EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES) (ENGLAND) (AMENDMENT) REGULATIONS 2026

2026 No. 1076

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Matthew Pennycook, Minister of State for Housing and Planning at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Lucy Hargreaves, Deputy Director for Development Management, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Theresa Donohue at the Ministry of Housing, Communities and Local Government can be contacted by email at the following address with any queries regarding the instrument: pdmcorrespondence@communities.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853) (the 2000 Regulations) apply to English local authorities operating executive arrangements. Under section 9D(2) of the Local Government Act 2000 (c. 22), the 'default' rule is that the functions of such an authority are to be the responsibility of its executive. However, the 2000 Regulations set out exceptions to this rule, including by specifying functions which are not to be the responsibility of an executive, and by specifying functions which may be (but need not be) the responsibility of an executive.

4.2 Schedule 1 to the 2000 Regulations sets out functions which are not to be the responsibility of the executive, or 'non-executive' functions. These are therefore the responsibility of the full council, though the council generally may decide to delegate any of those functions to a committee, sub-committee or an officer of the council (see section 101 of the Local Government Act 1972 (c. 70)).

4.3 This instrument amends the 2000 Regulations by updating and restating the list of planning functions which are to be 'non-executive' functions. The instrument also makes additions to Schedule 2 to the 2000 Regulations (functions which may be, but

need not be, the responsibility of the executive) and corrects a minor drafting error in the 2000 Regulations.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Schedule 1 to the 2000 Regulations sets out the functions which are not to be the responsibility of an authority's executive (i.e. those which are to be considered 'non-executive' functions). Part A of the Schedule sets out the planning functions which are to be considered non-executive functions (being mainly functions relating to planning decision-taking and development management). However, this part of the Schedule has not been consistently updated as new planning functions have been introduced in the period since the 2000 Regulations were laid.

5.2 This instrument therefore seeks to bring the list of planning functions which should be considered 'non-executive' functions up to date. This is necessary to ensure that all planning functions are dealt with at the appropriate level within councils.

5.3 In particular, this update is necessary at this time to ensure that the national scheme of delegation for planning decisions in England, which will come into effect on 31st October 2026, can operate as intended. The national scheme of delegation is set out in the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 (S.I. 2026/854) and governs which planning applications must be determined by officers and which may be determined by committees in certain circumstances. For the national scheme of delegation to work as intended, the functions of determining all the applications covered by the scheme must be 'non-executive' functions.

5.4 In updating and restating the list of planning functions in the 2000 Regulations, a different presentational approach has been taken. Rather than list each individual planning function, where possible, functions have been grouped together; for example, by referring to all the functions under a particular Part of the Town and Country Planning Act 1990. This approach is intended to make the Regulations easier to follow and potentially to reduce the need for further updates should new planning functions be introduced in the future.

What was the previous policy, how is this different?

5.5 Previously, the 2000 Regulations did not contain a comprehensive and up-to-date list of planning functions which should be considered 'non-executive' functions. This instrument now sets out an updated and restated list of planning functions.

5.6 For example, prior to this instrument, the duty to approve a biodiversity net gain plan was not listed in Schedule 1 to the 2000 Regulations. The technical result was that, pursuant to section 9D(2) of the Local Government Act 2000 (c. 22), where that function was to be exercised by a local authority operating executive arrangements, it was not clear that that function should be a non-executive function. This instrument

now clarifies that this function, and the others now added to Schedule 1, is to be a non-executive function.

6. Legislative and Legal Context

How has the law changed?

6.1 This Order amends the 2000 Regulations to update and consolidate the existing paragraph A of Schedule 1 to the 2000 Regulations, in setting out which planning-related functions of a local authority are not to be the responsibility of the executive of that authority. The Order also inserts three additional functions into Schedule 2 to the 2000 Regulations to the effect that a local authority operating executive arrangements may decide whether those specific functions should be the responsibility of their executive.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes, as it is the 2000 Regulations which set the legal framework for which functions (including planning functions) are to be considered 'non-executive' functions.

7. Consultation

Summary of consultation outcome and methodology

7.1 We have not consulted on these changes, as their principal purpose is simply to ensure that the 2000 Regulations are comprehensive and up to date in relation to planning functions.

8. Applicable Guidance

8.1 Local authorities are familiar with the rules governing the allocation of responsibilities for different functions and specific guidance on these changes is therefore, not considered necessary.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it deals with administrative processes within local authorities only.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument deals with administrative processes within local authorities only.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the instrument makes minimal changes to administrative processes.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through routine engagement with local authorities and other key stakeholders.

10.2 The instrument does not include a statutory review clause because it does not impact on businesses.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The procedure for free issue has been applied as this instrument corrects an error in S.I. 2000/2853. The Ministry of Housing, Communities and Local Government have complied with the requirement to consult with the SI Registrar.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").