

**EXPLANATORY MEMORANDUM TO THE
LOCAL GOVERNMENT (BEST VALUE AUTHORITIES) (POWERS TO
TRADE) (ENGLAND) (AMENDMENT) ORDER 2004**

2004 No. 2307

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. **Description**

The instrument uses the power in section 95(1) of the Local Government Act 2003 to make provision for certain fire and rescue authorities to recover in excess of full costs for specified services.

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

None.

4. **Legislative Background**

4.1 The Fire and Rescue Services Act 2004 received Royal Assent on 22nd July 2004 and most of its provisions will be commenced by order on 1st October 2004.

4.2 Section 19 of the 2004 Act provides that the Secretary of State may, by order, authorise fire and rescue authorities to charge a person of a specified description for any action of a specified description taken by the authority. The Fire and Rescue Services (England) Order 2004 (S.I. 2004/2304(C.100)) specifies the actions for which a fire and rescue authority may make a charge and specifies the persons who may be subject to the charge. By virtue of section 19(6), charges may only be made on a cost recovery basis.

4.3 Under the Fire Services Act 1947, which the 2004 Act repeals, some fire and rescue authorities charged for certain services they provided on a commercial basis. The purpose of this order is to provide transitional arrangements in respect of such authorities to allow them to continue to trade until September 2007. The Order amends the Local Government (Best Value Authorities) (Powers to Trade) (England) Order 2004 which gives local authorities other than fire and rescue authorities, general power to trade in the functions. Section 95 of the Local Government Act 2003, under which this Order is made, provides that any trading carried on by a local authority must be carried out through a company.

5. Extent

This instrument applies to England.

6. European Convention on Human Rights

Not applicable

7. Policy background

- 7.1 A power for certain local authorities (excluding fire and rescue authorities) to trade in function-related activities was introduced by section 95 of the Local Government Act 2003. While the power to charge under section 19 of the Fire and Rescue Services Act 2004 is limited to charging on a cost recovery basis, the policy intention is to authorise, in due course, fire and rescue authorities to provide certain services on a commercial basis. It is anticipated that all fire and rescue authorities will be subject to a comprehensive performance assessment by the Audit Commission over the next year. Any fire and rescue authority which is classified as excellent, good or fair by the Audit Commission as a result of that assessment will be permitted to trade in certain services, yet to be determined, and a further suitable amendment to the Local Government (Best Value Authorities) (Powers to Trade) (England) Order 2004 will be made at the appropriate time.
- 7.2 During the passage of the Fire and Rescue Services Bill it became clear that some fire and rescue authorities had interpreted their power to charge for the provision of services under section 3 of the Fire Services Act 1947 as allowing them to provide services on a commercial basis. To take account of this existing trading and to avoid unfairness, a concession was announced during Lords Committee stage of the Bill in relation to those authorities that were already trading in services on or before 1st April 2004.
- 7.3 Fire Service Circular 18/2004 requested that the 47 English Brigades confirm what services they had been trading in since the specified date. Nil returns were also required. This was completed on the 13th August 2004.
- 7.4 The Order specifies by name the authority and the service(s) in which they currently trade. Authorities who were not trading on or before 1st April are not mentioned in the Order.
- 7.5 Trading not conducted under the Order and which does not come within other powers will not be lawful.

- 7.6 These income streams will be reviewed after the introduction of the comprehensive performance assessment (CPA) for fire and rescue authorities in 2005. The intention is that the new trading powers will be available to councils judged 'fair', 'good' and 'excellent' in the CPA.
- 7.7 Article 3 of the Fire and Rescue Services Act (Commencement) (England and Scotland) Order 2004 S.I. 2004/2304 (C.100) provides for certain savings which affect this Order. Article 3(1) provides that where an authority, before 1st October 2004, provides or contracts to provide a service in exercise of its powers under section 3 of the 1947 Act, any charges which are referable to it are to be treated as payable under the 1947 Act. Articles 3(2) and (3) provide a saving in relation to authorities specified in this Order which provide or contract to provide a service specified in the Order. In such cases, any charges will be treated as payable under the 1947 Act. The purpose of article 3 is make provision for existing contracts and to provide a transitional period for authorities to establish a company through which to trade (as required by section 95 of the Local Government Act 2003).

8. Impact

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

9. Contact

Phillip Smith at the Office of the Deputy Prime Minister Tel: 020 7944 0055 or e-mail: phillip.smith@odpm.gsi.gov.uk can answer any queries regarding the instrument.