

## EXPLANATORY MEMORANDUM

### THE LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES) (AMENDMENT NO. 2) (ENGLAND) REGULATIONS 2004 No. 2211

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

#### 2. Description

The Regulations amend the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853) (“the 2000 Regulations”)<sup>1</sup> so as to specify certain functions of a local authority as functions which are not to be the responsibility of an authority’s executive.

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

None.

#### 4. Legislative Background

4.1 The Regulations are concerned with new functions conferred on local authorities in relation to town and country planning and development control under Part 2 of the Planning and Compulsory Purchase Act 2004.

4.2 They are made under sections 13 and 105 of the Local Government Act 2000. By virtue of section 13, a function of a local authority, which is operating under executive arrangements, is to be the responsibility of its executive subject to any provision made by the 2000 Act or by an enactment passed after 28 July 2000 unless the relevant function is specified in regulations made under that section. These Regulations are made to amend the list of specified functions in paragraph A of Schedule 1 to the 2000 Regulations (functions not to be the responsibility of an authority’s executive).

4.3 The Regulations are linked with the Planning and Compulsory Purchase Act 2004 (Commencement No. 2, Transitional Provisions and Savings) Order 2004 (S.I. 2004/ 2202 (c.99)) as the amendments they make relate to provisions which are to come into force on 28th September 2004 by virtue of that Order. The Order brings into force Parts 1, 2 and 5 of the 2004 Act, insofar as those Parts are not yet in force, and other miscellaneous provisions and also makes transitional provisions and savings. The Regulations are to be laid at the same time as the Order and other regulations relating to the implementation of the 2004 Act which are not relevant to the Regulations. The Regulations are to come into force at the same time as the Order.

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<sup>1</sup> The 2000 Regulations have been amended previously by the Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001 (S.I. 2001/2212), the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001 (S.I. 2001/2831), the Motor Salvage Operators Regulations 2002 (S.I. 2002/1916), and the Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2004 (S.I. 2004/1158).

## **5. Extent**

This instrument applies to local authorities in England only.

## **6. European Convention on Human Rights**

Not applicable.

## **7. Policy background**

7.1 Part II of the Local Government Act 2000 provides for local authority functions to be allocated between the executive and the full council of an authority where the authority is operating executive arrangements. The general approach to the division of functions between the executive and the authority is as follows:

i. determination of the local authority's policy framework and budget and other constitutional and quasi-legislative functions are to be the responsibility of the authority;

ii. functions which involve either determining an application from a person for a licence, approval, consent, permission or registration or direct regulation of a person together with any related enforcement actions are also to be the responsibility of the authority; and

iii. all other functions are to be the responsibility of the executive.

7.2 Part 2 of the Planning and Compulsory Purchase Act 2004 confers new plan-making functions on local planning authorities and requires them to prepare local development documents. Local development documents include development plan documents and supplementary planning documents. As development plan documents form part of the statutory development plan, which in turn forms part of an authority's policy framework, development plan documents are not to be the responsibility of the executive. Supplementary planning documents do not form part of the statutory development plan and are not part of an authority's policy framework and so are to be the responsibility of the executive. This is in keeping with the general approach to the division of functions referred to in paragraph 7.1 and the amendments made by the Regulations reflect this position.

7.3 Part 2 of the 2004 Act also confers on local planning authorities functions relating to a joint committee established by the Secretary of State by order under section 29 of that Act to be a local planning authority for any area. As these functions are of a constitutional nature, they are to be the responsibility of the authority in accordance with the general approach to the division of functions referred to above. Again the amendments made by the Regulations reflect this position.

## **8. Impact**

8.1 A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities, voluntary bodies.

8.2 There is no impact on the public sector.

## **9. Contact**

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