and Local Government (SSCLG). This is because SSCLG is the managing authority for the programmes and retains overall responsibility for their management and for accounting for ERDF expenditure to the Commission of the European Union.

7.3 As part of a wider process of decentralisation to local economic areas, the Government is abolishing regional development agencies and other regional structures. Regional development agencies will be abolished at the end of March 2012, pending Parliamentary approval of the Public Bodies Bill. However, the current ERDF programmes continue to be regional programmes. Since there is no longer a regional tier, the Secretary of State has decided that management of the ERDF programmes, except the London programme, is to become the sole responsibility of SSCLG. This will provide Government with a greater level of operational scrutiny, mitigating the risk of financial penalties. However, local involvement in the management of ERDF funds will increase as Programme Monitoring Committees, currently responsible for strategic oversight, will change to Local Management Committees.

7.4 For SSCLG to become responsible for the management of ERDF programmes requires new administrative arrangements to be made. It also requires legal steps to be taken to revoke the agencies' status as intermediate bodies and associated authority to carry out management functions and transfer to SSCLG all rights and liabilities that the agencies have acquired in exercise of their authority.

7.5 This instrument takes those legal steps by revoking the instruments that gave the agencies authority to manage the programmes in 2007 and by making provision for the transfer of rights and liabilities.

7.6 The Government's policy for the London programme is that management functions currently exercised by the LDA will become functions of the GLA. The allocation of functions between the GLA and SSCLG will otherwise be unchanged. This requires new administrative arrangements to be made. It also requires legal steps to be taken to give the

GLA authority to carry out the management functions currently performed by the LDA and to transfer to the GLA all rights and liabilities that the LDA has acquired in exercise of its authority.

7.7 This instrument takes those legal steps by amending the instrument that gave the LDA and the GLA authority to manage the London programme in 2008 and by making provision for a transfer of rights and liabilities. The instrument also allocates functions between the GLA and SSCLG by reference to a schedule published on 17th May 2011 and placed in the Library of each House.

7.8 No consolidation is contemplated. The instrument amends the instrument that designated the LDA and the GLA to exercise management functions for the London programme, and no further amendment is envisaged. Otherwise, the instrument will revoke eight instruments currently in force.

8. Consultation outcome

8.1 The regional development agencies have been fully consulted about the new arrangements for managing the ERDF programmes and the legal steps required. They have participated in discussions, plan-making and regular meetings as members of a working group set up by DCLG in mid 2010. The group also includes representatives of the Department for Business, Innovation and Skills.

8.2 In December 2010, DCLG circulated an explanatory note among the regional development agencies and persons who work in partnership with them in relation to strategic decisions about the allocation of money from the ERDF programme budgets. Such persons included the Local Government Association, some local authorities, organisations and individuals who had expressed an interest in the future of the management of ERDF and existing ERDF Programme Monitoring Committee members. The paper outlined the proposals and invited comments. The responses received were in agreement with the proposal that management of the ERDF programmes, except the London programme, should become the sole responsibility of SSCLG. No alternative proposals were made.

8.3 The agencies have been given an opportunity to comment on the provisions made in this instrument. No substantive comments have been received.

8.4 As regards the London programme, discussions with the LDA and the GLA have included consideration of the provisions amending the instrument that gave the LDA and the GLA authority to manage the London programme in 2008 and other special provisions required for that programme.

9. Guidance

9.1 There is no proposal to issue guidance. The effect of the instrument is to remove functions from non-Crown statutory agencies and give them to the Secretary of State for Communities and Local Government (to the GLA, in the case of the London programme).

9.2 The instrument that gave the LDA and the GLA authority to manage the London programme in 2008 includes provision for the issue of guidance by SSCLG to the LDA and the GLA concerning the performance of ERDF management functions. This provision is only amended to remove the reference to the LDA. SSCLG has no intention of issuing any further guidance.

10. Impact

An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sector is foreseen. The instrument will re-allocate responsibility for managing the ERDF programmes and make corresponding transfers of rights and liabilities, but this will not impose any overall net additional burden on the public sector.

11. Regulating small business

This instrument does not apply to small business.

12. Monitoring & review

12.1 This instrument is one of a number of measures which are required to effect the transfer of functions relating to the management of the ERDF programmes from the regional development agencies to the Secretary of State for the Department of Communities and Local Government (to the GLA, in the case of the London programme). This instrument takes the legal steps required, including transfer of rights and liabilities and provision for the smooth continuation by SSCLG of work in the course of being done by the regional development agencies.

12.2 As such, the instrument itself will not be amenable to monitoring or review. The broader policy of re-allocating ERDF management functions will be reviewed by the ongoing monitoring and audit requirements of the ERDF programmes, which include EC audit requirements.

13. Contact

Nicola Chissell at the Department for Communities and Local Government (e-mail: nicola.chissell@communities.gsi.gov.uk or telephone 0303 4441941) can answer any queries regarding the instrument.

