EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES) (ENGLAND) (AMENDMENT) (No. 2) REGULATIONS 2007

2007 No. 1557

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Description

These Regulations amend the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853) ("the 2000 Regulations") for the purposes of certain local authority functions conferred under or by virtue of the Health Act 2006.

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

None.

4. Legislative Background

4.1 The 2000 Regulations, which have been amended in relevant respects by S.I. 2004/2748, S.I. 2006/886 and S.I. 2007/1284, were made under sections 13 and 105 of the Local Government Act 2000 ("the 2000 Act"). Under section 13 of the 2000 Act, a function of a local authority operating executive arrangements is the responsibility of an executive of that authority subject to any provision made by the 2000 Act or by any enactment passed or made after 28th July 2000. This is unless the relevant function is specified in regulations made under that section. The current regulations are the 2000 Regulations.

4.2 The 2000 Regulations may be used to specify a function:

(a) to be a function which is not to be the responsibility of an authority's executive;

(b) to be a function which may be (but need not be) the responsibility of such an executive; and

(c) to be a function which:

(i) to the extent provided is to be the responsibility of such an executive; and

(ii) to the extent provided is not to be the responsibility of such an executive.

4.3 The functions which are the subject of these Regulations are:

(a) the power to enforce offences relating to the display of no-smoking signs under section 6 of the Health Act 2006;

(b) the power to enforce offences relating to smoking in smoke-free places under section 7(4) of the 2006 Act;

(c) the power to enforce the offence of failing to prevent smoking in smoke-free places under section 8(4) of the 2006 Act; and

(d) the power to transfer enforcement functions to another enforcement authority under the Smoke-free (Premises and Enforcement) Regulations 2006 (S.I. 2006/3368).

4.4 The Regulations come into force on 1st July 2007.

5. Territorial Extent and Application

This instrument applies to local authorities in England only.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy relating to the allocation of responsibility for functions in an authority operating executive arrangements, where the function involves a matter referred to below, is that the function should not be the responsibility of the authority's executive.

7.2 The matters are:

(a) constitutional and quasi-legislative matters;

(b) the determination of an application for a licence, approval, consent, permission or registration; or

(c) the direct regulation of a person together with any related enforcement action (other than cases where there is only limited discretion in the discharge of the function).

7.3 The functions under the Health Act 2006 which are the subject of these Regulations are concerned with the direct regulation of a person and enforcement action that may be taken in respect of offences relating to smoke-free premises, etc.

7.4 In accordance with the policy outlined in paragraphs 7.1 and 7.2, those functions should not be the responsibility of the executive.

These Regulations therefore amend the 2000 Regulation so as to provide for this.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen.

9. Contact

Luke Scofield at the Department for Communities and Local Government Tel: 020 7944 4275 or Email: luke.scofield@communities.gsi.gov.uk can answer any queries regarding the instrument.