

**EXPLANATORY MEMORANDUM TO  
THE LOCAL GOVERNMENT (BEST VALUE AUTHORITIES) (POWER TO  
TRADE) (AMENDMENT) (ENGLAND) ORDER 2006**

**2006 No. 3102**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

**2. Description**

The Order amends the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 (“the 2004 Order”) to alter the categories of local authorities who are able to exercise the power to trade under section 95 of the Local Government Act 2003 (“LGA 2003”). The amendments are made as a result of changes to the system of categorisation<sup>1</sup>.

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

None

**4. Legislative Background**

- 4.1. Under Section 95 of the LGA 2003 the Secretary of State may by order authorise best value authorities to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions. This is commonly known as the power to trade. It is restricted by section 95 so that it does not apply to matters which the authority is required to do under its ordinary functions or for which it has another specific power to trade. In addition the power to trade is only able to be exercised through a local authority company (within the meaning of Part 5 of the Local Government and Housing Act 1989). The power does not apply local authorities when acting in their capacity as fire and rescue authorities.
- 4.2. The 2004 Order provides the power to trade to those local authorities who have been categorised, by order under section 99 of the LGA 2003, as having attained a certain level of performance namely those authorities who have been categorised by order under as “excellent”, “good” or “fair”.
- 4.3. This order amends the 2004 Order by applying the power to trade to those local authorities categorised in an order under section 99 of the LGA 2003 as “4 stars”, “3 stars”, “2 stars” and “1 star” as well as to those authorities categorised as “excellent”, “good” or “fair”.

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<sup>1</sup> The changes to the categorisation system are made by the Local Authorities (Categorisation) (England) Order 2006 S.I. 2006 No.3096.

## 5. Extent

This instrument applies in relation to English local authorities only.

## 6. European Convention of 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 *Local Authorities (Goods and Services) Act 1970* governs the way in which local authorities are allowed to ‘trade’ with other public bodies. It authorises local authorities to enter into agreements with public bodies for the provision of goods, materials, and administrative, professional and technical services, for the use of vehicles, plant and apparatus, and for the carrying out of maintenance. There is also a power for the Secretary of State to designate by order that any person(s) exercising functions of a public nature shall be a public body for the purposes of the Act.
- 7.2. The Consultation Paper, *Working with Others to Achieve Best Value: Section 16 of the Local Government Act 1999 - A Consultation Paper on Changes to the Legal Framework to Facilitate Partnership Working* (DETR, March 2001), proposed to provide a new power alongside existing powers to enable best value authorities to provide a full range of goods and services to others working in partnership with them. The Local Government White Paper, *‘Strong Local Leadership – Quality Public Services’* (DTLR, December 2001) went further than the earlier Consultation Paper, proposing to provide wider powers to trade for all authorities where this helps achieve best value and the delivery of public services. These powers were provided in the Local Government Act 2003.
- 7.3. The Local Government White Paper “Strong Local leadership – Quality Public Services” (2001) announced a new Comprehensive Performance Assessment (CPA) framework to assess local authorities' delivery of national and local priorities. The White Paper promised that the highest performing local authorities would be given greater freedom and flexibilities.
- 7.4. The Audit Commission independently carried out assessments, which placed councils into one of five categories - excellent, good, fair, weak and poor. The Government’s stated policy was that those authorities categorised as Excellent, Good and Fair would have access to greater powers to trade.
- 7.5. In December 2005 The Audit Commission published a revised CPA framework (CPA – The Harder Test) for England's 150 single tier and county councils. Under CPA – The Harder Test framework, councils receive an overall performance category ranging from 0 to 4 stars, with 4 stars being the highest.

- 7.6. The Office of the Deputy Prime Minister launched a consultation exercise seeking views on the handling of freedoms and flexibilities under the Harder Test, in January 2006. The Government's preferred option was to extend freedoms and flexibilities downwards across star categories. This would mean that the trading powers, currently available to Excellent, Good and Fair authorities, would be given to 4 stars, 3 stars, 2 stars and 1 star authorities.
- 7.7. A total of 55 responses were received from: Local authorities, fire and rescue services, a regional authority, a functional body of a regional authority, local government representative bodies, non-departmental public bodies, a special interest group, a professional body and a non-statutory committee. 47 respondents, including the Local Government Association (LGA) and Audit Commission, supported the Government's preferred option to extend the application of freedoms downwards across star categories. Further details of the consultation, and the Government's response in September 2006, are given on DCLG's website at <http://www.communities.gov.uk/index.asp?id=1502867>.
- 7.8. Changes are not proposed for the freedoms and flexibilities of those District Councils (which are not single tier councils), as District CPA has not been altered to incorporate a 'harder test' and District councils (which are not single tier councils) retain the current categorisation labels of excellent to poor.
- 7.9. The powers under the 2003 Act enable local authorities to trade with private bodies and persons for profit (i.e. charges fixed at more than cost recovery). Trading is intended to help create a dynamic and entrepreneurial public sector that will increase diversity and choice in the delivery of public services. The power to trade is only exercisable through a company. This will help to ensure a level playing field with the private sector.

## **8. Impact**

A Regulatory Impact Assessment has been prepared for this instrument. The recommended option is consistent with the Government's policy of extending freedoms subject to minimum standards, provides an incentive for improvement and recognises that CPA 2005 is a tougher test. The RIA noted that the benefits of the preferred option included improvement in quality of services provided by councils through enhanced competition. There would be opportunity for more councils to make profit from having access to trading powers and more councils able to seek collaborative opportunities with other sectors from having access to trading powers

## **9. Contact**

Melvin Hughes at the Department of Communities and Local Government (Tel: 020 7944 4147 or e-mail: [Melvin.Hughes@comunities.gsi.gov.uk](mailto:Melvin.Hughes@comunities.gsi.gov.uk)) can answer any queries regarding this Statutory Instrument.

# REGULATORY IMPACT ASSESSMENT (FINAL)

## LOCAL GOVERNMENT ACT 2003

### The Local Government (Best Value Authorities) (Power to Trade) (Amendment) (England) Order 2006

#### 1. OBJECTIVE

1.1 To examine what categories of local authorities, based on their Comprehensive Performance Assessment, should be able to exercise the power to trade under section 95 of the Local Government Act 2003. This is to ensure that the appropriate range of local authorities have access to the Trading Powers due to changes of the naming conventions for the Comprehensive Performance Assessment (CPA) categories under the revised *CPA - The Harder Test* framework (CPA 2005)<sup>2</sup>.

#### 2. PURPOSE AND INTENDED EFFECT OF MEASURE (INTRODUCTION)

2.1 This RIA assesses sets out the objective, background, options, affected sectors, costs, benefits, impact on small business, competition issues, enforcement and policy review for the *Local Government (Best Value Authorities) (Power to Trade) (Amendment) (England) Order 2006* which amends the *Local Government (Best Value Authorities) (Power to Trade)(England) Order 2004* (“the 2004 Order) to alter the categories of local authorities who are able to exercise the power to trade under section 95 of the Local Government Act 2003. The amendments are made as a result of changes to the system of categorisation.

2.2 The new CPA 2005 framework “a harder test” for county, unitary and London borough councils replaces the five categories of performance from excellent to poor, with five new categories of 4 stars to 0 star. Amendments are necessary to the Trading Order to change the existing legislative references for county, unitary and London borough councils from the old CPA category names to the new star-based category names. This is to ensure that authorities continue to have access to the trading powers once the new Categorisation Order is made. District Councils are not subject to a harder test and retain the five “excellent” to “poor” labels. It is estimated that as a result of the change brought about by the new Order 14 additional local authorities (out of 388 English local authorities) will gain the right to access the Trading powers although they will make their own judgement as to whether or not they wish to use them.

2.3 Full Regulatory Impact Assessments were produced for the *Local Government Bill 2003* and for S.I. 2004/No 1705, the *Local Government (Power to Trade) (England) Order 2004*.

#### 3. BACKGROUND

##### Trading Powers

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3.1 The *Local Authorities (Goods and Services) Act 1970* governs the way in which local authorities are allowed to 'trade' with each other and with other public bodies. It authorises local authorities to enter into agreements with public bodies (which by definition includes local authorities) for the provision by local authorities to those bodies, of goods, materials and administrative, professional and technical services, for the use of vehicles, plant and apparatus, and for the carrying out of maintenance. This is *public to public* trading. There is also a power for the Secretary of State to designate by Order that any person(s) exercising functions of a public nature shall be a public body for the purposes of the Act (NB this is solely for the purposes of designation under the 1970 Act - it has no wider implication).

3.2 The *Local Government Act 2003* provides power for the Secretary of State to make an Order enabling Best Value authorities (with certain exceptions) to trade in any of their ordinary functions. This is *public to private trading*. The power to trade conferred by these provisions is only exercisable through a company within the meaning of Part 5 of the *Local Government and Housing Act 1989*.

### **Trading Orders**

3.3 *The Local Government (Best Value Authorities) (Power to Trade)(England) Order 2004* (S.I. 2004/No1705) (as amended), ("the Principal Order") which came into force on 29 July 2004, authorises local authorities that have been categorised by CPA on the basis of their performance as "excellent", "good", or "fair" to trade in any of their ordinary functions. This is subject to conditions requiring the approval of a business case, and the recovery of any costs incurred in anything the local authority supplies to a company through which the trading power is exercised. Where a local authority's performance is re-categorised as below "fair" a transitional provision permits an authority to complete anything started in exercise of the power to trade (any agreements or arrangements which have been entered into are allowed to continue for a period of 2 years).

3.4 Trading under the power needs to be directed towards the achievement of Best Value in the related function. The Best Value duty, is laid down in section 3 of the *Local Government Act 1999*<sup>3</sup>,

*"3.--(1) A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness."*

This means that local authorities cannot set up trading arms unrelated to core services or functions.

3.5 For local authorities in England the powers are exercised within the framework of the Comprehensive Performance Assessment ("CPA"). The original 2004 Trading Order provided the power to trade to those local authorities who have been categorised, by Order under section 99 of the LGA 2003, as having attained a certain level of performance namely those authorities who have been categorised by Order as "excellent", "good" or "fair". The new CPA 2005 framework means that

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<sup>3</sup> <http://www.opsi.gov.uk/acts/acts1999/19990027.htm#3>

amendments are necessary to the Trading Order to change the existing legislative references for county, unitary and London borough councils from the old CPA category names to the new star-based category names. This is to ensure that authorities continue to have access to the trading powers once the new Categorisation Order is made.

3.6 For completeness, the Principal Order has been amended by SI 2004/2307 *Local Government (Best Value Authorities) (Power to Trade)(England) (Amendment) Order 2004* and SI 2004/2573 *Local Government (Best Value Authorities) (Power to Trade)(England)(Amendment No 2) Order 2004*] which came into force on 29 July 2004. The Amendment Orders provide transitional arrangements in respect of certain fire and rescue authorities - allowing those authorities to continue trading in specified functions notwithstanding the repeal of the *Fire Services Act 1947* by the *Fire and Rescue Services Act 2004*. These arrangements for Fire Authorities are unaffected by the 2006 Trading Order which this RIA assesses.

### **Categorisation Order**

3.7 The Trading Order is framed by reference to descriptions of authority which, by virtue of an order made from time to time under section 99(4), of the 2003 Act are of a particular category. The *Local Authorities (Categorisation) (England) Order 2004* (S.I. 2004/1704)<sup>4</sup> was the first order made under that provision which categorises English local authorities according to their performance.

### **CPA 2005 Framework**

3.8 The new CPA 2005 framework for county, unitary and London borough councils replaces the five categories of performance from excellent to poor, with five new categories of 4 stars to 0 star. The new CPA framework is acknowledged to represent a harder test than the previous CPA methodology:

*“CPA will be a more stringent test with more emphasis on outcomes for local people and value for money. We are strengthening our methodologies for assessing user focus and will include, within corporate assessments, an explicit judgement on this.”<sup>5</sup>*

The first results under the new framework were announced on 15 December 2005. District Councils are not subject to a harder test and retain the five “excellent” to “poor” labels. They will be subject to a different audit regime on which the Audit Commission is consulting currently.

### **CPA Results Comparison**

3.9. The following shows the performance rating of county, unitaries and London boroughs pre- and post- CPA 2005:

#### CPA 2004

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<sup>4</sup> <http://www.opsi.gov.uk/si/si2004/20041704.htm>

<sup>5</sup> <http://www.audit-commission.gov.uk/CPA/Downloads/June05CPATheHarderTest.pdf>

| <i>Excellent</i> | <i>Good</i> | <i>Fair</i> | <i>Weak</i> | <i>Poor</i> | <i>Total</i> |
|------------------|-------------|-------------|-------------|-------------|--------------|
| 47               | 55          | 33          | 14          | 1           | 150          |

CPA 2005 and 2006 results as at 31 August 2006

| <i>4-stars</i> | <i>3-stars</i> | <i>2-stars</i> | <i>1-star</i> | <i>0-star</i> | <i>Total</i> |
|----------------|----------------|----------------|---------------|---------------|--------------|
| 40             | 67             | 33             | 9             | 1             | 150          |

CPA 2005 is a harder test, so comparisons cannot be made to ratings for single tier and county authorities under the previous CPA system. However, there have been some changes in terms of access to the performance related freedoms and flexibilities under CPA 2005, announced on 13 September 2005.

Migration to CPA 04 to CPA 05 harder test results at 31 August 2006

| <u>Good to 4</u> | <u>Fair or Weak to 3*</u> | <u>Weak to 2*</u> | <u>Poor to 1*</u> | <u>Total</u> |
|------------------|---------------------------|-------------------|-------------------|--------------|
| <u>8</u>         | <u>11</u>                 | <u>6</u>          | <u>0</u>          | <u>25</u>    |

Subject to transitional protection (2 years for trading)

| Excellent to 3* | Good to 2* | Fair to 1* | Weak to 0* | Total |
|-----------------|------------|------------|------------|-------|
| 15              | 6          | 3          | 1          | 25    |

**Rationale for Amended Trading Order**

3.10. Amendments are necessary to the Trading Order to change the existing legislative references for county, unitary and London borough councils from the old CPA category names to the new star-based category names. This is to ensure that the appropriate authorities continue to have access to the trading powers once the new Categorisation Order is made and also to consider how the Government should approach the freedoms and flexibilities agenda whilst recognising that CPA 2005 represents a tougher test for councils.

**Use of the Trading Powers**

Research on Freedoms and Flexibilities (DCLG, 2006)

3.11 ODPM (now DCLG) commissioned a baseline evaluation of the use, awareness, and emerging impact of freedoms and flexibilities in local government.

The Report was published as '*Evaluation of Freedoms and Flexibilities in Local Government: Baseline Study*' (DCLG, September 2006)

3.12 As part of the Local Government Modernisation Programme, the 2001 White Paper, *Strong Local Leadership – Quality Public Services* signalled the introduction of a new strand to the Local Government Modernisation Agenda, which has become known as 'freedoms and flexibilities'. This strand was aimed at releasing authorities from some of the existing regulatory burdens that prevented them from being more innovative and at providing greater freedom for them to use their resources and powers in ways which better meet local needs and aspirations. A comprehensive list of those freedoms and flexibilities that have been included in the scope of this study is listed in the Report. For the purposes of the Study, the researchers adopted the following definitions of freedoms and flexibilities measures, as proposed by ODPM:

- a 'freedom' refers to a local authority being relieved, or partially relieved, of an obligation or imposition, such as producing plans, seeking consent or being inspected; and
- a 'flexibility' refers to an authority being granted powers to do something not previously allowed, or to do something more than was previously allowed, such as borrowing, trading or charging.

3.13 The study generated a rich volume of data in relation to freedoms and flexibilities in local government, which provides key findings to support a baseline understanding of:

- the overall pattern of awareness and take-up of freedoms and flexibilities;
- emerging practice in the application of freedoms and flexibilities; and
- potential explanations for the way in which freedoms and flexibilities are being implemented and experienced across local government

However, in view of the relatively small size of the samples, caution should be used in drawing inferences about English local authorities as a whole. The Report found between 20% and 30% of respondents reported that their authorities were taking up trading and charging powers.

3.14 Some of the key findings from the baseline study include that:

- *trading and charging powers*, whilst welcomed 'in principle' by some authorities and deployed by others, are perceived by most authorities to be having a marginal impact in both financial and service development;
- this is an area where a small number of 'innovating authorities' are keen, and want to be seen, as 'pushing the boundaries' in bringing a more entrepreneurial edge to local government, but where most authorities are reluctant to explore the limits of the powers available to them;
- some authorities have claimed that the legal complexities and risks associated with the further development of trading make the risk-reward balance unattractive to them, whilst others point out that the types of commercial skills required to manage trading activity on a truly transformational scale are insufficiently developed within the sector at present;

3.15 Take-up of new freedoms such as trading and charging powers, appears to be higher amongst authorities rated 'Fair' and 'Good', rather than 'Excellent'. Several case study authorities reported that some of the new freedoms and flexibilities had made a positive contribution to the improvement agenda in their authorities, which may explain why those authorities seeking to move up the CPA 'ladder' are particularly keen to exploit particular freedoms and flexibilities.

3.16 A number of the new flexibilities, such as trading and charging powers, arguably require the development of more 'commercial' mind- and skill-sets than are currently the case across many local authorities, suggesting that capacity and capability needs to be developed in these areas if they are to take hold more fully in local government.

3.17 Chapter 4 set out detailed findings on individual freedoms and flexibilities. In summary:

- none of our case study authorities had established companies to exploit this new power. Only one mentioned that it was considering it. Many felt they already had sufficient flexibility in this area, others preferred to concentrate on core services, and others felt that the risks outweighed the potential rewards
- the Survey found similarly low levels of use of the power to trade, with just 3% of authorities saying they had made significant use of the power. A further 18% said they had made some use of it – but over half (56%) said they had made no use at all of the power. However, this low level of use does not seem to be caused by a low level of awareness of the powers now available.
- Research by the LGA12 in November 2004 found a similarly low level of use with only 2% of councils using their new powers to trade, with a further 18% intending to do so. Of those using or planning to use the power 64% identified raising revenue as a key objective.
- Research by INLOGOV13 (*unpublished at the time of this publication*) also found little evidence of authorities using or planning to use their increased power to trade, though upper tier authorities were more likely than districts to indicate a plan for marginal increases in trading activity. In relation to past activities, respondents generally talked of incremental, rather than major growth in trading and the evidence suggested that on the whole authorities anticipated levels to remain about the same. One of the reasons given was the need for changes in local authority capacity and skills, in particular the need to develop greater expertise in 'business' skills such as customer service and risk and financial management. Some authorities, however, regarded trading as an opportunity to develop such skills in their workforce.
- The INLOGOV study found that the biggest disincentives to using the power to trade were the commercial and financial risks to the local authority and the risk to their reputation should things go wrong. Diversion of capacity away from core objectives was another important factor cited.

- In their discussions with local authorities, the researchers found a sense that ‘mainstream’ trading was ‘counter culture’ to that prevailing in local authorities
- another reason given for not using the power to trade was the complexity of the commercial trading model, and a sense that there were already powers in existence which could be used to trade

3.18 Amongst the key conclusions, in summary

- there are high levels of awareness of the majority of the measures, although at present there are not similarly high levels of use of many of the measures. The situation can probably be best summed up as ‘early days’.
- the majority of the authorities in the Study were at this stage more cautious, or for some, agnostic about the measures. Whilst they can see some of the potential benefits of the freedoms and flexibilities, they have not yet put many of them into practice. They see some, for example local authority trading, as being untried and perhaps too risky or complex

3.19 A Summary of earlier research by ODPM and the Local Government Association is at **Annex A**

## 4. CONSULTATION

4.1. The Government consulted on the proposals for amending the current approach to Comprehensive Performance Assessment (CPA) based freedoms and flexibilities to take account of the new CPA 2005 system “a harder test” in the Consultation Paper <http://www.communities.gov.uk/index.asp?id=1502873> <sup>6</sup> (ODPM, Jan 2006).

4.2. The options considered in this RIA incorporate those options which were consulted on in the Paper. The consultation was based on 3 options for adapting current CPA based freedoms when migrating to the new star categorisations in the CPA 2005 system:

### a. Transfer freedoms directly across to the new star ratings

This would mean that:

- 4\* authorities - receive the freedoms currently given to excellents
- 3\* authorities - receive the freedoms currently given to goods
- 2\* authorities - receive the freedoms currently given to fairs.

### b. Transfer freedoms directly across to the new star ratings and extend transitional provisions for some authorities

This is a variation of option a. Those authorities, who would lose freedoms when migrating to a star rated category in the Audit Commission's December 2005 report but have an upward direction of travel, would have the transitional period for most freedoms extended to at least 2 years. For example, a formerly excellent authority, categorised as 3\* under the new system, but with a direction of travel indicating that it was either improving strongly, improving well, or improving adequately would be given a minimum recovery period of 2 years for most of the CPA based freedoms.

This would be a time limited measure to cover the transition to the new CPA system. Any downward categorisation after December 2005 would not be subject to extended transitional provisions.

### c. Extend application of freedoms across star categories

This was the Government's preferred option and would apply to most current freedoms, as follows:

- 4\* & 3\* authorities - receive the freedoms currently given to excellents
- 2\* authorities - receive the freedoms currently given to goods
- 1\* authorities - receive the freedoms currently given to fairs

Under this option, current transitional arrangements would be retained to ensure that when dropping a star rated category in subsequent years, authorities are given a period to recover while retaining their freedoms. We propose that the length of these periods remain as now (2 years for trading).

4.3 A total of 55 responses were received for this consultation. 90% of the responses received were in favour of the Government's preferred proposal and generally considered the changes as a demonstration of the Government's commitment to reducing the bureaucratic burden for authorities and providing additional freedoms. 9 respondents, which were a representative mix of London Borough's, Single Tier, County and District authorities, specifically commented on trading. They all favoured the Government's proposal to extend the power to trade to all 1 to 4 star authorities. Respondents felt the extension would improve take up and there were enough safeguards, built into the legislation to mitigate any risks such as approving a business case. The LGA and a number of respondents also felt that this could be extended to all authorities as it enables councils to engage in innovative activity in support of corporate, community and government policy objectives.

4.4. On 13 September 2006, Angela Smith announced that, as a result of the overwhelming response in favour of the Government's proposals, an extended package of freedoms and flexibilities has been developed by DCLG. Option c) extending the application of freedoms across star categories would be adopted. The ability to trade would be available for councils with 4, 3, 2 and 1 star.

## **5. OPTIONS**

5.1 Five options have been identified in this RIA:

1. 'Do nothing'
2. Transfer freedom to trade directly across to the new star ratings
3. Transfer freedom to trade directly across to the new star ratings and extend transitional provisions for some authorities
4. Extend application of freedom to trade to a broader range of categories
5. Extend freedom to trade to all authorities rated under CPA 2005

No other Options have been considered.

*Option 1 - 'Do nothing'*

If no amendments were to be made to the legislation governing local authority trading powers under the 2003 Act, then county, unitary and London borough councils would lose access to the trading powers once the new Categorisation Order was brought into force re-categorising authorities under the star based ratings. These local authorities would be unable to participate in wider trading activities and there would be a more limited scope for partnership working with the private and voluntary sectors. This option would not offer local authorities the ability to extend and improve the range of services offered or to trade these services at a profit.

*Option 2 - Transfer freedom to trade directly across to the new star ratings*

This would mean that:

- **4 stars** authorities – receive the freedoms currently given to **excellent** authorities
- **3 stars** authorities – receive the freedoms currently given to **good** authorities
- **2 stars** authorities – receive the freedoms currently given to **fair** authorities
- **1 star** and **0 star** authorities - would have no access to the trading powers.

This option is straightforward and could be seen as protecting the status quo. However, it implies there is a direct correlation between the old and new CPA categories. This option does not take account of CPA 2005 being a tougher test resulting in some authorities migrating downwards from 'excellent' to 3 stars, from 'good' to 2 stars and from 'fair' to 1 star, despite their direction of travel statements showing that they are continuing to improve.

Under this option, current transitional arrangements would be retained to ensure that when dropping a star rated category in subsequent years, authorities are given a period of 2 years to recover while retaining their freedoms.

*Option 3 - Transfer freedom to trade directly across to the new star ratings and extend transitional provisions for some authorities*

This is a variation of *option 2*. Those authorities which would lose freedoms when migrating to a star rated category in the Audit Commission's December 2005 report but have an upward direction of travel would have the transitional period for the trading freedom extended beyond 2 years. For example, a formerly fair authority, categorised as 1 star under the new system, but with a direction of travel indicating that it was either improving strongly, improving well, or improving adequately would be given a greater transitional period than the current 2 years for the trading powers. This should provide authorities with sufficient time to move up to a higher category and recover CPA based freedoms without the authority having lost the power to trade.

This approach would be a time limited measure to cover the transition to the new CPA system. Any downward categorisation after December 2005 would not be subject to extended transitional provisions. There would be a range of complex transitional arrangements for different authorities which would require careful action to prevent any confusion.

***Option 4 - Extend application of freedom to trade to a broader range of categories***

This was the Department's preferred option in the Consultation Paper and would be applied to the trading powers as follows:

- **4 stars & 3 stars** authorities – receive the freedoms currently given to **excellent** authorities
- **2 stars** authorities – receive the freedoms currently given to **good** authorities
- **1 star** authorities – receive the freedoms currently given to **fair** authorities
- **0 star** authorities - would have no access to the trading powers

This option is simple to understand and would apply to any future changes in a local authority's categorisation under the CPA 2005 framework. It is consistent with the Government's policy of extending freedoms subject to minimum standards, provides an incentive for improvement and recognises that CPA 2005 is a tougher test with more emphasis on outcomes for local people and value for money. It might be argued that this approach would undermine the principle of a harder test by potentially providing freedoms to councils that have not improved (i.e. those councils that are rated 1 star with a downward direction of travel but this is not a major issue as in the December 2005 CPA assessments, this description only applies to one authority).

Under this option, current transitional arrangements would be retained to ensure that when dropping a star rated category in subsequent years, authorities are given a period of 2 years to recover while retaining their freedoms.

***Option 5 - Extend freedom to trade to all authorities covered under CPA 2005***

This option would extend the freedom to trade to all county, unitary and London borough councils. This does not offer an incentive for improvement to be able to access the trading powers nor provides the power subject to minimum performance standards.

5.2 Proposals to use criteria other than the existing CPA rating (whether the old 'named' categories or the new star ones) were considered. The use of Direction of Travel Statements or a combination of this and CPA category to determine access to freedoms and flexibilities was considered, but after careful consideration we dismissed this option. This is because, although Direction of Travel (DoT) statements do provide an indication of the potential for improvement within a council, using these to determine access to freedoms and flexibilities would serve to complicate the criteria for access. For some freedoms, such as trading powers, this would also require amendments to primary legislation.

5.3 The Government's preferred option is Option 4.

## **6. POLICY IMPACTS**

### **Local Authority Coverage**

6.1 Under CPA 2004 135 county, unitary and London borough councils have access to the trading powers. Under CPA 2005, using the preferred option, 149 county, unitary and London borough councils have access to the trading powers. In reality, due to the fluidity of the CPA structure, even if the CPA assessment remained unchanged more authorities over time could access the trading powers. All Authorities except those with a '0' rating under new more robust CPA system will have access to trading powers.

### **Sectors and Groups Affected**

6.2 The proposal to extend the trading power potentially affects a wide range of sectors, groups and markets. It is anticipated that the proposals will have a positive effect on the private sector due to local authorities engaging in the new activities thereby stimulating markets and increasing competition. The powers allow local authorities to engage in activities which were also undertaken by the private sector; however, it is not necessary to assume that local authorities will necessarily be displacing business from the private sector. The trading powers may be used to improve competition and contestability or to fill a gap in the market in the provision of services to the public. The Department intends through its research programme and other stakeholders to implement a monitoring system to assess the impact of the trading powers on small businesses.

### **Impact Assessments**

#### *Race equality assessment*

6.3 The trading power is a non-prescriptive enabling power and should not in itself have an adverse impact on race equality. Local authorities are under a legal duty to eliminate race discrimination and to promote equality of opportunity and good

race relations in carrying out their functions. When making use of the trading powers, as part of their legal duty, local authorities should consider whether there are any race equality considerations that need to be addressed.

#### *Health impact assessment*

6.4 The trading power is a non-prescriptive enabling power and should not in itself have an adverse impact on health issues. When making use of the trading powers local authorities should consider whether there are any adverse health impact considerations that need to be addressed.

#### *Rural considerations*

6.5 The trading power is a non-prescriptive enabling power and should not in itself have an adverse impact on rural issues. When making use of the trading powers local authorities should consider whether there are any adverse rural considerations that need to be addressed.

## **7. RISKS, COSTS & BENEFITS**

### **Risk in the Context of Trading**

7.1 Section 3 of the *Local Government Act 1999*<sup>7</sup> places a duty of Best Value on local authorities and other public bodies. This requires them to secure continuous improvement in the way in which they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. Trading under the 2003 Act powers needs to contribute towards Best Value in the related function.

7.2 The trading power permits local authorities to act in an entrepreneurial manner and engage in commercial activities. There are inherent risks in undertaking such activities especially when taxpayer's money is being used to fund these ventures. However, there are safeguards in place to ensure that trading is undertaken with an appropriate level of consideration by a local authority. The trading power permits local authorities to trade in their ordinary functions only. This should minimise the risk as a local authority should not be engaging in activities in which they do not have any experience or expertise of undertaking. A local authority must also prepare and approve, as appropriate within its governance arrangements, a business case before exercising the 2003 Act trading powers. This provides further safeguards for taxpayers' money by ensuring that there is a rationale and full consideration presented through the appropriate local authority executive arrangement before undertaking trading activities. In addition, a local authority has a duty to ensure that arrangements must be made to ensure that taxpayer's money is spent appropriately, the fiduciary duty, which has generally emerged from case law:

“the dicta of Lord Atkinson in *Roberts v. Hopwood* [1925] AC 578: ‘A body charged with the administration for definite purposes of funds contributed in whole or in part by persons other than the members of that body, owes, in my

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<sup>7</sup> <http://www.opsi.gov.uk/acts/acts1999/19990027.htm#3>

view, a duty to those latter persons to conduct that administration in a fairly businesslike manner with reasonable care, skill and caution, and with a due and alert regard to the interest of those contributors who are not members of the body. Towards these latter persons the body stands somewhat in the position of trustees or managers of the property of others.’ And in *Bromley London Borough Council v Greater London Council* [1983] 1 AC 768 Lord Diplock said that: ‘It is well established by the authorities ... that a local authority owes a fiduciary duty to the ratepayers from whom it obtains moneys needed to carry out its statutory functions, and that this includes a duty not to expend those moneys thriftlessly but to deploy the full financial resources available to it to the best advantage’.”<sup>8</sup>

The fiduciary duty will apply to a local authority seeking to trade.

## **Options Analysis**

### ***Option 1 - ‘Do nothing’***

#### *Risks*

Diversity and choice in the delivery of public services would be restricted. Local authorities would be prevented from extending and improving the range of services they offer. The introduction of new players into the market would be restricted.

#### *Costs*

- No County, Unitary or London Borough would have access to the trading powers.
- Those authorities that have begun to trade successfully would have to start winding up their current trading activities.
- There would be less scope for collaborative working with the private and voluntary sectors.
- Local authorities would not be able to realise the financial benefits of trading for a profit.

#### *Benefits*

- Local authorities would not be subject to the risks inherent in undertaking trading activities (such as financial loss).

### ***Option 2 - Transfer freedom to trade directly across to the new star ratings***

#### *Risks*

Because CPA 2005 is a tougher test some authorities may lose existing trading powers. As with Option 1, this means that to some degree, diversity and choice in the delivery of public services would be restricted. Local authorities would be prevented

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<sup>8</sup> Page 7, *Corporate and Audit Issues - Public Law Developments*, (March 2006, Pinsent Masons)  
<http://www.pinsentmasons.com/media/1734854060.pdf>

from extending and improving the range of services they offer. The introduction of new players into the market would be restricted.

#### *Costs*

- Local authorities undertaking trading activities could result in distracting resources away from core public services.
- There is no direct correlation between the old and the new CPA framework; therefore some authorities might lose access to the trading powers where they previously had access to them.
- Allowing less authorities access to the trading powers would not help stimulate innovation and collaboration within councils.

#### *Benefits*

- The system of transferring freedoms in this manner is simple to understand.
- Improvement in quality of services provided by councils through enhanced competition.
- Opportunities for councils to make profit from managing their extended freedoms efficiently.
- Better usage of resources for tax payer.

### **Option 3 - Transfer freedom to trade directly across to the new star ratings and extend transitional provisions for some authorities.**

#### *Risks*

This would, to some extent, mitigate the effect of Option 2 by providing an extended transitional period during which an authority could regain a performance category that would allow it to exercise the trading powers. However it would still mean that in cases where an authority was still not able to recover its former categorisation (or equivalent), to some extent diversity and choice in the delivery of public services would be restricted. Local authorities would be prevented from extending and improving the range of services they offer. The introduction of new players into the market would be restricted.

#### *Costs*

- There is no direct correlation between the old and the new CPA framework; therefore some authorities might lose access to the trading powers where they previously had access to them.
- Allowing less authorities access to the trading powers would not help stimulate innovation and collaboration within councils.
- Extending the transitional period for an authority to recover a categorisation which permits it to access the trading powers could mean its full resources are not available to sort out key services

#### *Benefits*

- Improvement in quality of services provided by councils, through enhanced competition.
- Opportunities for councils to make profit from managing their extended freedoms efficiently.
- Better usage of resources for tax payer.

#### **Option 4 - Extend application of freedom to trade to a broader range of categories**

##### *Risks*

In trading in their ordinary functions, authorities may be tempted to enter into areas of activity for which they are not best qualified and do not have the appropriate level of expertise rather than concentrating on improving delivery of their core functions. Trading is not without risk for local taxpayers. Relating trading to a strong performance on delivery minimises the risk to local tax payers.

##### *Costs*

- Costs of drawing up business cases for trading in any functions.
- Concentrates resources away from core business.

##### *Benefits*

- Public sector expenditure reduced through lower admin costs of managing the newly extended freedoms.
- Improvement in quality of services provided by councils, through enhanced competition.
- Opportunity for more councils to make profit from having access to trading powers.
- More councils able to seek collaborative opportunities with other sectors from having access to trading powers

#### **Option 5 - Extend freedom to trade to all authorities rated under CPA 2005**

##### *Risks*

In trading in their ordinary functions, authorities may be tempted to enter into areas of activity for which they are not best qualified and do not have the appropriate level of expertise rather than concentrating on improving delivery of their core functions. Trading is not without risk for local taxpayers. Relating trading to a strong performance on delivery minimises that risk. Unrestricted trading does not provide that safeguard for the local community.

##### *Costs*

- Costs of drawing up business cases for trading in any functions.
- Local authorities undertaking trading activities could result in distracting resources away from core public services

- Larger number of authorities subject to the risks inherent in undertaking trading activities (such as financial loss).

### *Benefits*

- There would be maximum scope for collaborative working with the private and voluntary sectors.
- Opportunity for more councils to make profit from having access to trading powers.
- Allowing less authorities access to the trading powers would not help stimulate innovation and collaboration within councils
- Improvement in quality of services provided by councils, through enhanced competition.
- More councils able to seek collaborative opportunities with other sectors from having access to trading powers

### **Preferred Option**

Option 4 is the preferred Option. It provides the greatest flexibility while minimising the risks involved. The recommended option is consistent with the Government's policy of extending freedoms subject to minimum standards, provides an incentive for improvement and recognises that CPA 2005 is a tougher test. The benefits of the preferred option included improvement in quality of services provided by councils through enhanced competition. There would be opportunity for more councils to make profit from having access to trading powers and more councils able to seek collaborative opportunities with other sectors from having access to trading powers. No other Options were considered other than those set out above.

## **8. SMALL FIRMS' IMPACT TEST (SFIT)**

8.1 Whilst the trading powers mean that authorities are potentially trading in competition with the private sector, various safeguards have been built in. Safeguards include requiring authorities to adopt a genuinely risk-based approach, based on a sound business case prepared for the proposed trading activity.

8.2 The arrangements secure that authorities are not able to distort markets through the provision of inappropriate subsidies to trading companies. In order to maintain a level playing field with local businesses, the new powers to trade will be subject to a requirement that it must take place through a corporate body formed by the authority. This means that surpluses on commercial operations under the new power will be subject to taxation in the same way as other companies. Local authorities like other bodies are subject to and must abide by competition law.

8.3 Research undertaken by Inlogov suggests that some local authorities, when trading, are actively seeking to understand the impact that their trading activity will have on small business. The research suggests that 27% of local authorities voluntarily undertake a small business impact test when engaging in any trading activity. A copy of this RIA was provided to the Small Business Service, who acknowledged our approach and findings.

## 9. COMPETITION ASSESSMENT

9.1 A full Competition Assessment carried for the Regulatory Impact Assessment published to coincide with the introduction of the *Local Government Bill 2003*. The RIA for the Charging and Trading powers in the Local Government Act 2003 is attached at **Annex B**.

9.2 The underlying assumptions in the analysis have not changed since then. The trading powers were made available to local authorities in 2004 and the new Order merely makes some changes to the authorities covered following alterations to the CPA regime.

9.3 In summary the conclusions of the Competition Assessment were:

- deducing the effects on competition is difficult due to the "enabling" nature of the powers and the inevitable uncertainty about the extent to which local authorities will seek to use them
- the new powers could lead to increased contestability and/or increased competition in markets (especially those which are currently inefficient or less active)
- greater levels of trading by local authorities could lead to efficiency gains through increased economies of scale, and so could benefit consumers through lower prices, better quality, or both
- there could however be a number of adverse effects arising from certain advantages that local authorities may possess, with consequent potential for the abuse of market power
  - conflicts of interest may arise for local authorities in cases where they both regulate markets and participate in them (for example where withholding planning consents would create barriers to entry)
  - the legislation could potentially facilitate collusion between local authorities, thereby adversely affecting private sector businesses, either through increased information asymmetry or affecting bidding outcomes
  - in terms of existing markets, local authorities may be able to exploit the benefits of an existing customer base and crowd out the private sector
  - the legislation may alter the competitive process through increased consolidation and the possible exclusion of small businesses from particular markets.

9.4 In relation to the bullet points above, it should be noted that:

- the power to trade will only be exercisable through a company structure, which will be subject to regulation in the same way as other commercial bodies (e.g. taxation). This will help ensure a level playing field with the private sector

- local authorities, like other bodies, are subject to and must abide by competition legislation. Trading by local authorities may be subject to the provisions in the Competition Act 1998 and/or Articles 81 and 82 of the EC Treaty (see paragraph 9.5).

9.5 The *Competition Act 1998* introduced two prohibitions which reflect Articles 81 and 82 of the EC Treaty respectively. The Chapter I prohibition covers agreements between undertakings that have the object or effect of distorting competition in the United Kingdom, or a part of the United Kingdom. The Chapter II prohibition makes unlawful conduct by one or more undertakings which may amount to an abuse of a dominant position in a market in the United Kingdom.

9.6 Authorities should consider any proposed trading activities very carefully against the requirements of competition law, consulting their own lawyers as necessary. Trading by local authorities may be subject to the provisions in the *Competition Act 1998* and/or Articles 81 and 82 of the EC Treaty.

9.7 Whether or not a local authority may be considered an undertaking with respect to a particular activity (and therefore subject to competition rules), depends on whether the activity is ‘an economic activity’. The new provisions do not make a significant difference in a local authorities' obligation to abide by competition rules.

9.8 In addition to the general consultation exercise for the 2003 Act, discussions were held with the Small Business Service and the Office of Fair Trading, CBI and other representative bodies for small businesses. ODPM also received and responded to written representations from the Federation of Small Businesses on their concerns with the charging and trading provisions in the Bill.

## **10. ENFORCEMENT, SANCTIONS AND MONITORING**

### **Enforcement**

10.1 The trading power is an enabling power; therefore there are no non-compliance issues.

### **Sanctions**

10.2 As above there are no sanction requirements for the trading powers. Any sanctions for non-compliance with the legislative duties under the trading legislation will be a matter for the courts if necessary.

### **Monitoring and Review**

10.3 Monitoring the use of the trading powers is undertaken through the Inlogov survey which will continue until 2008 (see the **Annex B** for further information about this Study).

10.4 Due to the nature of the freedoms and flexibilities agenda there is a natural regulation concerning the performance of local authorities. Those authorities who do

not maintain the standards expected from a trading authority might lose the power to trade through slipping out of the appropriate CPA categorisation. The authority will have the two year transitional period in which to regain the categorisation otherwise the authority will have to wind down its trading activities.

## **11. IMPLEMENTATION AND DELIVERY PLAN**

11.1 Councils are aware of the existence of the trading powers which have been available since 2004 and will exercise their own commercial judgement as to whether or not to use them. There is no delivery plan necessary.

## 12 SUMMARY AND RECOMMENDATION

### 12.1

| Option   | Total cost per annum<br>Economic, environmental, social   | Total benefit per annum<br>Economic, environmental, social   |
|--|---|--|
| <b>1 - Do nothing</b>  | <ul style="list-style-type: none"> <li>• No local authorities would have access to the trading powers.</li> <li>• Authorities that have begun to trade successfully would have to start winding up their current trading activities.</li> <li>• Less scope for collaborative working with the private and voluntary sectors.</li> <li>• Local authorities would not be able to realise the financial benefits of trading for a profit.</li> </ul> | <ul style="list-style-type: none"> <li>• Local authorities would not be subject to the risks inherent in undertaking trading activities (such as financial loss).</li> </ul>   |
| <b>2 - Transfer freedom to trade directly across to the new star ratings</b> | <ul style="list-style-type: none"> <li>• No direct correlation between the old and the new CPA framework; therefore some authorities might lose access to the trading powers where they previously had access to them.</li> <li>• Allowing less authorities access to the trading powers would not help stimulate innovation and collaboration within councils.</li> </ul>  | <ul style="list-style-type: none"> <li>• Improvement in quality of services provided by councils, through enhanced competition.</li> <li>• Opportunities for councils to make profit from managing their extended freedoms efficiently.</li> <li>• Better use of resources for tax payer.</li> </ul> |
| <b>3 - Transfer</b>  | <ul style="list-style-type: none"> <li>• No direct correlation between the old and the new</li> </ul>   | <ul style="list-style-type: none"> <li>• Improvement in quality of services provided by</li> </ul>   |

|  |   |  |
|--|---|--|
| <p><b>freedom to trade directly across to the new star ratings and extend transitional provisions for some authorities</b></p> | <p>CPA framework; therefore some authorities might lose access to the trading powers where they previously had access to them.</p> <ul style="list-style-type: none"> <li>• Allowing less authorities access to the trading powers would not help stimulate innovation and collaboration within councils.</li> <li>• Extending the transitional period for an authority to recover a categorisation, which permits it to access the trading powers, could mean its full resources are not available to sort out key services</li> </ul> | <p>councils, through enhanced competition.</p> <ul style="list-style-type: none"> <li>• Opportunities for councils to make profit from managing their extended freedoms efficiently.</li> <li>• Better usage of resources for tax payer.</li> </ul>  |
| <p><b>4 - Extend application of freedom to trade to a broader range of categories</b></p>                                      | <ul style="list-style-type: none"> <li>• Costs of drawing up business cases for new trading</li> <li>• May concentrates resources away from core business</li> </ul>  | <ul style="list-style-type: none"> <li>• Improvement in quality of services provided by councils, through enhanced competition.</li> <li>• Opportunity for more councils to make profit from having access to trading powers.</li> <li>• More councils able to seek collaborative opportunities with other sectors from having access to trading powers</li> </ul>   |
| <p><b>5 - Extend freedom to trade to all authorities rated under CPA 2005</b></p>  | <ul style="list-style-type: none"> <li>• Costs of drawing up business cases for trading in any functions.</li> <li>• Local authorities undertaking trading activities could result in distracting resources away from core public services</li> <li>• Larger number of authorities subject to the risks inherent in undertaking trading activities (such as financial loss).</li> </ul>   | <ul style="list-style-type: none"> <li>• There would be maximum scope for collaborative working with the private and voluntary sectors.</li> <li>• Opportunity for more councils to make profit from having access to trading powers.</li> <li>• Allowing less authorities access to the trading powers would not help stimulate innovation and collaboration within councils</li> <li>• Improvement in quality of services provided by</li> </ul> |

|  |  |   |
|--|--|---|
|  |  | <p>councils, through enhanced competition.</p> <ul style="list-style-type: none"><li>• More councils able to seek collaborative opportunities with other sectors from having access to trading powers</li></ul> |
|--|--|---|

12.2 The Government has decided to pursue Option 4 as follows:

**Extend application of freedom to trade to a broader range of categories under CPA as below:**

12.3 In the Consultation Paper, this was the Department's preferred option and would apply the trading powers, as follows:

- **4 stars & 3 stars** authorities – receive the freedoms currently given to **excellent** authorities
- **2 stars** authorities – receive the freedoms currently given to **good** authorities
- **1 star** authorities – receive the freedoms currently given to **fair** authorities
- **0 star** authorities - would have no access to the trading powers

12.4 The recommended option aligns with the proposals set out in the Consultation Paper (ODPM, Jan 2006)<sup>9</sup> and the Analysis of Responses *Proposed Changes to the Delivery of Local Authority Freedoms and Flexibilities under CPA 2005: Analysis of Responses*<sup>10</sup>.

**The Local Government (Best Value Authorities) (Power to Trade) (Amendment) (England) Order 2006**

12.5. To implement Option 4, the Government proposes to lay the *Local Government (Best Value Authorities) (Power to Trade) (Amendment) (England) Order 2006* to extend the power to trade to those local authorities whose performance has been categorised by an order, made under section 99(4) of the *Local Government Act 2003*, as “4 stars” “3 stars” “2 stars” and “1 star”.

**The Local Government (Best Value Authorities) (Power to Trade) (Amendment) (England) Order**

This Statutory Instrument amends the application of the *Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004*.

Article 1 (2) (b) -

For “by virtue of such order as may from time to time be made by the Secretary of State under section 99(4) of the *Local Government Act 2003* are within one of the following categories—

- (i) “excellent”;
- (ii) “good”;
- (iii) “fair”;

is substituted:

<sup>9</sup> [http://www.communities.gov.uk/embedded\\_object.asp?id=1163296](http://www.communities.gov.uk/embedded_object.asp?id=1163296)

<sup>10</sup> [http://www.communities.gov.uk/embedded\\_object.asp?id=1502868](http://www.communities.gov.uk/embedded_object.asp?id=1502868)

“by virtue of such order as may from time to time be made by the Secretary of State under section 99(4) of the Local Government Act 2003 are within one of the following categories—

- (i) “excellent”;
- (ii) “good”;
- (iii) “fair”;
- (iv) “4 stars”;
- (v) “3 stars”;
- (vi) “2 stars”; or
- (vii) “1 star”.

### **13. POST-IMPLEMENTATION REVIEW**

13.1 The Department intends through its research programme and other stakeholders to implement a monitoring system to assess the impact of the trading powers on small businesses.

**Department for Communities and Local Government  
Local Government Modernisation & Efficiency Division**

**November 2006**



## RESEARCH INTO LOCAL AUTHORITY TRADING

### LGA Research “Loosening the Reins”

1. A survey by the Local Government Association in July 2004 suggested that the vast majority of authorities did not intend to make use of the new power. The survey was of limited value due to it taking place very shortly after the introduction of the new powers when authorities would have had very little time in which to implement them. It is questionable whether local authorities would have had consideration of how the powers could be utilised in future due to this short timescale. However results from the survey suggested that: 2% of respondents are using the new powers (75% eligible to do so); a further 18% had plans to use powers, and, 80% had no plans to use powers.

### INLOGOV Research “Evaluation of the Local Government Procurement Agenda”

2. In 2004, the then ODPM commissioned the *Institute of Local Government Studies* (Inlogov) to undertake a research programme into the *Evaluation of the Local Government Procurement Agenda*<sup>11</sup>. This research programme will continue through to 2008 and includes research into both the practice of local government procurement and its outcomes.

3. The Inlogov Baseline Survey Report (August 2005)<sup>12</sup> found that almost a quarter (23%) of authorities' procurement strategies referred to their approach to trading powers. The survey suggests that trading was not, at that time, a major activity for local authorities. Proposals for using the 2003 Act trading powers focused on legal services, finance and accountancy, planning, procurement, and waste management.

### INLOGOV Trading Report

4. As part of the research programme Inlogov were commissioned to conduct specific research examining local authority trading activities. The Inlogov trading research looks at trading powers that are wider than those provided under the 2003 Act. The research sought to establish:

- Why local authorities trade.
- the nature and extent of trading activities: type, value and volume of goods and service local authorities are trading, and to whom they are supplying these goods and services – both currently and over time.
- how local authorities are responding to trading powers (in particular, those provided by the Local Government Act 2003) –new areas where trading is beginning or planned, etc.
- how local authorities approach trading: processes, structures, skills, etc.

<sup>11</sup> For further information on the project:

<http://www.communities.gov.uk/index.asp?id=1137743>

<sup>12</sup> <http://www.communities.gov.uk/index.asp?id=1164542>

- what obstacles/barriers to local authority trading currently exist and how these might be overcome.
- local authority attitudes from the supply and demand side.

5 The Report found that 75% of authorities sell to other parts of the public sector, mainly other local authorities (67%); 46% of authorities sell to the voluntary and community sector, and 34% of authorities sell to the private sector. Trading authorities identified a number of advantages of trading such as: making surpluses to re-invest, service improvement, developing partnerships with the voluntary and community sector.

6 Most authorities thought that trading activity had increase modestly over time although the Trading Services Revenue (TSR) account data suggests that revenue from trading has decreased since 2000/01. 40% of top-tier authorities indicate plans to marginally increase trading activity.

7 Headline findings from the trading report indicated that:

- Revenue from all trading activities totalled over £1 Billion.
- The most commonly traded services are Grounds maintenance, Building cleaning / maintenance, Highways maintenance, Vehicle maintenance.
- 75% of authorities sell to other parts of the public sector, mainly other local authorities (67%); 46% of authorities sell to the voluntary and community sector, and 34% of authorities sell to the private sector.
- Trading authorities identified a number of advantages of trading such as: making surpluses to re-invest, service improvement, developing partnerships with the voluntary and community sector.
- Non trading authorities with plans to trade identified efficient use of assets, income generation and reductions in service delivery costs as their objectives for trading.
- 84% of trading authorities had a business plan for their trading activity and nearly all of these linked business planning to the authorities' corporate strategy.
- Most often (43%) authorities approach pricing with the aim of breaking even, 25% aim to profit on trading activity and 32% operate a mixed approach depending on circumstances.
- Most authorities thought that trading activity had increase modestly over time although the Trading Services Revenue (TSR)<sup>13</sup> account data suggests that revenue from trading has decreased since 2000/01. 40% of top-tier authorities indicate plans to marginally increase trading activity.

8. A later unpublished Trading Report by Inlogov is summarised in the main body of the text.

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<sup>13</sup> <http://www.local.odpm.gov.uk/finance/stats/natstats.htm#rev>

**ANNEX B - LOCAL GOVERNMENT ACT 2003 - Power to Charge for Discretionary Services and to Trade RIA**

**ANNEX C - LOCAL GOVERNMENT ACT 2003 - The Local Government (Power to Trade) (England) Order 2004 RIA**

**Both Annex B and Annex C are available separately.**