

2001 No. 2212

LOCAL GOVERNMENT, ENGLAND

**The Local Authorities (Functions and Responsibilities)
(England) (Amendment) Regulations 2001**

Made - - - - - *18th June 2001*
Laid before Parliament *19th June 2001*
Coming into force - - *10th July 2001*

The Secretary of State for Transport, Local Government and the Regions, in exercise of the powers conferred on him by sections 13 and 105 of the Local Government Act 2000(a), and in exercise of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, application, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001.

(2) These Regulations apply in relation to local authorities in England.

(3) These Regulations shall come into force, subject to paragraphs (4) and (5), on 10th July 2001.

(4) Where, on 10th July 2001, a local authority are operating executive arrangements(b), the amendments specified or referred to in regulation 2 shall not have effect in relation to that authority until the day that falls three months after the day on which these Regulations are laid before Parliament.

(5) Where—

(a) at any time before 10th July 2001 a local authority have sent to the Secretary of State a copy of proposals drawn up in accordance with section 25 (proposals) of the 2000 Act or any comparable provision of regulations or an order under Part II (arrangements with respect to executives etc.) of that Act; and

(b) on 10th July 2001 the authority are not operating either executive arrangements or alternative arrangements(c),

the amendments specified or referred to in regulation 2 shall not have effect in relation to the authority until—

(i) in a case to which paragraph (6) applies, the day on which they first operate alternative arrangements based on their detailed fall-back proposals(d);

(ii) in any other case, the day that falls three months after the day on which they first operate executive arrangements.

(a) 2000 c. 22.

(b) For the definition of “executive arrangements”, see section 10 of the Local Government Act 2000.

(c) For the definition of “alternative arrangements”, see section 32(1) of the Local Government Act 2000.

(d) As to the drawing up of detailed fall-back proposals, see, in particular, section 27(8) of the Local Government Act 2000.

- (6) This paragraph applies where—
- (a) the copy of the proposals sent to the Secretary of State as mentioned in paragraph (5) is accompanied by a copy of outline fall-back proposals which involve alternative arrangements; and
 - (b) the proposals are rejected in a referendum.
- (7) In this regulation—
- “the 2000 Act” means the Local Government Act 2000;
- “outline fall-back proposals”—
- (a) in relation to proposals under section 25 of the 2000 Act, means an outline of the proposals that a local authority intend to implement if their proposals under section 25 are rejected in a referendum;
 - (b) in relation to proposals under regulation 17 (action before referendum) or regulation 19 (action on receipt of direction) of the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000(a), means an outline of the proposals that a local authority intend to implement if proposals that are to be the subject of a referendum under Part II or Part III of those Regulations are rejected in that referendum;
 - (c) in relation to proposals under an order under section 36 (referendum following order) of the 2000 Act, means an outline of the proposals that the authority intend to implement if proposals that are to be the subject of a referendum are rejected in that referendum;
 - (d) in relation to proposals under regulations under section 30 (operation of different executive arrangements) or section 33 (operation of alternative arrangements) of the 2000 Act, means a summary of the authority’s existing executive arrangements or existing alternative arrangements, as the case may be; and
- “referendum” means a referendum held under section 27 (referendum in case of proposals involving elected mayor) of the 2000 Act, or by virtue of regulations or an order made under any provision of Part II (arrangements with respect to executives etc.) of the 2000 Act.

Amendment of Regulations

2. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000(b) are amended—

- (a) in regulation 4 (functions not to be the sole responsibility of an authority’s executive)—
 - (i) in paragraph (3), by the insertion, after sub-paragraph (b), of the following—

“(bb) the approval, for the purposes of public consultation in accordance with regulation 10 or 22 of the Town and Country Planning (Development Plans) (England) Regulations 1999, of draft proposals associated with the preparation of alterations to, or the replacement of, a development plan;”(c);
 - (ii) in sub-paragraph (a) of paragraph (5), by the insertion, immediately before “or”, of “for the inclusion of a disposal in a disposals programme”;
 - (iii) in sub-paragraph (b) of paragraph (5), by the insertion, at the beginning, of “for consent to that disposal”; and
 - (iv) by the insertion, after paragraph (11), of the following paragraphs—

“(12) The function, pursuant to an order under section 70 (functions of local authorities) of the Deregulation and Contracting Out Act 1994, of authorising a person to exercise a function to which that section applies (“section 70 function”)—

 - (a) shall be the responsibility of an executive of the authority to the extent that the section 70 function is the responsibility of that executive; and
 - (b) shall not be the responsibility of such an executive to any other extent.

(a) S.I. 2000/2852, to which there are amendments not relevant to these Regulations.

(b) S.I. 2000/2853.

(c) S.I. 1999/3280.

(13) The function of revoking such an authorisation as is referred to in paragraph (12)—

- (a) shall be the responsibility of an executive of the authority to the extent that the section 70 function is the responsibility of the executive; and
- (b) shall not be the responsibility of such an executive to any other extent.”(a);
- (b) in Schedule 1 (functions not to be the responsibility of an authority’s executive), in accordance with Part I of the Schedule to these Regulations;
- (c) in Schedule 2 (functions which may be (but need not be) the responsibility of an authority’s executive), in accordance with Part II of the Schedule to these Regulations; and
- (d) in Schedule 3 (functions not to be the sole responsibility of an authority’s executive), in accordance with Part III of the Schedule to these Regulations.

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

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

18th June 2001

(a) 1994 c. 40. See also article 21 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001 (S.I. 2001/2211).

PART I

SCHEDULE 1 AMENDMENTS

1. In paragraph B (licensing and registration functions), at the end, insert—
 - (a) in column (1)—
 - “69. Power to issue near beer licence.
 70. Power to register premises or stalls for the sale of goods by way of competitive bidding.”;
 - and
 - (b) in column (2)—
 - (i) in relation to the entry in column (1) for item 69, “Sections 16 to 19 and 21 of the London Local Authorities Act 1995 (c.x.) and, to the extent that it does not have effect by virtue of regulation 2(3), section 25 of that Act”; and
 - (ii) in relation to the entry in column (2) for item 70, “Section 28 of the Greater London Council (General Powers) Act 1984 (c.xxvii).”.
2. For paragraph I (miscellaneous functions), substitute the following paragraph(a)—

“I. Miscellaneous functions	
(1) Function	(2) Provision of Act or Statutory Instrument
<i>Part I: functions relating to public rights of way</i>	
1. Power to create footpath or bridleway by agreement.	Section 25 of the Highways Act 1980 (c. 66).
2. Power to create footpaths and bridleways.	Section 26 of the Highways Act 1980.
3. Duty to keep register of information with respect to maps, statements and declarations.	Section 31A of the Highways Act 1980.
4. Power to stop up footpaths and bridleways.	Section 118 of the Highways Act 1980.
5. Power to determine application for public path extinguishment order.	Sections 118ZA and 118C(2) of the Highways Act 1980.
6. Power to make a rail crossing extinguishment order.	Section 118A of the Highways Act 1980.
7. Power to make a special extinguishment order.	Section 118B of the Highways Act 1980.
8. Power to divert footpaths and bridleways.	Section 119 of the Highways Act 1980.
9. Power to make a public path diversion order.	Sections 119ZA and 119C(4) of the Highways Act 1980.
10. Power to make a rail crossing diversion order.	Section 119A of the Highways Act 1980.
11. Power to make a special diversion order.	Section 119B of the Highways Act 1980.
12. Power to require applicant for order to enter into agreement.	Section 119C(3) of the Highways Act 1980.

- (a) Section 31A of the Highways Act 1980 was inserted by the Countryside and Rights of Way Act 2000 (c. 37), Schedule 6. Sections 118A and 119A of the Highways Act 1980 were inserted by the Transport and Works Act 1992 (c. 42), section 47 and Schedule 2. Sections 118ZA, 118B, 119ZA, 119B, 119D, 121B and 121C of the Highways Act 1980 were inserted by the Countryside and Rights of Way Act 2000, Schedule 6. Section 135 of the Highways Act 1980 was substituted by the Rights of Way Act 1990 (c. 24). Sections 135A and 135B of the Highways Act were inserted by the Countryside and Rights of Way Act 2000, Schedule 6. Sections 53A, 53B and 57A of the Wildlife and Countryside Act 1981 (c. 69) were inserted by the Countryside and Rights of Way Act 2000, Schedule 5, paragraphs 2 and 8.

“I. Miscellaneous functions	
(1) Function	(2) Provision of Act or Statutory Instrument
13. Power to make an SSSI diversion order.	Section 119D of the Highways Act 1980.
14. Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.	Section 121B of the Highways Act 1980.
15. Power to decline to determine certain applications.	Section 121C of the Highways Act 1980.
16. Duty to assert and protect the rights of the public to use and enjoyment of highways.	Section 130 of the Highways Act 1980.
17. Duty to serve notice of proposed action in relation to obstruction.	Section 130A of the Highways Act 1980.
18. Power to apply for variation of order under section 130B of the Highways Act 1980.	Section 130B(7) of the Highways Act 1980.
19. Power to authorise temporary disturbance of surface of footpath or bridleway.	Section 135 of the Highways Act 1980.
20. Power temporarily to divert footpath or bridleway.	Section 135A of the Highways Act 1980.
21. Functions relating to the making good of damage and the removal of obstructions.	Section 135B of the Highways Act 1980.
22. Powers relating to the removal of things so deposited on highways as to be a nuisance.	Section 149 of the Highways Act 1980.
23. Power to extinguish certain public rights of way.	Section 32 of the Acquisition of Land Act 1981 (c. 67).
24. Duty to keep definitive map and statement under review.	Section 53 of the Wildlife and Countryside Act 1981 (c. 69).
25. Power to include modifications in other orders.	Section 53A of the Wildlife and Countryside Act 1981.
26. Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Countryside Act 1981.	Section 53B of the Wildlife and Countryside Act 1981.
27. Duty to reclassify roads used as public paths.	Section 54 of the Wildlife and Countryside Act 1981.
28. Power to prepare map and statement by way of consolidation of definitive map and statement.	Section 57A of the Wildlife and Countryside Act 1981.
29. Power to designate footpath as cycle track.	Section 3 of the Cycle Tracks Act 1984 (c. 38).
30. Power to extinguish public right of way over land acquired for clearance.	Section 294 of the Housing Act 1981 (c. 68).
31. Power to authorise stopping-up or diversion of footpath or bridleway.	Section 257 of the Town and Country Planning Act 1990.
32. Power to extinguish public rights of way over land held for planning purposes.	Section 258 of the Town and Country Planning Act 1990.

“I. Miscellaneous functions	
(1) Function	(2) Provision of Act or Statutory Instrument
33. Power to enter into agreements with respect to means of access.	Section 35 of the Countryside and Rights of Way Act 2000 (c. 37).
34. Power to provide access in absence of agreement.	Section 37 of the Countryside and Rights of Way Act 2000.
<i>Part II: other miscellaneous functions</i>	
35. Functions relating to sea fisheries.	Sections 1, 2, 10 and 19 of the Sea Fisheries Regulation Act 1966 (c. 38).
36. Power to make standing orders.	Section 106 of, and paragraph 42 of Schedule 12 to, the Local Government Act 1972 (c. 70).
37. Power to appoint staff, and to determine the terms and conditions on which they hold office (including procedures for their dismissal).	Section 112 of the Local Government Act 1972.
38. Power to make standing orders as to contracts.	Section 135 of the Local Government Act 1972.
39. Duty to make arrangements for proper administration of financial affairs etc.	Section 151 of the Local Government Act 1972.
40. Power to appoint officers for particular purposes (appointment of “proper officers”).	Section 270(3) of the Local Government Act 1972.
41. Power to make limestone pavement order.	Section 34(2) of the Wildlife and Countryside Act 1981 (c. 69).
42. Power to make closing order with respect to take-away food shops.	Section 4 of the Local Government (Miscellaneous Provisions) Act 1982 (c. 30).
43. Duty to designate officer as the head of the authority’s paid service, and to provide staff, etc.	Section 4(1) of the Local Government and Housing Act 1989 (c. 42).
44. Duty to designate officer as the monitoring officer, and to provide staff, etc.	Section 5(1) of the Local Government and Housing Act 1989.
45. Duty to approve authority’s statement of accounts, income and expenditure and balance sheet, or record of payments and receipts (as the case may be).	The Accounts and Audit Regulations 1996 (S.I. 1996/590).
46. Powers relating to the protection of important hedgerows.	The Hedgerows Regulations 1997 (S.I. 1997/1160).
47. Powers relating to the preservation of trees.	Sections 197 to 214D of the Town and Country Planning Act 1990, and the Trees Regulations 1999 (S.I. 1999/1892).
48. Power to make payments or provide other benefits in cases of maladministration etc.	Section 92 of the Local Government Act 2000.”.

PART II
SCHEDULE 2 AMENDMENTS

At the end of Schedule 2, insert—

“20. The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities.

21. Any function of a local authority in their capacity as a harbour authority (to the extent that the function does not fall within paragraph 1 of this Schedule.”**(a)**.

PART III
SCHEDULE 3 AMENDMENT

Insert, at the appropriate place—

“(1) <i>Plans and strategies</i>	(2) <i>Reference</i>
Local Transport Plan	Section 108(3) of the Transport Act 2000 (c. 38).”.

(a) As to paragraph 20, *see* section 113 of the Local Government Act 1972 (c. 70). As to paragraph 21, *see*, in particular, the Harbours, Docks and Piers Clauses Act 1847 (c. 27), the Harbours Act 1964 (c. 40), the Docks and Harbours Act 1966 (c. 28), the Prevention of Oil Pollution Act 1971 (c. 60), the Pilotage Act 1987 (c. 21) and the Merchant Shipping Act 1995 (c. 21).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (“the 2000 Regulations”). Paragraphs (3) to (5) of regulation 1 provide for the amendments to come into force at different times for different descriptions of local authority, according to whether or not the authority are operating executive arrangements or alternative arrangements under Part II of the Local Government Act 2000 when these Regulations come into force.

Regulation 2(a) makes four amendments to regulation 4 (functions not to be the sole responsibility of an authority’s executive). The effect of the first is to secure that approval of issues papers and draft policies and proposals associated with the preparation of an altered or replacement development plan, prior to public consultation under regulation 10 or 22 of the Town and Country Planning (Development Plans) (England) Regulation 1999, is not the function of the executive of a local authority.

The effect of the second and third amendments is to limit the responsibility of an authority’s executive to the making of applications—

- (a) under section 135(5) of the Leasehold Reform, Housing and Urban Development Act 1993 for the inclusion of disposals in a disposals programme, and
- (b) for consent to such disposals under section 32 or 43 of the Housing Act 1985.

(By virtue of regulation 4(5) and (6) of the 2000 Regulations, the authority retain the function of authorising the making of such applications.)

The effect of the fourth amendment is to restrict the authority’s executive to authorising, pursuant to orders under section 70 of the Deregulation and Contracting Out Act 1994, the contracting out of functions that are the responsibility of the executive, and to revoking only those authorisations that relate to functions that are the executive’s responsibility.

Parts I, II and III of the Schedule to these Regulations (which are introduced by regulation 2(b) to (d)) set out amendments to Schedules 1, 2 and 3, respectively, to the 2000 Regulations.

The amendments to Schedule 1 (functions not to be the responsibility of an authority’s executive) are primarily concerned with functions relating to public rights of way (the new *Part I* of paragraph I of that Schedule). Most of the functions in that Part relate to provisions of the Highways Act 1980, as amended or inserted by the Countryside and Rights of Way Act 2000. The new *Part II* of paragraph I contains other entries relating to miscellaneous functions, of which some are new. There are some additions to the licensing functions in paragraph B of Schedule 1.

The effect of the amendments to Schedule 2 to the 2000 Regulations (functions which may be (but need not be) the responsibility of an authority’s executive) is that a local authority may decide—

- (a) whether the power under section 113 of the Local Government Act 1972 to place their staff at the disposal of other local authorities should be exercisable by their executive; and
- (b) whether functions in their capacity as a harbour authority (to the extent that those functions are not contained in local Acts, to which paragraph 1 of Schedule 2 is relevant) should be exercisable by their executive.

The amendment to Schedule 3 (functions not to be the sole responsibility of an authority’s executive) is consequential on the Transport Act 2000. Local Transport Plans, prepared under section 108(3) of that Act, become plans to which regulation 4(1) of the 2000 Regulations applies.

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