EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES) (ENGLAND) (AMENDMENT) REGULATIONS 2007

2007 No. 1284

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 under the Gambling Act 2005.

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 and S.I. 2006/886, 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 designate an officer of a licensing authority under section 304 of the 2005 Act as an authorised person for a purpose relating to premises;

(b) the power to institute criminal proceedings under section 346 of the 2005 Act for offences under section 342 (relating to the giving of false information);

(c) the power to exchange information under section 350 of the 2005 Act; and

(d) functions relating to the determination of fees for premises licences under the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 (S.I. 2007/479).

4.4 The Regulations come into force on 21st May 2007 which is when the provisions in the 2005 Act which provide for the functions mentioned in paragraph 4.3 are commenced.[1] A separate set of regulations will be made at a later date in relation to functions contained in provisions of the 2005 Act which have yet to be commenced.

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 is set out below.

7.2 Functions which are not to be the responsibility of an executive are functions which involve:

(a) constitutional and quasi-legislative matters;

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

[1] The relevant provisions are commenced by the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 (S.I. 2006/3272), as amended by S.I. 2006/3361 and S.I. 2007/1157.

(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 Functions which may (but need not be) the responsibility of an executive fall into two categories:

(a) locally derived functions (i.e. those conferred by local acts, other than those specified in the 2000 Regulations); and

(b) functions which depending on the circumstances, may be appropriate for either the full council or an executive.

7.4 It is for the authority concerned to determine the extent to which such functions are to be the responsibility of an executive. The authority may also specify actions in connection with the discharge of those functions which are to be the responsibility of an executive.

7.5 Functions which are to be the shared responsibility of the full council and the executive are those relating to the council's policy framework and budget. The 2000 Regulations provide that the executive is responsible for making proposals to the full council in relation to the budget and statutory plans and strategies, such as those listed in Schedule 3 (functions not to be the sole responsibility of an authority's executive) to those Regulations.

Gambling Act 2005

7.6 The majority of licensing authority[2] functions under the 2005 Act are to be discharged by the authority's licensing committee. This mirrors the position in relation to licensing authority functions under the Licensing Act 2003 (see item 14A in paragraph B of Schedule 1 to the 2000 Regulations, inserted by S.I. 2004/2748).

7.7 To the extent that a function under the 2005 Act (a) is not delegated to the authority's licensing committee[3] or (b) is referred back to the licensing authority in cases where that committee is unable to discharge the function, the function is not to be the responsibility of the executive. This mirrors the approach taken in relation to the discharge of licensing functions under the 2003 Act.

7.8 These Regulations amend the 2000 Regulations so that they specify the functions which are mentioned in paragraph 4.3 as functions which are not to be the responsibility of the executive.

[2] 'Licensing authority' is defined in section 2 of the 2005 Act.

[3] Licensing authority functions under the Gambling Act 2005, with the exception of those conferred by sections 166, 212 and 349, are delegated to the licensing committee by virtue of section 154(2) of that Act.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

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.