

LOCAL GOVERNMENT ACT 2000

EXPLANATORY NOTES

INTRODUCTION

Part I: Promotion of Economic, Social Or Environmental Well-Being

Summary

4. Part I of the Act gives local authorities powers to take any steps which they consider are likely to promote the well-being of their area or their inhabitants. It also places authorities under a duty to develop community strategies, together with other local bodies, for this purpose. These provisions are intended to give local authorities increased opportunities to improve the quality of life of their local communities.
5. Part I also enables the Secretary of State to remove statutory constraints on authorities' ability to exercise the new well-being power and on their ability to plan co-ordinated local action.

Background

6. Local authorities are statutory corporations and operate within a framework laid down by statute. They have no powers to act other than where they are expressly authorised by law to do so. There is a wide range of statutory duties which authorities are required to fulfil, and an even wider range of permissive powers enabling them to undertake defined activities if they so wish.
7. In addition, local authorities have a small number of 'general' powers. The most significant of these is section 137 of the Local Government Act 1972, which permits authorities to incur expenditure that is in the interests of their area, subject to certain conditions. One of those conditions is that section 137 cannot be used for any purpose for which there is authority in other legislation, or to overcome any limitations, prohibitions or conditions in other legislation.
8. This formulation has, on occasion, led the courts to take a restrictive view of the activities that can be pursued using section 137. In some cases, the courts have inferred from the absence of specific powers in other legislation that certain activities are prohibited and that an authority cannot, therefore, rely on its section 137 powers to overcome that prohibition. This has created uncertainty amongst local authorities and their potential partners about the extent to which authorities can rely on their general powers to undertake certain activities.
9. The scope of section 137 is further restricted by the limit on how much authorities can spend (currently between £1.90 and £3.80 per head of population depending on the class of authority); and by the additional restrictions placed on section 137 by the Local Government and Housing Act 1989. As a result of the 1989 Act, authorities must now be able to establish that any expenditure under section 137 is of "direct" benefit to their area which is "commensurate with the expenditure to be incurred".

10. Local authorities also have general economic development powers under sections 33 to 35 of the Local Government and Housing Act 1989. Again, these powers are heavily constrained by the restrictions placed on their use.
11. In the White Paper, *Modern Local Government: In Touch with the People*¹, the Government set out its view that community leadership should be at the heart of the role of modern local authorities. To enable local authorities to develop that role and to respond to the needs of local communities, the White Paper argued that authorities would need the freedom to work with other local public, private and voluntary organisations to develop solutions to local problems.
12. To provide authorities with the necessary freedoms, the White Paper proposed that local authorities' general powers should be extended; specifically, that they should be given a new discretionary power to take steps which in their view promote the economic, social and environmental well-being of those who live in, work in or visit the local area.
13. To facilitate a more co-ordinated and coherent response to local service delivery, the White Paper also proposed that authorities should be required to develop community strategies. These strategies, developed with local people, business, public and voluntary organisations would set out how the authority and its partners would work together to promote the well-being of their local community.

Commentary on sections

Sections 2 and 3: Promotion of well-being

14. *Section 2* provides local authorities with a power to take any steps which they consider are likely to promote or improve the economic, social or environmental well-being of their local community, subject to the restrictions contained in *section 3*.
15. Together, these sections allow local authorities to undertake a wide range of activities for the benefit of their local area and to improve the quality of life of local residents, businesses and those who commute to or visit the area. This is intended to clear up much of the uncertainty which currently exists about what authorities can do. Sections 2 and 3 allow authorities to take any action, unless it is subject to statutory prohibitions, restrictions or limitations specifically set out in legislation. The intention is to broaden the scope for local authority action while reducing the scope for challenge on the grounds that local authorities lack specific powers.
16. Amongst other things, *section 2(3)* means local authorities must consider the objectives and priorities contained in their community strategy before they take action under the power in *section 2(1)*. This is in no way meant to limit the scope of the power in *section 2(1)*. Rather it is designed to encourage authorities to think about the broad goals and objectives contained in the community strategy, before deciding how best to use their well-being power.
17. Additionally, *section 2(4)* makes clear that the power in *section 2(1)* enables authorities to work in partnership with other bodies. For example, it allows authorities to assist other statutory bodies to discharge their functions, or to exercise those functions on their behalf. This is intended to help local authorities and other statutory service providers to work together to provide services in ways which meet the needs of communities.
18. *Section 3* prevents local authorities from using the power in *section 2* to raise money. It also allows the Secretary of State, in relation to England, and the National Assembly for Wales (NAW), in relation to Wales, to prevent authorities from using the power to do anything which they specify by order that authorities should not do. This section also permits the Secretary of State and the NAW to issue guidance to authorities on

¹ Cm 4014, July 1998. Available from The Stationery Office (telephone: 0345 023474) or on the DETR website (www.detr.gov.uk).

the exercise of the power. Before issuing any guidance, the Secretary of State and the NAW would have to consult local government and others.

Section 4: Strategies for promoting well-being

19. *Section 4* requires authorities to work together with other bodies to establish a strategy for promoting the well-being of their local communities. Such strategies are intended to allow authorities, and other bodies who provide local services, to establish common priorities and determine the steps which they would take to address them.
20. This section also allows the Secretary of State and the NAW, following consultation with local government and others, to issue guidance on the exercise of the power.

Sections 5 to 7 and section 9: Powers to modify enactments

21. *Section 2* provides authorities with a broad power to act. Local authorities will be able to use the power except where there are specific prohibitions, restrictions or limitations in other legislation. There may, however, be statutory prohibitions, restrictions or limitations specifically set out in legislation which will be found to limit the use of the well-being power. *Section 5* allows the Secretary of State, by order, to amend, repeal, revoke or disapply any enactment which obstructs authorities from taking steps to promote the well-being of their communities. This power could be exercised in relation to particular local authorities.
22. *Section 6* allows the Secretary of State to amend, repeal, revoke or disapply any enactment which requires local authorities to prepare a plan or strategy. This power could also be exercised in relation to particular local authorities. This is a deregulatory power; it might, for example, be used to remove requirements for statutory plans which no longer served a useful purpose, or to amend the requirements on specific authorities so that they could work more efficiently with their local partners to plan how they would meet common priorities.
23. *Section 7* allows the NAW to exercise the powers in section 6 in relation to the plans specified in *section 7(2)*. The list of plans in that subsection is not yet comprehensive because not all the statutory plans where the NAW has a relevant role have yet been identified. *Subsection (2)(d)* therefore provides the Secretary of State with the powers to add further plans to the list, by order.
24. *Section 9* sets out the procedure to be followed by the Secretary of State in making orders under sections 5 or 6. It provides for detailed scrutiny of any such orders. Before laying any orders, the Secretary of State is required to consult local government and others (including, where the proposals would affect Welsh local authorities, the NAW). He must make available to Parliament the results of that consultation, together with a full explanation of the purpose of the order.

Section 8: Modification of section 137 of the Local Government Act 1972

25. *Section 8* modifies the general power contained in section 137 of the 1972 Act, as a consequence of the introduction of the new power contained in section 2 of this Act. It removes most of the powers contained in section 137 from the authorities to whom section 2 applies (as set out in *section 1*). It retains, for all authorities, the powers in section 137(3) of the 1972 Act, which permit authorities to make contributions to certain charitable funds.