

2012 No. 1019

LOCAL GOVERNMENT, ENGLAND

**The Local Authorities (Arrangements for the Discharge of
Functions) (England) Regulations 2012**

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| <i>Made</i> - - - - | <i>30th March 2012</i> |
| <i>Laid before Parliament</i> | <i>10th April 2012</i> |
| <i>Coming into force</i> - - | <i>4th May 2012</i> |

The Secretary of State for Communities and Local Government, in exercise of the powers conferred by sections 9EA, 9EB and 105 of the Local Government Act 2000(a), makes the following Regulations.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and come into force on 4th May 2012.

Interpretation

2. In these Regulations—

“the 1972 Act” means the Local Government Act 1972(b);

“the 2000 Act” means the Local Government Act 2000;

“relevant authority” means a local authority within the meaning of section 101 of the 1972 Act(c); and

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- (a) 2000 c.22. Sections 9EA and 9EB were inserted into the Local Government Act 2000 by section 21 of, and Schedule 2 to, the Localism Act 2011 (c.20).
- (b) 1972 c.70.
- (c) Section 101 was amended by section 30 of, and Schedule 10 to, the Health and Social Services and Social Security Adjudications Act 1983 (c.41); sections 84 and 102 of, and Schedules 14 and 17 to, the Local Government Act 1985 (c.51); the Statute Law (Repeals) Act 1986 (c.12); section 237 of, and Schedule 13 to, the Education Reform Act 1988 (c.40); sections 45(5) and 194 of, and Schedule 12 to, the Local Government and Housing Act 1989 (c.42); section 307 of, and Schedules 19 and 21 to, the Education Act 1993 (c.35); section 93 of, and Schedule 9 to, the Police and Magistrates’ Courts Act 1994 (c.29); section 66(5) of, and Schedule 15 to, the Local Government (Wales) Act 1994 (c.19); section 120 of, and Schedule 24 to, the Environment Act 1995 (c.25); section 332(1) of the Greater London Authority Act 1999 (c.29); section 198 of, and Schedule 6 to, the Licensing Act 2003 (c.17); section 64 of, and Schedule 5 to, the Children Act 2004 (c.31); section 209 of, and Schedule 6 to, the Local Government and Public Involvement in Health Act 2007 (c.28); section 224 of the Planning Act 2008 (c.29); section 119 of, and Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009 (c.20); section 321 of, and Schedule 22 to, the Marine and Coastal Access Act 2009 (c.23); section 99 of, and Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c.13); section 22 of, and Schedule 3 to, the Localism Act 2011 (c.20); (in relation to England) S.I. 2001/1517; and S.I. 2009/1375.

“relevant executive” means an executive of a local authority under either Part 1A or Part 2 of the 2000 Act.

PART 2

Persons with power to make arrangements

Persons with power to make arrangements: mayor and cabinet executives

3. In the case of a local authority^(a) which has a mayor and cabinet executive, the following persons have power to make arrangements under regulation 5 and to make arrangements under section 101(5) of the 1972 Act (arrangements for discharge of functions by local authorities) in accordance with Part 4—

- (a) the elected mayor as respects any functions which are the responsibility of the executive;
- (b) unless the elected mayor otherwise directs—
 - (i) the executive of the local authority;
 - (ii) a member of the executive other than the elected mayor; or
 - (iii) a committee of the executive,

as respects any functions which, by virtue of section 9E of the 2000 Act (discharge of functions: general), may be discharged by the executive, that member or, as the case may be, that committee.

Persons with power to make arrangements: leader and cabinet executives (England)

4. In the case of a local authority which has a leader and cabinet executive (England), the following persons have power to make arrangements under regulation 5 and to make arrangements under section 101(5) of the 1972 Act in accordance with Part 4—

- (a) the executive leader as respects any functions which are the responsibility of the executive;
- (b) unless the executive leader otherwise directs—
 - (i) the executive of the local authority;
 - (ii) a member of the executive other than the executive leader; or
 - (iii) a committee of the executive,

as respects any functions which, by virtue of section 9E of the 2000 Act, may be discharged by the executive, that member or, as the case may be, that committee.

PART 3

Discharge of functions by another relevant authority

Discharge of an executive’s functions by another relevant authority or another relevant executive

5.—(1) Subject to paragraph (3), a person with power to make arrangements under this regulation, in relation to a local authority, may make the arrangements specified in paragraph (2).

(2) The arrangements referred to in paragraph (1) are arrangements for a function which is the responsibility of the executive of the local authority to be discharged by—

- (a) a relevant authority (other than the local authority); or

(a) Local authority is defined in section 9R of the Local Government Act 2000 (c.22).

- (b) a relevant executive (other than an executive of the local authority).
- (3) If the function which is the responsibility of the executive of the local authority—
 - (a) is also a function which is, or which becomes, the responsibility of the relevant executive of the other authority; or
 - (b) is not, or ceases to be, a function of the other relevant authority and that other authority is operating, or begins to operate, executive arrangements,

the arrangements referred to in paragraph (1) must not or, as the case may be, must no longer provide for the other relevant authority to discharge that function but may provide for the executive of the other relevant authority to discharge it.

- (4) Any arrangements made under this regulation—
 - (a) are not to prevent the person who made the arrangements from exercising the functions to which they relate; and
 - (b) are to be made with the other relevant authority concerned.

Discharge of a local authority's functions by the relevant executive of another authority

6.—(1) A relevant authority in England may make arrangements for the discharge of any of its functions, which are not the responsibility of an executive of that authority, by a relevant executive (other than an executive of the relevant authority) in accordance with this regulation.

(2) Arrangements may only be made for the relevant executive of the other authority to discharge any function referred to in paragraph (1) if the function is also a function of that other relevant authority and is the responsibility of the executive of that authority.

- (3) Any arrangements made under this regulation—
 - (a) are not to prevent the authority which made the arrangements from exercising the functions to which they relate; and
 - (b) are to be made with the other relevant authority concerned.

Responsibility for functions delegated to the relevant executive of another authority

7. Where, by virtue of regulation 5 or 6, arrangements are in force for the discharge of any functions of a local authority, or for the discharge of any functions which are the responsibility of the executive of that authority, by the relevant executive of another authority, those functions are to be treated, for the purposes of section 9E of the 2000 Act, as functions which are the responsibility of the relevant executive of that other authority.

Further delegation of discharge of functions delegated to another relevant authority

8.—(1) Where, by virtue of regulation 5, arrangements are in force for the discharge of any functions which are the responsibility of the executive of a local authority by another relevant authority, then, subject to the terms of the arrangements, that other authority may arrange for the discharge of any of those functions by a committee, sub-committee or officer of theirs.

(2) Where by virtue of paragraph (1) any functions may be discharged by a committee of a relevant authority, then, unless that authority otherwise directs, the committee may arrange for the discharge of any of those functions by a sub-committee or an officer of the authority.

(3) Where by virtue of paragraph (1) or (2) any functions may be discharged by a sub-committee of a relevant authority, then, unless that authority or, as the case may be, that committee otherwise directs, the sub-committee may arrange for the discharge of any of those functions by an officer of the authority.

PART 4

Joint exercise of functions

Joint arrangements for exercise of an executive's functions

9.—(1) Arrangements made under section 101(5) of the 1972 Act, in relation to functions which are the responsibility of an executive of a local authority, by a person on whom the power to do so is conferred by regulation 3 or 4, in relation to that authority, must be made in accordance with this Part.

- (2) Any arrangements made in relation to a function are to be made—
 - (a) if the function is a function which is also the responsibility of the executive of the other relevant authority concerned, with the person who, by virtue of regulation 3 or 4, has power to make such arrangements in relation to that other authority; and
 - (b) in any other case, with the other relevant authority.

Variation of joint arrangements

10.—(1) If a function, in relation to which arrangements have been made in accordance with regulation 9(2)(b), is a function which becomes the responsibility of the relevant executive of the other authority, the person who by virtue of regulation 3 or 4 has power to make arrangements under section 101(5) in accordance with this Part must take the action specified in paragraph (2).

(2) As soon as reasonably practicable after the executive becomes responsible for the function, the person must—

- (a) decide whether or not the function is to continue to be discharged in relation to the authority in accordance with the existing arrangements; and
- (b) notify in writing all the other parties to the arrangements—
 - (i) that the executive of the relevant authority has become responsible for the function; and
 - (ii) what decision he or she has made under sub-paragraph (a).

(3) Until the person decides whether or not the function is to continue to be discharged in accordance with the existing arrangements, and notifies in writing that decision to all the other parties to the arrangements, the function is to continue to be discharged under the existing arrangements.

(4) Where the person decides that the function is to continue to be discharged in accordance with the existing arrangements, the function is to continue to be so discharged.

(5) Where the person decides that the function is not to continue to be discharged in accordance with the existing arrangements, and has notified in writing that decision to all the other parties to the arrangements, the function must cease to be so discharged.

Arrangements involving joint committees

11.—(1) Paragraph (2) applies where—

- (a) arrangements are made under section 101(5) of the 1972 Act at the same time in relation to more than one function;
- (b) at least one of those functions is one which is the responsibility of an executive of a local authority; and
- (c) the arrangements in respect of each function are made on behalf of the same local authorities, regardless of who made the arrangements on behalf of each authority in respect of each function.

(2) Where this paragraph applies the arrangements may provide for one joint committee to discharge all the functions which are the subject of the arrangements on behalf of those authorities.

(3) Subject to paragraph (4), where the arrangements provide for the discharge of functions by a joint committee, the joint committee may be a new joint committee or an existing joint committee.

(4) Arrangements made under this Part may only provide for an existing joint committee to discharge functions on behalf of the authorities concerned where each function, which the joint committee will discharge or will continue to discharge once the arrangements are made, is to be discharged on behalf of each of those authorities and not on behalf of any other authorities.

(5) Where arrangements provide for the discharge of functions by a joint committee and the functions to be discharged by that joint committee, in relation to an authority, are all the responsibility of the authority—

- (a) appointment of the joint committee is to be made, under section 102(1)(b) of the 1972 Act; and
- (b) the number of members to be appointed, their term of office, and the area (if restricted) within which the committee is to exercise its authority, are to be fixed, under section 102(2) of the 1972 Act,

in relation to the authority, by the authority.

(6) Where arrangements provide for the discharge of functions by a joint committee and the functions to be discharged by that joint committee, in relation to an authority, are all the responsibility of the executive of the authority—

- (a) appointment of the joint committee is to be made, under section 102(1)(b) of the 1972 Act; and
- (b) the number of members to be appointed, their term of office, and the area (if restricted) within which the committee is to exercise its authority, are to be fixed, under section 102(2) of the 1972 Act,

in relation to the authority, by the person who, by virtue of regulation 3 or 4, has power to make arrangements under section 101(5) of the 1972 Act in accordance with this Part.

(7) Where arrangements provide for the discharge of functions by a joint committee and one or more, but not all, of the functions to be discharged by that joint committee, in relation to an authority, are the responsibility of the executive of the authority—

- (a) appointment of the joint committee is to be made, under section 102(1)(b) of the 1972 Act; and
- (b) the number of members to be appointed, their term of office, and the area (if restricted) within which the committee is to exercise its authority, are to be fixed, under section 102(2) of the 1972 Act,

in relation to the authority, by the authority with the agreement of the executive of that authority.

(8) A joint committee appointed in accordance with this regulation may, subject to the terms of the arrangements and unless a relevant person, if any, directs otherwise, arrange for the discharge of any of its functions by a sub-committee of the joint committee or an officer of one of the authorities concerned.

(9) Any sub-committee appointed in accordance with paragraph (8) may, subject to the terms of the arrangements and unless the joint committee or a relevant person, if any, directs otherwise, arrange for the discharge of any of its functions by an officer of one of the authorities concerned.

(10) In paragraphs (8) and (9), “a relevant person” means, in relation to any local authority whose functions are the subject of the arrangements and where the function in question is the responsibility of the executive of that authority—

- (a) where the local authority has a mayor and cabinet executive, the elected mayor; or
- (b) where the local authority has a leader and cabinet executive, the executive leader.

Members of joint committees

12.—(1) A local authority may exercise the function under section 102(3) of the 1972 Act (appointment of persons who are not members of the authority) in relation to a joint committee where members of that committee are appointed by the local authority in accordance with paragraph (5) or (7) of regulation 11.

(2) Subject to paragraphs (3) to (8), every person appointed to a joint committee in accordance with regulation 11 by an executive, a member of an executive or a committee of an executive must be a member of that executive, and the political balance requirements do not apply to the appointment of such members.

(3) Where—

- (a) the joint committee is discharging a function in relation to five or more relevant authorities; or
- (b) the function which the joint committee is discharging is a function which is required by statute to be discharged by a joint committee,

every person appointed to the joint committee in relation to an authority, in accordance with regulation 11, by the authority's executive, a member of the executive or a committee of the executive must be a member of that executive or of that authority, and the political balance requirements do not apply to the appointment of such members.

(4) Where arrangements provide for the discharge of functions by a joint committee and one or more, but not all, of the functions to be discharged by that joint committee, in relation to an authority, are the responsibility of the executive of that authority—

- (a) where only one member of the authority is a member of the joint committee, that person may be, but need not be, a member of the executive of the authority; and
- (b) where more than one member of the authority is a member of the joint committee, at least one member of the executive of the authority must be a member of the joint committee.

(5) Paragraph (6) applies where—

- (a) arrangements provide for the discharge of functions by a joint committee;
- (b) the functions to be discharged by that joint committee, in relation to an authority, are all the responsibility of the executive of that authority; and
- (c) the joint committee previously discharged one or more functions in relation to the local authority which were not the responsibility of the executive of the authority.

(6) Where this paragraph applies—

- (a) if sub-paragraph (a) or (b) of paragraph (3) applies, any member of the joint committee, who was appointed by the local authority and is not a member of the authority or of the executive of the authority, ceases to be a member of the joint committee;
- (b) if neither sub-paragraph (a) nor (b) of paragraph (3) applies, any member of the joint committee, who was appointed by the local authority and is not a member of the executive of the authority, ceases to be a member of the joint committee; and

any other member of the joint committee, who was appointed by the local authority, is to be treated as if he or she had been appointed by the person who, by virtue of regulation 3 or 4, has power to make arrangements under section 101(5) of the 1972 Act in accordance with regulation 11.

(7) Where—

- (a) the joint committee has functions in respect of part only of the area of one of the local authorities concerned; and
- (b) those functions are the responsibility of the executive of that authority,

the representatives of that authority on the joint committee may include any members of that authority who have been elected for electoral divisions or wards which are wholly or partly within that part of the authority's area, and the political balance requirements do not apply to the appointment of those members.

(8) Where the joint committee is established under arrangements made between a county council and a single district council for the discharge of functions which are the responsibility of the executive of the county council, the representatives of the county council on the joint committee may include any members of the county council who have been elected for electoral divisions which are wholly or partly within the area of the district council, and the political balance requirements do not apply to the appointment of those members.

(9) Where the joint committee has functions in respect of part of the area of one of the local authorities concerned and the representatives of that authority on that committee are appointed, in accordance with regulation 11, by the authority itself, the political balance requirements do not apply to the appointment of those representatives and those representatives must be members of that local authority who have been elected for electoral divisions or wards which are wholly or partly within that part of the authority's area.

PART 5

Revocations

Revocations

13. The following Regulations are revoked—

- (a) the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000(a);
- (b) the Local Authorities (Arrangements for the Discharge of Functions) (England) (Amendment) Regulations 2001(b).

Signed by authority of the Secretary of State for Communities and Local Government

Andrew Stunell

Parliamentary Under Secretary of State

Department for Communities and Local Government

30th March 2012

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1A of the Local Government Act 2000 enables a local authority to make arrangements for the creation and operation of an executive which is responsible for certain functions of the local authority. The executive must take one of the forms specified in section 9C of that Act.

These Regulations enable arrangements to be made for the discharge of functions, which are the responsibility of a local authority executive, by another local authority or an executive of another local authority (regulation 5). Regulations 3 and 4 set out who may make such arrangements in relation to mayor and cabinet executives and leader and cabinet executives (England).

These Regulations also enable a local authority to make arrangements for the discharge of its functions, which are not the responsibility of an executive of that authority, by the executive of another local authority (regulation 6).

(a) S.I. 2000/2851.

(b) S.I. 2001/3961.

Where the arrangements made under regulation 5 or 6 are for the discharge of functions by the executive of another local authority, those functions are treated as the responsibility of that executive for the purposes of section 9E of the Local Government Act 2000 (regulation 7).

Where the arrangements made under regulation 5 are for the discharge of functions by another local authority, regulation 8 makes provision for the discharge of those functions by a committee, sub-committee or officer of the other authority.

Regulation 9 makes provision in connection with the discharge of functions jointly by two or more authorities where any of those functions are the responsibility of an executive of a local authority, and regulation 10 provides for variation of such arrangements where the function in question ceases to be an executive function.

Regulation 11 makes provision for joint arrangements to involve a joint committee, under section 101(5) of the Local Government Act 1972 and regulation 12 makes provision in respect of membership of joint committees. Regulations 3 and 4 also apply to who may make these arrangements.

A full impact assessment has not been produced in relation to these Regulations as no impact on the private or voluntary sectors is foreseen.

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