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STATUTORY INSTRUMENTS

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**2001 No. 2237**

**LOCAL GOVERNMENT, ENGLAND**

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

<i>Made</i>	- - - -	<i>19th June 2001</i>
<i>Laid before Parliament</i>		<i>20th June 2001</i>
<i>Coming into force</i>	- -	<i>11th July 2001</i>

The Secretary of State for Transport, Local Government and the Regions, in exercise of the powers conferred upon him by sections 47 and 105 of the Local Government Act 2000(1), and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation, commencement, application and interpretation**

1.—(1) This Order may be cited as the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 and shall come into force on 11th July 2001.

(2) This Order applies to England only(2).

(3) In this Order—

“the 1972 Act” means the Local Government Act 1972(3);

“the 1988 Finance Act” means the Local Government Finance Act 1988(4); and

“the 1989 Act” means the Local Government and Housing Act 1989(5).

**Modification of Acts**

2. The following enactments, in their application to England, are modified in accordance with articles 3 to 44—

(a) the 1972 Act;

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(1) 2000 c. 22.

(2) For the application of sections 47 and 105 of the Local Government Act 2000 to Wales, see section 106(1) of that Act.

(3) 1972 c. 70.

(4) 1988 c. 41.

(5) 1989 c. 42.

- (b) the Local Government Act 1974**(6)**;
- (c) the Local Government (Miscellaneous Provisions) Act 1976**(7)**;
- (d) the Local Government Act 1985**(8)**;
- (e) the Transport Act 1985**(9)**;
- (f) the Weights and Measures Act 1985**(10)**;
- (g) the Local Government Act 1986**(11)**;
- (h) the Airports Act 1986**(12)**;
- (i) the Pilotage Act 1987**(13)**;
- (j) the Local Government Act 1988**(14)**;
- (k) the 1988 Finance Act;
- (l) the 1989 Act;
- (m) the Water Industry Act 1991**(15)**;
- (n) the Local Government Finance Act 1992**(16)**;
- (o) the Deregulation and Contracting Out Act 1994**(17)**;
- (p) the Employment Rights Act 1996**(18)**;
- (q) the Defamation Act 1996**(19)**;
- (r) the Education Act 1996**(20)**;
- (s) the Justices of the Peace Act 1997**(21)**;
- (t) the Teaching and Higher Education Act 1998**(22)**;
- (u) the Greater London Authority Act 1999**(23)**
- (v) the Powers of the Criminal Courts (Sentencing) Act 2000**(24)**;
- (w) the Adoption Agencies Regulations 1983**(25)**;
- (x) the Definition of Independent Visitors (Children) Regulations 1991**(26)**;
- (y) the Children (Secure Accommodation) Regulations 1991**(27)**;
- (z) the Council Tax (Administration and Enforcement) Regulations 1992**(28)**;

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- (6) 1974 c. 7.
  - (7) 1976 c. 57.
  - (8) 1985 c. 51.
  - (9) 1985 c. 67.
  - (10) 1985 c. 72.
  - (11) 1986 c. 10.
  - (12) 1986 c. 31.
  - (13) 1987 c. 21.
  - (14) 1988 c. 9.
  - (15) 1991 c. 56.
  - (16) 1992 c. 14.
  - (17) 1994 c. 40.
  - (18) 1996 c. 18.
  - (19) 1996 c. 31.
  - (20) 1996 c. 56.
  - (21) 1997 c. 25.
  - (22) 1998 c. 30.
  - (23) 1999 c. 29.
  - (24) 2000 c. 6.
  - (25) S.I. 1983/1964.
  - (26) S.I. 1991/892.
  - (27) S.I. 1991/1505.
  - (28) S.I. 1992/613.

- (aa) the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994<sup>(29)</sup>; and
- (bb) the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000<sup>(30)</sup>.

### **Restriction on promotion of Bills for changing local government areas, etc.**

3. In section 70 of the 1972 Act<sup>(31)</sup> (restriction on promotion of bills for changing local government areas, etc.), at the end there shall be added—

“(3) No local authority or joint authority shall have power to promote a Bill for forming, altering or abolishing executive arrangements or alternative arrangements, or for altering arrangements for electing an elected mayor.”.

### **Qualifications for election and holding office as elected mayor**

4. In section 79 of the 1972 Act<sup>(32)</sup> (qualifications for election and holding office as member of local authority), in subsection (1), after “member of a local authority”, there shall be inserted “, or be qualified to be elected and to be an elected mayor,”.

### **Disqualifications for election and holding office as elected mayor**

5. In section 80 of the 1972 Act<sup>(33)</sup> (disqualifications for election and holding office as member of local authority), in subsection (1)—

- (a) after “member of a local authority”, there shall be inserted “, and be disqualified for being elected or being an elected mayor,”; and
- (b) in subsection (a), after “appointments”, there shall be inserted “or elections”.

### **Validity of acts done by unqualified persons**

6. In section 82 of the 1972 Act<sup>(34)</sup> (validity of acts done by unqualified persons), in subsection (1), after “the Local Government Act 1985”, there shall be inserted “or elected as elected mayor or executive leader”.

### **Vacation of office by failure to attend meetings**

7. In section 85 of the 1972 Act<sup>(35)</sup> (vacation of office by failure to attend meetings)—

- (a) after subsection (2), there shall be inserted—

“(2A) Subject to subsections (2B) and (3), if a member of a local authority which are operating executive arrangements, who is also a member of the executive of that local authority, fails throughout a period of six consecutive months from the date of his last

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<sup>(29)</sup> S.I. 1994/651.

<sup>(30)</sup> S.I. 2000/617.

<sup>(31)</sup> Section 70 was amended by paragraph 1 of Schedule 14 to the Local Government Act 1985 (c. 51), paragraph 41 of Schedule 12 and Schedule 13 to the Education Reform Act 1988 (c. 40) and paragraph 14 of Schedule 29 to the Greater London Authority Act 1999 (c. 29).

<sup>(32)</sup> Section 79 was amended by regulation 3 of the Local Government Elections (Changes to the Franchise and Qualification of Members) Regulations 1995 (S.I. 1995/1948). There are other amendments to section 79 which are not relevant to this Order.

<sup>(33)</sup> Section 80(1) was amended by paragraph 5 of Schedule 5 and Part IV of Schedule 6 to the Local Government Finance Act 1982 (c. 32), paragraph 12 of Schedule 8 to the Representation of the People Act 1983 (c. 2), section 1(3) of the 1989 Act, paragraph 10 of Schedule 10 to the Environment Act 1995 (c. 25), paragraph 3 of Schedule 3 to the Audit Commission Act 1998 (c. 18) and paragraph 8 of Schedule 3 and paragraph 8 of Schedule 5 to the Local Government Act 2000.

<sup>(34)</sup> Section 82(1) was amended by Schedule 14 to the Local Government Act 1985, Schedule 6 to the Norfolk and Suffolk Broads Act 1988 (c. 4) and Schedule 13 to the Education Reform Act 1988.

<sup>(35)</sup> Subsection (3A) of section 85 was inserted by paragraph 9 of Schedule 5 to the Local Government Act 2000. There are other amendments to section 85 which are not relevant to this Order.

attendance to attend any meeting of the executive, he shall, unless the failure was due to some reason approved by the local authority before the expiry of that period, cease to be a member of the local authority.

(2B) For the purposes of this section—

- (a) the discharge by a member, acting alone, of any function which is the responsibility of the executive; and
- (b) in respect of a mayor and cabinet executive or leader and cabinet executive, attendance as a member at a meeting of a committee of the executive,

shall each be deemed to be attendance at a meeting of the executive.”;

- (b) in subsection (3), after “meetings of the local authority”, there shall be inserted “or of a failure to attend meetings of the executive”; and
- (c) in subsection (3A)—
  - (i) after “subsection (1)”, there shall be inserted “or (2A)”; and
  - (ii) after “meetings of the authority”, there shall be inserted “or, as the case may be, meetings of the executive”.

### **Members of local authorities not to be appointed as officers**

**8.** In section 116 of the 1972 Act<sup>(36)</sup> (members of local authorities not to be appointed as officers)

- (a) after “being appointed”, there shall be inserted “or elected”; and
- (b) after “or vice-chairman”, there shall be inserted “or, in the case of a local authority which are operating executive arrangements which involve a leader and cabinet executive, the office of executive leader or member of the executive”.

### **General provisions as to interpretation**

**9.** In subsection (1) of section 270 of the 1972 Act<sup>(37)</sup> (general provisions as to interpretation), after “that is to say—”, there shall be inserted—

““alternative arrangements” has the same meaning as in Part II of the Local Government Act 2000;”.

### **Consideration of adverse reports**

**10.—**(1) In section 31A of the Local Government Act 1974<sup>(38)</sup> (consideration of adverse reports)

(a) after subsection (2), there shall be inserted—

“(2A) In the case of a local authority which are operating executive arrangements, consideration of a further report of the Local Commissioner under section 31(2A) above by the executive of that local authority, or any person on behalf of that executive, shall be subject to a corresponding restriction.”; and

(b) after subsection (5), there shall be inserted—

“(5A) In the case of a local authority which are operating executive arrangements—

- (a) no member of the executive of that authority shall decide; and

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<sup>(36)</sup> Section 116 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51).

<sup>(37)</sup> Section 270 was amended by paragraph 12 of Schedule 3 to the Local Government Act 2000. There are other amendments to section 270 which are not relevant to this Order.

<sup>(38)</sup> Section 31A was inserted by section 28(1) of the Local Government and Housing Act 1989.

- (b) no member of the executive or any body acting on behalf of that executive shall vote on any question with respect to a report or further report under this Part of the Act in which he is named and criticised by a Local Commissioner.”

(2) In subsection (1) of section 34 of the Local Government Act 1974 (interpretation of Part III), after the definition of “the Commissions” there shall be inserted—

““executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000;”.

### **Evidence of resolutions and minutes of proceedings etc.**

**11.**—(1) In section 41 of the Local Government (Miscellaneous Provisions) Act 1976 (evidence of resolutions and minutes of proceedings)—

- (a) after subsection (2), there shall be inserted—

“(2A) In the case of a local authority which are operating executive arrangements, a document which—

- (a) purports to be a copy of a record of any decision made by the executive of that authority, or any person acting on behalf of that executive, where that record is required to be kept or produced by section 22 of the Local Government Act 2000 or any regulations made under that section<sup>(39)</sup>; and
- (b) bears a certificate purporting to be signed by the proper officer of the authority or by a person authorised in that behalf by him or any other person who, by virtue of regulations made under section 22 of the Local Government Act 2000, is authorised or required to produce such a record, stating that the decision was made on the date specified in the certificate by that executive, or as the case may be, by the person acting on behalf of that executive,

shall be evidence in any proceedings of the matters stated in the certificate and of the terms of the decision in question.”.

(2) In subsection (1) of section 44 of the Local Government (Miscellaneous Provisions) Act 1976 (interpretation etc. of Part I), there shall be inserted after the definition of “the Common Council”—

““executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000;”.

### **Disqualification**

**12.** In subsection (1) of section 35 of the Local Government Act 1985 (disqualification)—

- (a) after “or vice-chairman”, there shall be inserted “or, in the case of a local authority which are operating executive arrangements which involve a leader and cabinet executive, the office of executive leader or member of the executive”; and
- (b) after “appointments”, there shall be inserted “or elections”.

### **Disabilities of directors of public transport companies**

**13.** In section 74 of the Transport Act 1985 (disabilities of directors of public transport companies)—

- (a) for subsection (3A)<sup>(40)</sup>, there shall be substituted—

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<sup>(39)</sup> See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (S.I. 2000/3272).

<sup>(40)</sup> Subsection (3A) of section 74 of the Transport Act 1985 was inserted by section 161 of the Transport Act 2000 (c. 38).

“(3A) Subject to the following provisions of this section, where a director of a public transport company is a member of the executive of any such council as is mentioned in subsection (1)(a) or (b) above which are operating executive arrangements under Part II of the Local Government Act 2000, he shall not, in the course of the discharge of any function that is the responsibility of the executive, take any action in the consideration, or the making of any decision with respect to any contract or proposed contract with, or any other matter relating to the activities of, the public transport company or a subsidiary of that company.

(3B) Subsection (3) or (3A) above shall not prohibit a person from taking part in the consideration or discussion of, or from voting on any question with respect to, a local transport plan or bus strategy.”;

(b) for subsection (4), there shall be substituted—

“(4) The Secretary of State may grant a written dispensation from subsection (3) or (3A) above in the case of any individual member, except that no such dispensation may be granted in the case of a member of a council’s executive acting alone.”;

(c) for subsection (6), there shall be substituted—

“(6) The Secretary of State may confer exemptions from subsection (3) or (3A) above either generally or in the case of any class or description of members except that no such exemption may be granted in the case of a member of a council’s executive acting alone; and—

(a) subsection (5)(a) and (b) above shall apply in relation to any such exemption as they apply in relation to any dispensation that may be granted under subsection (4) above; and

(b) any such exemption may be withdrawn or varied at any time by the Secretary of State.”; and

(d) in subsection (7), after “subsection (3)” there shall be inserted “or (3A)”.

### **Working standards and testing and stamping equipment**

**14.** In section 5 of the Weights and Measures Act 1985 (working standards and testing and stamping equipment) in subsection (11), at the end of paragraph (c) there shall be inserted—

“or

(d) sections 14 to 16 of the Local Government Act 2000 or any regulations made under sections 17 to 20 of that Act<sup>(41)</sup>

### **Local authority publicity**

**15.** In section 6 of the Local Government Act 1986<sup>(42)</sup> (interpretation and application of Part II), after subsection (6), there shall be added—

“(7) Nothing in this Part shall be construed as applying to anything done by a person in the discharge of any duties under regulations made under section 22 of the Local Government Act 2000 (access to information etc.)<sup>(43)</sup>.”.

### **Disabilities of directors of public airport companies**

**16.** In section 18 of the Airports Act 1986 (disabilities of directors of public airport companies)—

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<sup>(41)</sup> See the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (S.I. 2000/2851).

<sup>(42)</sup> There are amendments to section 6 which are not relevant to this Order.

<sup>(43)</sup> See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (S.I. 2000/3272).

- (a) after subsection (2), there shall be inserted—

“(2A) Where a director of a public airport company is a member of the executive of any such council as is mentioned in subsection (1)(a) or (b) above which are operating executive arrangements under Part II of the Local Government Act 2000, he shall not, in the course of the discharge of any function that is the responsibility of that executive, take any action in the consideration, or the making of any decision with respect to—

- (a) any contract or proposed contract between the company or a subsidiary of the company and the council; or
- (b) any matter relating to the activities of the company or such a subsidiary.”; and
- (b) in subsection (3), after “of subsection (2)” there shall be inserted “or any person who contravenes subsection (2A)”.

### **Authorisation of pilots**

- 17.** In section 3 of the Pilotage Act 1987 (authorisation of pilots)—

- (a) after subsection (9), there shall be inserted—

“(9A) A person who is an authorised pilot for a harbour for which the competent harbour authority is a local authority which are operating executive arrangements shall not by reason of his holding any office or employment as a pilot be disqualified—

- (a) for being a member of the executive of the local authority where that executive is to any extent responsible for any function in respect of which knowledge or experience relevant to pilotage is material; or
- (b) for being a member of a committee of the executive of the local authority with any functions in respect of which knowledge or experience relevant to pilotage is material.”; and
- (b) in subsection (10), before the definition of “local authority” there shall be inserted—
- ““executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000;”.

### **Public supply or works contracts**

**18.**—(1) In section 19 of the Local Government Act 1988 (provisions supplementary to or consequential on section 17), in subsection (6), after “Local Government Act 1972”, there shall be inserted “, regulations under section 19 of the Local Government Act 2000 (discharge of functions of and by another local authority)”.

(2) In Schedule 2 to the Local Government Act 1988<sup>(44)</sup> (public supply or works contracts: the public authorities), after “A local authority.”, there shall be inserted “An executive of a local authority (within the meaning of Part II of the Local Government Act 2000).”.

### **Financial administration—interpretation**

**19.** In section 111 of the 1988 Finance Act<sup>(45)</sup> (interpretation), after subsection (3), there shall be inserted—

“(3A) In this Part, “council manager”, “elected mayor”, “executive”, “executive arrangements”, “executive leader”, “leader and cabinet executive”, “mayor and cabinet executive” and “mayor and council manager executive” have the same meaning as in Part II of the Local Government Act 2000.”.

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<sup>(44)</sup> There are amendments to Schedule 2 which are not relevant to this Order.

<sup>(45)</sup> There are amendments to section 111 which are not relevant to this Order.

### Functions of responsible officer as regards reports

**20.**—(1) In section 114 of the 1988 Finance Act<sup>(46)</sup> (functions of responsible officer as regards reports)—

- (a) in subsection (2), at the beginning, there shall be inserted “Subject to subsection (2A),”;
- (b) after subsection (2), there shall be inserted—

“(2A) Where a relevant authority is operating executive arrangements, the chief finance officer of the relevant authority shall not make a report under subsection (2) in respect of any action referred to in paragraph (a), (b) or (c) of that subsection unless it is action taken otherwise than by or on behalf of the relevant authority’s executive.”; and

- (c) in subsection (4), at the end, there shall be added—

“; and

- (c) in a case where the relevant authority has a mayor and council manager executive, the person who at the time the report is made is the council manager of that authority”.

(2) After section 114 of the 1988 Finance Act, there shall be inserted—

#### “Functions of responsible officer as regards reports—local authorities operating executive arrangements

**114A.**—(1) The person having responsibility under section 151 of the 1972 Act for the administration of the financial affairs of a relevant authority which is operating executive arrangements shall have the duties mentioned in this section, without prejudice to any other functions; and in this section he is referred to as the chief finance officer of the authority.

(2) The chief finance officer of an authority that is referred to in subsection (1) shall make a report under this section to the executive of that authority if it appears to him that, in the course of the discharge of functions of the authority, the executive or a person on behalf of the executive—

- (a) has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful;
- (b) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority; or
- (c) is about to enter an item of account the entry of which is unlawful.

(3) It shall be the duty of the chief finance officer of an authority, in preparing a report in pursuance of subsection (2) above, to consult so far as practicable—

- (a) with the person who is for the time being designated as the head of the authority’s paid service under section 4 of the Local Government and Housing Act 1989; and
- (b) with the person who is for the time being responsible for performing the duties of the authority’s monitoring officer under section 5 and 5A of that Act<sup>(47)</sup>.

(4) Where a chief finance officer has made a report under this section he shall send a copy of it to—

- (a) the person who at the time the report is made has the duty to audit the authority’s accounts;

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<sup>(46)</sup> Section 114 was amended by paragraphs 1 and 66 of Schedule 5 to the 1989 Act and section 130 of the Greater London Authority Act 1999 (c. 29). There are other amendments to section 114 which are not relevant to this Order.

<sup>(47)</sup> Section 5A is inserted by article 23(2) of this Order.



- (b) each person who at that time is a member of the authority; and
- (c) where the authority has a mayor and council manager executive, the person who at that time is the council manager.

(5) Subsections (5) and (6) of section 114 shall apply in relation to duties under subsections (2) and (3) of this section as they apply in relation to duties under subsections (2) and (3) of that section.

(6) A relevant authority shall provide its chief finance officer with such staff, accommodation and other resources as are in his opinion sufficient to allow his duties under this section to be performed.”.

### **Duties of executive as regards reports**

**21.**—(1) After section 115A of the 1988 Finance Act(48), there shall be inserted—

#### **“Duties of executive as regards reports**

**115B.**—(1) This section applies where copies of a report under section 114A above have been sent under section 114A(4) above.

(2) The executive of the authority (within the meaning of Part II of the Local Government Act 2000) shall consider the report at a meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it.

(3) The meeting must be held not later than the end of the period of 21 days beginning with the day on which copies of the report are sent.

(4) During the prohibition period the course of conduct which led to the report being made shall not be pursued.

(5) If subsection (4) above is not complied with, and the executive makes any payment in the prohibition period as a result of the course of conduct being pursued, the executive shall be taken not to have had power to make the payment (notwithstanding any obligation to make it under contract or otherwise).

(6) As soon as practicable after the executive has concluded its consideration of the chief finance officer’s report, the executive shall prepare a report which specifies—

- (a) what action (if any) the executive has taken in response to the chief finance officer’s report;
- (b) what action (if any) the executive proposes to take in response to the chief finance officer’s report and when the executive 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.

(7) As soon as practicable after the executive has prepared a report under subsection (6), the executive shall arrange for a copy of it to be sent to—

- (a) the person who at the time the report is made has the duty to audit the authority’s accounts;
- (b) each person who at that time is a member of the authority; and
- (c) the chief finance officer of the authority.

(8) In this section—

- (a) “chief finance officer” has the same meaning as in section 114A; and

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(48) Section 115A was inserted by section 131 of the Greater London Authority Act 1999 (c. 29).

- (b) “the prohibition period” means the period—
- (i) beginning with the day on which copies of the chief finance officer’s report are sent; and
  - (ii) ending with the first business day to fall after the day (if any) on which the executive’s consideration of the report under subsection (2) above is concluded.

(9) If subsection (3) above is not complied with, it is immaterial for the purposes of subsection (8)(b)(ii) above.

(10) The nature of the decisions made at the meeting is immaterial for the purposes of subsection (8)(b)(ii) above.

(11) In subsection (8)(b)(ii) above “business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England.”.

(2) In section 116 of the 1988 Finance Act—

(a) after subsection (1), there shall be inserted—

“(1A) Where it is proposed to hold a meeting under section 115B above—

- (a) where the authority has a mayor and cabinet executive, the elected mayor;
- (b) where the authority has a leader and cabinet executive, the executive leader; or
- (c) where the authority has a mayor and council manager executive, the council manager,

shall as soon as is reasonably practicable notify, or instruct the authority’s proper officer to notify, the authority’s auditor of the date, time and place of the proposed meeting.”; and

(b) after subsection (2), there shall be inserted—

“(2A) As soon as is reasonably practicable after a meeting is held under section 115B above—

- (a) where the authority has a mayor and cabinet executive, the elected mayor;
- (b) where the authority has a leader and cabinet executive, the executive leader; or
- (c) where the authority has a mayor and council manager executive, the council manager,

shall notify, or instruct the authority’s proper officer to notify, the authority’s auditor of any decision made at the meeting.”.

### **Politically restricted posts**

**22.** In subsection (3)(a) of section 2 of the 1989 Act<sup>(49)</sup> (politically restricted posts), after “are represented”, there shall be inserted—

“or, where the authority are operating executive arrangements, to the executive of the authority, to any committee of that executive, or to any member of that executive who is also a member of the authority”.

### **Designation and reports of monitoring officer**

**23.**—(1) In section 5 of the 1989 Act<sup>(50)</sup> (designation and reports of monitoring officer)—

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<sup>(49)</sup> There are amendments to section 2 which are not relevant to this Order.

<sup>(50)</sup> 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.

- (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
- (b) any such maladministration or injustice as is mentioned in Part III of the Local Government Act 1974<sup>(51)</sup> (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

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(51) 1974 c. 7.

(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.”.

### **Assistants for political groups**

**24.** In section 9 of the 1989 Act<sup>(52)</sup> (assistants for political groups)—

(a) in subsection (8), after “corresponding provision for Scotland)”, there shall be inserted—

“; or

(c) Part II of the Local Government Act 2000 (arrangements with respect to executives etc.)<sup>(53)</sup>

(b) after subsection (8), there shall be inserted—

“(8A) Neither an executive, a committee of an executive or a member of an executive, of a relevant authority, shall exercise any power under—

- (a) sections 14 to 18 of the Local Government Act 2000 (discharge of functions); or
- (b) section 101(5) of the Local Government Act 1972 (arrangements for the discharge of functions by local authorities)<sup>(54)</sup>,

so as to arrange for the discharge of any of the authority’s functions by any person who holds a post under the authority to which he was appointed in pursuance of this section.

(8B) An area committee of a relevant authority shall not exercise any power under arrangements made under regulations made under section 18 of the Local Government Act

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<sup>(52)</sup> There are amendments to section 9 which are not relevant to this Order.

<sup>(53)</sup> See, in particular, section 15(2) of that Act.

<sup>(54)</sup> See, in particular, regulations 11 and 12 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (S.I. 2000/2851).

2000 (discharge of functions by area committees)(55) so as to arrange for the discharge of any of the authority's functions by any person who holds a post under the authority to which he was appointed in pursuance of this section.”; and

- (c) in subsection (11), after the definition of “appropriate year”, there shall be inserted—
- ““area committee” has the same meaning as in section 18 of the Local Government Act 2000;”.

### **Interpretation of Part I of the 1989 Act**

**25.** In section 21 of the 1989 Act(56)—

- (a) in subsection (3), after the definition of “contravention”, there shall be inserted—
- ““council manager”, “executive”, “executive arrangements” and “mayor and council manager executive” have the same meaning as in Part II of the Local Government Act 2000;”; and
- (b) in subsection (4), after “or otherwise)”, there shall be inserted “or a member of any executive of the authority (other than a council manager)”.

### **Companies in which local authorities have interests**

**26.—**(1) In subsection (5) of section 71 of the 1989 Act(57) (control of minority interests etc. in certain companies), after “or sub-committee thereof),”, there shall be inserted—

“or, where a local authority is operating executive arrangements under Part II of the Local Government Act 2000, for enabling members of the executive, in the course of proceedings of the executive (or of any committee of the executive),”.

(2) In subsection (4) of section 73 of the 1989 Act (authorities acting jointly and by committees), after “any of the authority's officers”, there shall be inserted—

“or, where a local authority is operating executive arrangements under Part II of the Local Government Act 2000, by the authority's executive, any committee of the executive, or any member of the executive”.

### **Performance of sewerage undertaker's functions by local authorities etc.**

**27.** In section 97 of the Water Industry Act 1991 (performance of sewerage undertaker's functions by local authorities etc.)—

- (a) after subsection (4), there shall be inserted—

“(4A) Where arrangements entered into for the purposes of this section provide for a local authority which are operating executive arrangements to carry out the sewerage functions of a sewerage undertaker on that undertaker's behalf—

- (a) those sewerage functions shall be treated as functions of the authority for the purposes of section 13 of the Local Government Act 2000; and
- (b) if or to the extent that those sewerage functions are the responsibility of the executive of that authority—
- (i) subsection (4) above shall not apply; and

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(55) See regulation 6 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000, (S.I. 2000/2851).

(56) There are amendments to section 21 which are not relevant to this Order.

(57) Section 71 has been brought into force in part by S.I. 1989/2445 and 1995/841. Subsection (5) has been brought into force for the purposes of paragraph (a) only.

- (ii) sections 14 to 16 of the Local Government Act 2000 and any regulations made under sections 17 to 20 of that Act shall apply in relation to those sewerage functions only in so far as the arrangements do not provide otherwise.”; and
- (b) in subsection (5), before the definition of “new town” there shall be inserted—
  - ““executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000;”.

### **Council tax and community charges: restrictions on voting**

**28.**—(1) In section 106 of the Local Government Finance Act 1992 (council tax and community charges: restrictions on voting)—

- (a) in subsection (1), after “(including in either case a sub-committee),” there shall be inserted “or a council manager within the meaning of section 11(4)(b) of the Local Government Act 2000;”;
- (b) in subsection (2)—
  - (i) after “a member” there shall be inserted “or a council manager”; and
  - (ii) after “or committee” there shall be inserted “or in the case of an authority which are operating executive arrangements the executive of that authority or any committee of that executive”; and
- (c) after subsection (2), there shall be inserted—
  - “(2A) In the case of an authority which are operating executive arrangements, if or to the extent that any matter listed in paragraphs (a), (b) or (c) of subsection (2) is the responsibility of the executive of that authority, no member of the executive to whom this section applies shall take any action or discharge any function with respect to that matter.”.

(2) In section 116 of the Local Government Finance Act 1992 (interpretation: general), after the definition of “the Social Security Acts” there shall be inserted—

- ““executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000;”.

### **Functions of local authorities**

**29.** In section 70 of the Deregulation and Contracting Out Act 1994(**58**) (functions of local authorities)—

- (a) after subsection (1), there shall be inserted—
  - “(1A) This section also applies to any function of a local authority—
    - (a) if, and to the extent that, it is the responsibility of an executive of that local authority under executive arrangements(**59**), within the meaning of Part II of the Local Government Act 2000;
    - (b) which is conferred by or under any enactment;
    - (c) which, by virtue of any of sections 14 to 16, or any provisions made under sections 17 to 20, of the Local Government Act 2000 (provisions with respect to executive arrangements—discharge of functions etc.), may be exercised by an officer of the local authority; and

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(58) 1994 c. 40. Section 70 was amended by section 40 of the Greater London Authority Act 1999 (c. 29) and is to be amended by Part IX of Schedule 34 to that Act on a date to be appointed.

(59) See section 13 of the Local Government Act 2000 (c. 22) and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853).

- (d) which is not excluded by section 71 below.”; and
  - (b) after subsection (6), there shall be inserted—
    - “(7) Where at any time—
      - (a) an order is in force under this section in relation to any function of a local authority (“authority A”);
      - (b) that function, to any extent, is the responsibility of an executive of authority A under executive arrangements, within the meaning of Part II of the Local Government Act 2000; and
      - (c) arrangements are in force under regulations made under section 19 of the Local Government Act 2000(60) (discharge of functions of and by another local authority) for the exercise of that function, to any extent, by another local authority (“authority B”) or by any executive of authority B,
- it shall be an implied term of those arrangements that authority B or, as the case may be, the executive of authority B, shall not give any authorisation by virtue of the order in relation to that function except with the consent of the executive of authority A.”.

#### **Right to time off for public duties**

**30.** In section 50 of the Employment Rights Act 1996 (right to time off for public duties),

- (a) in subsection (3), after paragraph (b) there shall be inserted—

“and

- (c) in the case of a local authority which are operating executive arrangements—

- (i) attendance at a meeting of the executive of that local authority or committee of that executive; and
- (ii) the doing of any other thing, by an individual member of that executive, for the purposes of the discharge of any function which is to any extent the responsibility of that executive.”; and

- (b) after subsection (9), there shall be inserted—

“(9A) In subsection (3)(c) of this section “executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000.”.

#### **Statements privileged subject to explanation or contradiction**

**31.** In Schedule 1 to the Defamation Act 1996 (statements privileged subject to explanation or contradiction)—

- (a) in sub-paragraph (1)(a) of paragraph 11, for “or local authority committee” there shall be substituted “, local authority committee or in the case of a local authority which are operating executive arrangements the executive of that authority or a committee of that executive”; and

- (b) after sub-paragraph (1) of paragraph 11, there shall be inserted—

“(1A) In the case of a local authority which are operating executive arrangements, a fair and accurate record of any decision made by any member of the executive where that record is required to be made and available for public inspection by virtue of section 22 of the Local Government Act 2000 or of any provision in regulations made under that section.”; and

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(60) See the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (S.I. 2000/2851).



- (c) in sub-paragraph (2) of paragraph 11, for “In sub-paragraph (1)(a)—” there shall be substituted—

“In sub-paragraphs (1)(a) and (1A)—

“executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000;”.

### **Pupil referral units**

- 32.** In Schedule 1 to the Education Act 1996 (pupil referral units)—

- (a) in sub-paragraph (2) of paragraph 15(**61**) (management committees)—

- (i) for paragraph (d), there shall be substituted—

“(d) for requiring or (as the case may be) prohibiting the delegation by—

(i) a local education authority; or

(ii) in the case of a local education authority which are operating executive arrangements, the executive of that authority or any person on behalf of that executive,

to a management committee of such functions in connection with pupil referral units as are specified in the regulations.”; and

(ii) in paragraph (f) after “a local education authority” there shall be inserted “, and in the case of a local education authority which are operating executive arrangements the executive of that authority or any person acting on behalf of that executive;”;

- (b) after sub-paragraph (2) there shall be added—

“(3) In sub-paragraph (2), “executive” and “executive arrangements” have the same meaning as in the Local Government Act 2000.”.

### **Disqualification in certain cases of justices who are members of local authorities**

- 33.** In subsection (1) of section 66 of the Justices of the Peace Act 1997 (disqualification in certain cases of justices who are members of local authorities)—

- (a) for “or any committee or officer of the authority.” there shall be substituted “, any committee or officer of the authority or in the case of a local authority which are operating executive arrangements the executive of that authority or any person acting on behalf of that executive.”; and

- (b) after subsection (7) there shall be inserted—

“(8) In this section “executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000.”.

### **Transfer or delegation of functions relating to student support**

- 34.** In section 23 of the Teaching and Higher Education Act 1998 (transfer or delegation of functions relating to student support)—

- (a) for subsection (3), there shall be substituted—

“(3) Where any function is so exercisable by a local education authority, the functions shall be taken to be a function of that authority for the purposes of—

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(61) Paragraph 15 was inserted by section 48 of the Education Act 1997 (c. 44).



- (a) in the case of an authority which is not operating executive arrangements, section 101 of the Local Government Act 1972 (arrangements for discharge of functions by local authorities),
  - (b) section 70 of the Deregulation and Contracting Out Act 1994 (contracting out of functions of local authorities), and
  - (c) in the case of an authority which is operating executive arrangements, section 13 of the Local Government Act 2000 and accordingly—
    - (i) if, or to the extent that, that function is the responsibility of the executive of that authority sections 14 to 16 and any regulations made under sections 17 to 20 of that Act shall apply; or
    - (ii) if, or to the extent that, that function is not the responsibility of that executive section 101 of the Local Government Act 1972 shall apply”; and
- (b) after subsection (10) there shall be inserted—
- “(11) In this section “executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000.”.

### **Disqualification from being the Mayor or an Assembly member**

**35.** In section 21 of the Greater London Authority Act 1999 (disqualification from being the Mayor or an Assembly member)—

- (a) in subsection (2) after paragraph (b) there shall be inserted—
    - “(c) the executive or any committee of the executive of that council, where that council are operating executive arrangements and the membership of that executive includes the Mayor or one or more persons appointed on the nomination of the Authority acting by the Mayor, or
    - (d) a member of the executive of that council, where that council are operating executive arrangements and that member is also the Mayor or a person appointed on the nomination of the Authority acting by the Mayor;”;
- (b) after subsection (2) there shall be inserted—
- “(2A) In this section “executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000.”.

### **Delegation**

**36.** In section 38 of the Greater London Authority Act 1999 (delegation)—

- (a) in subsection (4), for “Where” there shall be substituted “Subject to subsection (5A), where”;
- (b) in subsection (5), for “Subsection” there shall be substituted the words “Subject to subsection (5A), subsection”;
- (c) after subsection (5), there shall be inserted—
  - “(5A) Where, by virtue of an authorisation under subsection (1) above, a duty is exercisable by a local authority which are operating executive arrangements—
    - (a) that duty shall be treated as a function of that local authority for the purposes of section 13 of the Local Government Act 2000; and
    - (b) if, or to the extent that, that duty is a function which is the responsibility of the executive of that authority—
      - (i) subsections (4) and (5) above shall not apply; and

- (ii) sections 14 to 16 of the Local Government Act 2000 and any regulations made under sections 17 to 20 of that Act shall apply except to the extent that the terms of the authorisation or any conditions imposed by the Mayor under subsection (1) above otherwise provide.”; and
- (d) after subsection (10), there shall be added—
  - “(11) For the purposes of this section “executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000.”.

### **Delegation of Authority’s functions**

**37.** In section 380 of the Greater London Authority Act 1999 (delegation of Authority’s functions)—

- (a) in subsection (4), for “Where” there shall be substituted “Subject to subsection (5A), where”;
- (b) in subsection (5), for “Subsection” there shall be substituted “Subject to subsection (5A), subsection”;
- (c) there shall be inserted after subsection (5)—
  - “(5A) Where, by virtue of an authorisation under subsection (1) above, a duty is exercisable by a local authority which are operating executive arrangements—
    - (a) that duty shall be treated as a function of that local authority for the purposes of section 13 of the Local Government Act 2000; and
    - (b) if, or to the extent that, that duty is a function which is the responsibility of the executive of that authority,
      - (i) subsections (4) and (5) above shall not apply; and
      - (ii) sections 14 to 16 of the Local Government Act 2000 and any regulations made under sections 17 to 20 of that Act shall apply except to the extent that the terms of the authorisation or any conditions imposed by the Mayor under subsection (1) above otherwise provide.”; and
- (d) in subsection (13), before the definition of “Trafalgar Square” there shall be inserted—
  - ““executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000;”.

### **Power to order parent or guardian to pay fine, costs or compensation**

**38.** In section 137 of the Powers of Criminal Courts (Sentencing) Act 2000 (power to order parent or guardian to pay fine, costs or compensation) in subsection (8)(b), for “stand referred to their social services committees under” there shall be substituted “are social services functions within the meaning of”.

### **Adoption panels**

**39.** In regulation 5 of the Adoption Agencies Regulations 1983<sup>(62)</sup> (establishment of adoption panel and appointment of members), after paragraph (6), there shall be added—

- “(7) Where a local authority are operating executive arrangements, paragraphs (2)(b) and (6)(c) shall have effect as if the references in those paragraphs to a local authority’s social services committee were references to—

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<sup>(62)</sup> S.I. 1983/1964. Regulation 5 was substituted by the Adoption Agencies and Children (Arrangements for Placement and Reviews) (Miscellaneous Amendments) Regulations 1997 (S.I. 1997/649).

- (a) the authority’s executive; or
  - (b) an overview and scrutiny committee of the authority where the committee’s functions under section 21 of the Local Government Act 2000 (overview and scrutiny committees) relate wholly or partly to any social services functions of the authority.
- (8) In paragraph (7)—
- (a) “executive”, “executive arrangements” and “overview and scrutiny committee” have the same meaning as in Part II of the Local Government Act 2000; and
  - (b) “social services functions” has the same meaning as in section 1A of the Local Authority Social Services Act 1970(63) (meaning of “social services functions”).”.

### **Independent visitors**

**40.** In regulation 2 of the Definition of Independent Visitors (Children) Regulations 1991(64) (independent visitors), in sub-paragraph (i) of paragraph (a), after “elected or co-opted”, there shall be inserted “, or a council manager of the local authority (within the meaning of section 11(4)(b) of the Local Government Act 2000 (local authority executives))”.

### **Applications to court**

**41.** In regulation 8 of the Children (Secure Accommodation) Regulations 1991(65) (applications to court), after “Local Government Act 1972”, there shall be inserted “or to provisions in or under sections 14 to 20 of the Local Government Act 2000”.

### **Information from public bodies**

**42.** In regulation 4 of the Council Tax (Administration and Enforcement) Regulations 1992(66) (information from public bodies), in sub-paragraph (a) of paragraph (3), after “by a committee”, there shall be inserted “, any executive (within the meaning of Part II of the Local Government Act 2000), a committee of any executive or a member of any executive,”.

### **Special educational needs—approval of independent schools**

**43.** In regulation 2(1) of the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994(67) (interpretation)—

- (a) after the definition of “child with a statement”, there shall be inserted—
  - ““executive” has the same meaning as in Part II of the Local Government Act 2000;”;
  - and
- (b) in the definition of “local authority”, for “acting in the discharge of their functions under any of the enactments specified in Schedule 1 to the Local Authority Social Services Act 1970 (enactments conferring functions assigned to the social services committee)”, there shall be substituted “which is, or whose executive (if any) is, responsible for exercising social services functions within the meaning of section 1A of the Local Authority Social Services Act 1970(68) (meaning of “social services functions”)”.

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(63) 1970 c. 42. Section 1A was inserted by section 102(3) of the Local Government Act 2000.

(64) S.I. 1991/892.

(65) S.I. 1991/1505.

(66) S.I. 1992/613. Regulation 4 was substituted by the Council Tax (Administration and Enforcement) (Amendment) Regulations 1992 (S.I. 1992/3008).

(67) S.I. 1994/651. There are amendments to regulation 2 which are not relevant to this Order.

(68) 1970 c. 42. Section 1A was inserted by section 102(3) of the Local Government Act 2000.

### **NHS bodies and local authorities partnership arrangements**

**44.** In regulation 10 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000(**69**) (supplementary)—

(a) after paragraph (2), there shall be inserted—

“(2A) Where a local authority in England is operating executive arrangements, a joint committee formed under paragraph (2) may include any person who is a member of that authority whether or not he is also a member of the executive of that authority.”; and

(b) at the end, there shall be added—

“(4) In paragraph (2A), “executive” and “executive arrangements” have the same meaning as in Part II of the Local Government Act 2000.”.

### **Disability of members of authorities for voting on account of prejudicial interests**

**45.**—(1) Where a local authority are operating either executive arrangements or alternative arrangements, the provisions in this article shall apply.

(2) Subject to the provisions of paragraphs (5) and (6), a member of the local authority must regard himself as having a prejudicial interest in a matter if—

(a) he is present at a meeting of an overview and scrutiny committee of the local authority or a sub-committee of such a committee (whether or not he is a member of the committee or sub-committee);

(b) the matter is the subject of consideration at the meeting; and

(c) the matter was the subject of, or relates to, a decision made, or action taken, by—

(i) another committee or sub-committee; or

(ii) a joint committee or sub-committee of a joint committee, of which he is also a member.

(3) Subject to paragraph (7), where a member regards himself as having a prejudicial interest in a matter in accordance with paragraph (2), he must—

(a) disclose the existence of the interest at the commencement of the discussion of the matter or, if later, as soon as it becomes apparent to him that he must regard himself as having a prejudicial interest in the matter;

(b) immediately after he has disclosed the existence of the interest, withdraw from the meeting at which the matter is being considered, unless he has obtained a dispensation from the Secretary of State under the provisions of paragraphs (5) and (6); and

(c) not return to the meeting while the matter is under consideration.

(4) The proper officer of the authority shall record in a book to be kept for the purpose particulars of any disclosure made under paragraph (3)(a) and the book shall be open at all reasonable hours to the inspection of any member of the authority and, where the authority have a mayor and council manager executive, the council manager of the authority.

(5) The Secretary of State may, subject to such conditions as he may think fit to impose, remove any disability imposed by paragraphs (2) and (3) in any case in which the number of members of the overview and scrutiny committee, or the sub-committee of such a committee, disabled by those paragraphs at any one time would be so great a proportion of the whole as to impede the transaction of business, or in any other case in which it appears to the Secretary of State in the interests of the inhabitants of the area that the disability should be removed.

(6) The power of the Secretary of State under paragraph (5) includes power to remove, either indefinitely or for any period, any such disability which would otherwise attach to any member, or any class or description of member, of the authority, of an overview and scrutiny committee, or of a sub-committee of such a committee, by reason of such interests, and in respect of such matters, as may be specified by the Secretary of State.

(7) Nothing in paragraph (3) precludes any person from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Secretary of State for the exercise of the powers conferred by paragraphs (5) and (6) above.

(8) In this article any reference to an overview and scrutiny committee shall include a reference to a committee of an authority operating alternative arrangements which is appointed to review or scrutinise decisions made, or other action taken, in connection with the discharge of functions of that authority.

(9) The provisions in this article shall cease to have effect with respect to a local authority as soon as that local authority adopt a code of conduct within the meaning of Part III of the Local Government Act 2000 (conduct of local government members and employees).

### **Members of the executive**

**46.**—(1) Where a member of an executive of a local authority ceases to be a councillor, in the case of a mayor and cabinet executive or leader and cabinet executive, he shall at the same time cease to be a member of the executive.

(2) Where a councillor is appointed by an elected mayor as a member of a mayor and cabinet executive—

- (a) subject to sub-paragraph (b), unless the councillor resigns as a member of the executive or ceases to be a councillor, he shall hold office until the end of the term of office of the elected mayor;
- (b) the elected mayor may, if he thinks fit, remove him from office.

(3) Where a councillor is appointed by an executive leader as a member of a leader and cabinet executive—

- (a) subject to sub-paragraph (b), unless the councillor resigns as a member of the executive or ceases to be a councillor, if the end of the term of office of the executive leader is provided for in executive arrangements, the councillor shall hold office until the end of that term;
- (b) the executive leader may, if he thinks fit, remove him from office.

(4) Where, under the executive arrangements of a leader and cabinet executive, the authority determine the number of councillors who may be appointed to the executive under section 11(3)(b) of the Local Government Act 2000(70), and the executive leader appoints the councillors to the executive, the executive leader shall—

- (a) appoint to the executive the number of councillors so determined; and
- (b) where a councillor ceases to be a member of the executive before the end of the term of office of the executive leader, appoint another councillor to the executive to replace him.

### **Mayor and cabinet executives**

**47.**—(1) The provisions in this article apply in relation to executive arrangements by a local authority which involve a mayor and cabinet executive.

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(70) See paragraph 2(3)(a) of Schedule 1 to the Local Government Act 2000.

(2) For the purposes of this article an elected mayor, deputy mayor or member of the executive is to be considered unable to act only if he is either suspended from office or is unfit to act on health grounds.

(3) If for any reasons—

- (a) the elected mayor is unable to act or the office of elected mayor is vacant;
- (b) the deputy mayor is unable to act or the office of deputy mayor is vacant; and
- (c) only one other member of the executive is able to act,

that other member must act in the elected mayor's place.

(4) Subject to paragraphs (5) and (6), if for any reason—

- (a) the elected mayor is unable to act or the office of elected mayor is vacant; and
- (b) no other member of the executive is able to act or, because of vacancies, there are no other members of the executive,

the authority shall, as soon as reasonably practicable, appoint a councillor of the authority ("the interim mayor") to act in the place of the elected mayor and appoint at least two, but not more than nine, councillors of the authority ("the interim members") to act in the place of members of the executive appointed by the elected mayor.

(5) The interim mayor and interim members shall not appoint councillors of the authority to the executive nor remove them from office.

(6) For the purposes of section 11(8) of the Local Government Act 2000 (local authority executives), the interim mayor and interim members shall be treated as if they are not members of the executive.

(7) Notwithstanding section 80 of the 1972 Act (disqualifications for election and holding office as a member of a local authority) or section 35 of the Local Government Act 1985 (disqualification), a person shall not be disqualified from being a member of a local authority or, as the case may be, a joint authority solely because he is an interim mayor or an interim member.

(8) Where the interim mayor or an interim member ceases to be a councillor, he shall at the same time cease to be the interim mayor or, as the case may be, an interim member.

(9) The authority may, if it thinks fit, remove the interim mayor or an interim member from office.

(10) Any interim mayor and interim member, unless he resigns as interim mayor or, as the case may be, as interim member, ceases to be a councillor or is removed from office, shall hold office until—

- (a) the elected mayor becomes able to act;
- (b) where the office of elected mayor was vacant, a new elected mayor takes up office; or
- (c) a member of the executive appointed by the elected mayor becomes able to act,

whichever occurs first.

Signed by authority of the Secretary of State for Transport, Local Government and the Regions

19th June 2001

*Nick Raynsford*  
Minister of State,  
Department for Transport, Local Government  
and the Regions

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order modifies primary and secondary legislation and makes other provisions for the purposes of, in consequence of, or for giving full effect to provisions in Part II of the Local Government Act 2000 (“the 2000 Act”). This Order and the modifications made by it apply to England only.

Articles 3 to 9 make modifications to the Local Government Act 1972. **Article 3** prevents a local authority or joint authority from promoting a Bill to form, alter or abolish executive arrangements or alternative arrangements or to alter arrangements for electing a mayor. **Articles 4 and 5** apply the qualifications and disqualifications for election and holding office as a member of a local authority to election and holding office as an elected mayor. **Article 6** extends to elected mayors and executive leaders provisions for the validity of acts done by unqualified persons. **Article 7** modifies the provisions for the vacation of office by failure to attend meetings so that they apply to members of the executive. **Article 8** modifies the provisions for members of local authorities not to be appointed as officers so that a person who is a member of a leader and cabinet executive (who will also be a member of the authority) may be appointed to paid office during the twelve month period after he ceases to be such an executive member. **Article 9** modifies the interpretation provision by inserting a definition of “alternative arrangements”.

**Article 10** modifies section 31A of the Local Government Act 1974 so that restrictions relating to consideration of a report from the Ombudsman apply equally to the executive, committees of the executive and members of the executive as they do to committees of and members of the authority.

**Article 11** modifies section 41 of the Local Government (Miscellaneous Provisions) Act 1976 so that records of decisions made by the executive, members of the executive and committees of the executive can be used as evidence in civil proceedings in the same way as minutes of meetings of the council and its committees.

**Article 12** modifies section 35 of the Local Government Act 1985 so that a member of a leader and cabinet executive is not disqualified from membership of a joint authority.

**Article 13** modifies section 74 of the Transport Act 1974 so that a member of the executive who is also a director of a public transport company cannot take part in meetings of the executive or a committee of the executive or make a decision acting alone where contracts concerning that company are being considered.

**Article 14** makes a consequential amendment to section 5 of the Weights and Measures Act 1985.

**Article 15** modifies section 6 of the Local Government Act 1986 so that the local authority publicity provisions in part II of that Act do not apply where access to information provisions apply to local authority executives by virtue of section 22 of the Local Government Act 2000.

**Article 16** modifies section 18 of the Airports Act 1986 so that a member of an executive who is also a director of a public airport company cannot take part in meetings of the executive, or a committee of an executive or make a decision alone where contracts or other matters concerning the airport company are being considered.

**Article 17** modifies section 3 of the Pilotage Act 1987 so that a harbour pilot who is a member of the executive of an authority is not prevented from taking part in a collective decision where knowledge of pilotage is material.

**Article 18** modifies the public supply or works contracts provisions in the Local Government Act 1988. Schedule 2 is modified so that a local authority executive is a public authority for the purposes



of section 17 of that Act (exclusion of non-commercial considerations when exercising functions in relation to a public authority's public supply or works contracts). Section 19 is modified so that section 17 applies to another local authority, which is discharging functions on behalf of a local authority's executive, and to another local authority's executive, which is discharging functions on behalf of local authority or a local authority's executive.

**Articles 19 to 21** modify the Local Government Finance Act 1988. **Article 19** adds further definitions to the interpretation section. **Article 20** modifies section 114 and inserts a new section 114A so that provisions for an authority's chief finance officer to make a report in cases of financial misconduct by a local authority are extended to a local authority's executive. Where a report has been made, the provisions in new section 115B (duties of executive as regards reports), inserted by **article 21**, apply, including a requirement for the executive to make a report after considering the chief finance officer's report. Section 116 is modified so that information about meetings of the executive under section 115B is sent to the authority's auditor.

**Articles 22 to 26** modify the Local Government and Housing Act 1989. **Article 22** modifies section 2 so that giving advice on a regular basis to an executive, executive committee or executive member is a duty of a post under a local authority for the purposes of that section. **Article 24** modifies section 5 and inserts a new section 5A so that provisions for an authority's monitoring officer to make a report in cases of a contravention of law, maladministration or injustice by a local authority are extended to a local authority's executive. The executive must prepare a report after considering the monitoring officer's report. **Article 23** extends the provisions relating to assistants for political groups so that a political assistant cannot discharge functions which are exercisable by or on behalf of a local authority's executive. **Article 25** inserts further definitions in section 21 (interpretation of Part I). **Article 26** modifies Part V (companies in which local authorities have interests) so that certain provisions which refer to members of an authority, or a committee or sub-committee of an authority, are extended to an executive, members of an executive or an executive committee, as appropriate.

**Article 27** modifies section 97 of the Water Industry Act 1991 so that where a sewerage undertaker has arranged for certain sewerage functions to be exercised by a local authority then such functions are treated as functions of the local authority for the purposes of section 13 of the 2000 Act.

**Article 28** modifies section 106 of the Local Government Finance Act 1992 so that an executive member who has not paid his council tax for at least two months shall not take part in executive decisions in respect of the council's budget, council tax or precept.

**Article 29** modifies section 70 of the Deregulation and Contracting Out Act 1994 (functions of local authorities) so that it applies in relation to a local authority's executive.

**Article 30** modifies section 50 of the Employment Rights Act 1996 so that employees have a right to time off work in order to undertake business as a member of a local authority executive.

**Article 31** modifies Schedule 1 to the Defamation Act 1996 so that records of public meetings of the executive or committees of the executive and records of decisions made by individual members of an executive are classified as information which is privileged subject to explanation or contradiction in defamation proceedings.

**Article 32** modifies Schedule 1 to the Education Act 1996 making consequential amendments to the Secretary of State's powers to make provision concerning management committees for pupil referral units.

**Article 33** modifies section 66 of the Justices of the Peace Act 1997 so that a justice of the peace who is a member of a local authority cannot act as a member of a Crown Court or magistrates court in any proceedings concerning decisions made by the executive or by any person on behalf of the executive.

**Article 34** modifies section 23 of the Teaching and Higher Education Act 1988 so that where the Secretary of State has arranged for certain functions relating to student support to be exercised by a local education authority then such functions are to be treated as functions of the authority for the purposes of section 13 of the 2000 Act.

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**Article 35** modifies section 21 of the Greater London Authority Act 1999 so that disqualifications from being elected or being the Mayor of London are maintained for officers acting under the direction of the executive, a committee of the executive or a member the executive.

**Articles 36 and 37** modify sections 38 and 380 of the Greater London Authority Act 1999 so that where the Mayor of London has authorised a local authority to exercise functions on behalf of the Greater London Authority then such functions are to be treated as functions of the authority for the purposes of section 13 of the 2000 Act.

**Article 38** modifies section 137 of the Power of Criminal Courts Act 2000 so that this section applies where a local authority is operating executive arrangements.

**Article 39** modifies regulation 5 of the Adoption Agencies Regulations 1983 to provide that where a local authority operates executive arrangements and therefore has no social services committee from which to appoint a member to the adoption panel, the reference to the social services committee is to be treated as a reference to the authority's executive or an overview and scrutiny committee of the authority (where that committee's functions relate wholly or partly to the authority's social services functions).

**Article 40** modifies the Definition of Independent Visitors (Children) Regulations 1991. A person appointed by a local authority as an independent visitor is regarded as independent of the authority appointing him where, for example, the person appointed is not connected with the local authority by virtue of being a member of the authority. The modification extends this provision so that a person is also connected with the local authority by virtue of being a council manager and therefore a council manager is not to be regarded as independent of the authority.

Regulation 8 of the Children (Secure Accommodation) Regulations 1991 provides that applications to a court under section 25 of the Children Act 1989 (c. 41) (use of accommodation for restricting liberty) in respect of a child must be made only by the local authority which are looking after that child. This is subject to section 101 of the Local Government Act 1972. **Article 41** of this Order makes the provision in regulation 8 also subject to provisions in or under sections 14 to 20 of the Local Government Act 2000.

Regulation 4 of the Council Tax (Administration and Enforcement) Regulations 1992 enable a billing authority to request certain information for the purpose of its functions under Part I of the Local Government Finance Act 1992. There are exceptions to the information that can be requested. These exceptions are modified by **article 42** of this Order to include information that was obtained by an executive, or a committee or member of an executive, of a local authority in that local authority's capacity as a constituent council of a police authority.

**Article 43** modifies the definition of "local authority" in the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994 to reflect the fact that, where a local authority is operating executive arrangements, its executive has responsibility for exercising most of its social services functions.

**Article 44** modifies the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 so that where a local authority in England has an executive, and a joint committee is formed under those Regulations, a local authority member appointed to the joint committee by the executive need not be a member of the executive.

**Article 45** makes provision regarding prejudicial interests of a person, who is present at a meeting of an overview and scrutiny committee or sub-committee, where the matter considered at the meeting relates to action by another committee or sub-committee of which the person is a member.

**Article 46** makes various provisions in relation to members of an executive who cease to be members of the local authority.

**Article 47** makes provisions for an interim mayor and interim members where members of a mayor and cabinet executive are unable to act.

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