

**EXPLANATORY MEMORANDUM TO THE
LOCAL AUTHORITIES (CATEGORISATION) (ENGLAND) (No. 2) ORDER 2005
2005 No. 2416**

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 Order categorises local authorities in England into five categories according to performance, following a report of the Audit Commission dated 18th July 2005.

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

None

4. Legislative Background

4.1 Under section 99(1) of the Local Government Act 2003 (“the Act”), the Audit Commission must from time to time produce a report on its findings in relation to the performance of English local authorities in exercising their functions. The report must categorise each authority according to how the authority has performed in exercising its functions.

4.2 Where the Secretary of State receives such a report from the Audit Commission, section 99(4) of the Act enables him to make an order categorising the English local authorities in accordance with their categorisation in the report.

4.3 This Order is the fourth use of the power under section 99(4). It follows the Audit Commission’s latest report of 18th July 2005. This Order revokes and replaces the Local Authorities (Categorisation) (England) Order 2005 (SI 2005/694) which came into force on 11th April 2005.

5. Extent

This instrument applies in relation to English local authorities only.

6. European Convention on Human Rights

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

7. Policy background

7.1 The December 2001 Local Government White Paper *Strong Local Leadership - Quality Public Services* announced a new Comprehensive Performance Assessment (CPA) framework to assess local authorities' delivery of national and local priorities. The Audit Commission has been independently carrying out these assessments, which

have been rolled out to all English local authorities since December 2002. The Audit Commission places councils into one of five categories - excellent, good, fair, weak and poor - and publishes these results on their website. CPA provides local people with more information about the performance of their council, and enables Government to apply measures appropriate to councils' performance - including more support for weaker authorities and less regulation for high performers.

- 7.2 The entitlement of local authorities to exercise certain powers, subject to their performance, depends on how they are categorised by orders made under s99(4) of the Act. Categorisation orders categorise local authorities by their performance and are made regularly following announcements of revised CPA results by the Audit Commission. Categorisation orders can only be made on receipt of a report from the Audit Commission and in making such orders, the Government cannot depart from the categorisations in the Audit Commission's report (except to correct clerical or typographical errors).
- 7.3 There are various provisions which are contingent on the Audit Commission's categorisations being made statutory via the categorisation order. The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 (S.I.2004/1705) came into effect on 29th July 2004 and provides fair, good and excellent authorities with new powers to trade. The Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005 (S.I. 2005/157) came into effect on 1st February 2005 and granted excellent authorities exemptions from certain statutory requirements to make plans and strategies.
- 7.4 The Government made the first categorisation Order in July 2004, and replaced it with a second Order in December 2004, followed by a third Order in April 2005, to reflect new and changing CPA results. Each Order has revoked the previous Order, and the present Order now revokes the third Order. It includes categorisations for all local authorities that have had a CPA result published by the Audit Commission as at 18th July 2005.
- 7.5 This Order includes 8 revised results for authorities that have had new Corporate Assessments carried out, or had their Corporate Assessment result (corporate assessment is a key part of CPA, which assesses the particular authority's corporate ability to support and drive service improvement) or other elements of their result reviewed by the Audit Commission. Compared with the third categorisation Order, 8 councils have moved into higher categories. Of those 8 councils 6 have now been categorised as "excellent" namely; Darlington Borough Council, Halton Borough Council, Knowlsey Metropolitan Borough Council, Leeds City Council, Middlesbrough Borough Council and Newcastle upon Tyne City Council, 1 council, Oxfordshire County Council, has now been categorised as "good" and 1 council, Walsall Metropolitan Borough Council, has now been categorised as "fair". 1 council has been included for the first time, Amber Valley Borough Council, which has been categorised as "fair". 1 other council, the London Borough of Ealing, has been included again in the categorisation order. Ealing was categorised as "fair" in the first and second Orders, but was omitted from the last Order following a successful judicial review in the High Court of the Audit Commission's re-categorisation of the council as "weak". The Audit Commission has since been successful in an appeal to the Court of Appeal.

- 7.6 This Order will enable 2 additional councils, Amber Valley Borough Council and Walsall Metropolitan Borough Council, to access the powers to trade, and 6 additional councils, Darlington Borough Council, Halton Borough Council, Knowlsey Metropolitan Borough Council, Leeds City Council, Middlesbrough Borough Council and Newcastle upon Tyne City Council, to benefit from the exemptions from statutory plan requirements.
- 7.7 The Government intends to regularly update the Categorisation Order to reflect any new categorisations made following further updated CPA assessments, and plans to update the Order after revised results are published in December. In the meantime, the Government does not want to delay the provision of freedoms and flexibilities to authorities who have moved into higher categories.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector will be that high performing local authorities will receive additional freedoms and flexibilities. Local authorities have welcomed these freedoms and are keen to make use of them as soon as possible to help improve the delivery of public services to local people.

9. Contact

Susie Turner at the Office of the Deputy Prime Minister (Tel: 020 7944 4357 or e-mail: Susie.Turner@odpm.gsi.gov.uk) can answer any queries regarding this Statutory Instrument.