Using your legal powers for income generation
Jackie McGuire, Partner, Brodies LLP
The agenda....

- Busting the myth about the need for a trading company
- 10 things you can do using your charging powers
- Taking a risk but acting with due diligence
Trading Companies Myth or Necessity?
Compare and contrast

- The Local Government Act 2003
- The Localism Act 2011
- The Local Government in Scotland Act 2003
- Local Authorities (Goods and Services) Act 1970
The Local Authorities (Goods and Services) Act 1970

- Intra – Public Sector Trading
- Not limited to cost recovery
- Must relate to a function of local government
The Local Government Act 2003

- Section 95 - Power to trade in function-related activities through a company

- Must be function based – consider the breadth

- Trade outwith the public sector must be conducted by a local authority trading company – NOT a MYTH!

- Charging powers – cost recovery only
# Trade and collaboration E & W

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<thead>
<tr>
<th>Collaboration</th>
<th>Trade public/public</th>
<th>Trade Public/Private</th>
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<tr>
<td>Permissible</td>
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<tr>
<td>Lead Authority</td>
<td>No Trading Company</td>
<td>Trading company required</td>
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<td>Joint Committee</td>
<td>Contractual relationship</td>
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<td>Joint Board</td>
<td>Function based</td>
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Localism Act 2011

- Applies to E & W only
- General power of competence
- Commercial purposes – trading
- Trading must be through a company – fact not myth
Scottish Local Authorities and Trading

• Local Authorities (Goods and Services) Act 1970
• Intra – the “public market” – no restriction
• Otherwise – income subject to a financial limit
• Provides for consent to exceed these limits
Local Government in Scotland Act 2003

- No equivalent of LGA 2003 s95 – MYTH exposed
- Power to advance well-being
- Charging for discretionary services – but benefit to local area/inhabitants needs to be identified
- Compare to E & W – exercise of general power of competence – no requirement to identify a specific benefit
- Finally – regard to statutory guidance – due regard must be had
Approaches to trading

• The appetite and confidence in the power to trade varies from local authority to local authority
• Increased interest in the use of trading structures
• Broadening out of areas of service delivery
Horses for courses or if the myth fits……..

- Joint Ventures public/private – LLPs and tax transparency
- Fiscal advantages – VAT, gift aid, etc
- Downside – complex governance arrangements?
- Conflicts and confusion
- Set up costs
Time for Reform?

- Financial constraints
- Innovative approaches
- Greater clarity and improved confidence
- Level playing fields
Charging – ten things are for YOU to decide

- Generate income – subject to clear policy guidelines
- Influence behaviour – gym charges/parking charges
- Effect environmental improvements
- Promote improvements in health
- Address inequality – concessions and variable charges (PSED)
- Avoid discrimination EqIa
- Re-investment of surpluses – ALEOs, Charitable Trusts – service improvements – reduce deficit funding
- Maintain existing standards
- Promote, control or limit the uptake of services
- Improve quality of life – ands and adaptations
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