EXPLANATORY MEMORANDUM TO THE

LOCAL AUTHORITIES (ELECTED MAYORS) (ENGLAND) REGULATIONS 2004

2004 No. 1815

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

2. Description

This instrument uses powers under the Local Government Act 2000 to specify enactments for the purpose of which an elected mayor of a local authority in England is to be treated as a member of the authority.

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

None

4. Legislative Background

4.1 The Local Government Act 2000 introduced new constitutional structures for local authorities. Under the provisions of the Act many local authorities now operate "executive arrangements". These are arrangements by which a local authority sets up and operates a separate executive to be responsible for the management of certain functions of the authority. There are several possible forms an executive may take, some of which may include a directly elected mayor.

4.2 Section 39(5) of the Local Government Act 2000 provides that an elected mayor is to be treated as a member of a local authority for the purposes of such enactments as may be specified in regulations made by the Secretary of State under that subsection.

4.3 Section 101 of the Local Government Act 2000 confers powers on the Secretary of State to make provision for or in connection with conferring power on relevant authorities in England to provide indemnities to some or all of their members and officers. The First Secretary of State intends to lay an Order, before both Houses of Parliament, under these powers to specify circumstances in which relevant authorities in England and police authorities in Wales may provide indemnities to their officers and members, or to insure those persons instead of providing an indemnity.

4.4 In order to ensure that elected mayors in England are "members" for the purposes of this Order, these Regulations are being made and laid under the power in section 39(5) of the Local Government Act 2000, specifying certain provisions in section 101 of the Local Government Act 2000 as enactments for the purposes of which elected mayors are to be considered members.

5. Extent

5.1 This instrument applies to England only.

5.2 It applies to those relevant local authorities in England that have elected Mayors.

6. European Convention on Human Rights

This instrument is subject to negative procedure and does not amend primary legislation. Therefore no statement as to compatibility is required.

7. Policy background

7.1 These Regulations are connected with, although not dependent on, an Order which is shortly to be laid before Parliament, under the affirmative procedure, under section 101 of the Local Government Act 2000, providing that authorities may grant indemnities to their members and officers . The policy background to these Regulations is therefore connected with the policy background to that Order.

7.2 During the passage of the Local Government Act 2000 it was suggested that there was ambiguity regarding the circumstances in which members and officers could be indemnified. There was insufficient time to resolve the ambiguity at the time. Accordingly the Act conferred a power under section 101 to allow the Secretary of State to make an Order to provide authorities with the ability to indemnify their members and officers in respect of personal liabilities incurred in connection with their service on behalf of their authority. Case law has developed since the passing of the Act, but the legal position is still not entirely clear and thus the Secretary of State has concluded that an Order should be made in order to provide a firm foundation on which authorities may grant indemnities.

7.3 The indemnities policy has two objectives. The first is to clarify the existing legal situation to make clear provision for circumstances in which relevant authorities can provide indemnities, both through their own resources and through insurance, to officers and members. The second is to enable relevant authorities to provide indemnities in a wider range of circumstances than is presently possible. It is proposed that both of these objectives can best be achieved by providing relevant authorities with a new power to provide indemnities and an Order to that effect will be laid in due course. It is proposed that under the Order authorities should be able to make provision to cover elected mayors. However, the definition of "member" for the purposes of section 101 does not specifically include elected mayors. These Regulations have been made to ensure that elected mayors are members for this purpose.

8. Impact

8.1 A Regulatory Impact Assessment has been prepared in connection with the associated Order under section 101 of the Local Government Act 2000. The Assessment touches on the inclusion of elected mayors as those in respect of whom authorities may make provision. A copy of that document is attached.

8.2 The impact of these regulations on the public sector is limited. The associated Order intends to clarify and in some situations extend the circumstances in which relevant authorities can provide indemnities to members and officers. If that Order is made, should authorities choose to make use of some or all of this new power some may face larger insurance premiums (if they choose to insure against the risk) or an increased risk of an individual calling on an indemnity. This is discussed in more detail in the Regulatory Impact Assessment. These Regulations make clear that Mayors should be considered members for the purposes of the associated Order and as such will only have a limited impact beyond that of the Order.

9. Contact

James Holdaway at the Office of the Deputy Prime Minister - Tel: 020 7944 4184 or e-mail: james.holdaway@odpm.gsi.gov.uk - can answer any queries regarding the instrument.