



July 2004

## Briefing 04/35

To All Local Authority Chief Executives and Best Value and Procurement Contacts in England, Wales, Scotland and Northern Ireland

### **Government announces statutory instruments laid before parliament in relation to local authority trading**

#### **Key issues**

- APSE Briefing Number 04/27 advised members about the draft Statutory Instrument and draft Government guidance in relation to Trading.
- This briefings confirms that the Statutory Instrument has now been laid before parliament to come into effect on the 29<sup>th</sup> July 2004 and an additional Statutory Instrument 'The Local Authorities (Categorisation) (England) Order 2004' has also been laid before Parliament to come into effect again on the 29<sup>th</sup> July 2004.

#### **Background**

The Office of the Deputy Prime Minister (ODPM) issued draft consultation on both a draft Statutory Instrument and draft guidance in relation to the new powers to trade conferred by the Local Government Act 2003, in May 2004. APSE consulted its member authorities and responded to the ODPM on behalf of its members. On the 8<sup>th</sup> July 2004 the Secretary of State laid before Parliament the Statutory Instrument, **The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 [ Statutory Instrument No. 1705 ]** which will come into effect on the 29<sup>th</sup> July 2004. In addition the Secretary of State has also laid before Parliament an SI giving effect to S.99 (4) of the Local Government Act 2003 concerning the Comprehensive Performance Assessment (CPA) rating of each best value authority in England.

## **Main Changes between the Draft SI (Power to Trade) and the SI as Laid Before Parliament.**

2(4) of the Draft SI stated:-

*(4) In this article*

*“business case”, means a detailed case setting out the objectives of the business, forecasts as to financial and other circumstances of the business in the event that the objectives are achieved, the investment and other resources required to achieve those objectives and any material risks involved.*

2(4) of the final SI states:-

*(4) In this article “business case” means a comprehensive statement as to –*

- (a) the objectives of the business*
- (b) the investment and other resources required to achieve those objectives,*
- (c) any risks the business might face and how significant these risks are, and*
- (d) The expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.*

It would appear the strengthened wording in the final SI is to reflect the fact that the financial matters of a Trading Company could impact upon parent authorities prudential borrowing plans. However the broad definition in 4 (d) could well reflect an intention to revise the restrictions on local authority companies to reflect more general accountancy principles.

## **Local Authority Companies – Part V of the Local Government and Housing Act 1989 (LGHA)**

APSE member authorities will recall that one of the main issues we raised in our response to the draft guidance and on which we were particularly critical of the Government’s approach to Trading was the failure to link anticipated revisions, to Part V of the LGHA 1989, with the draft SI and draft Guidance on Trading, which govern local authority involvement in companies. Following an approach to the ODPM by APSE they have confirmed that it is intended to revise the regulations stemming from Part V to ensure that the Part V arrangements reflect ‘generally accepted accountancy principles’. It is now expected that a new CIPFA code will be developed which will hopefully bring about a commonsense approach to local authority involvement in companies, rather than the current restrictions, which fetter authorities, based on share ownership and equity stakes.

**Comprehensive Performance Assessment (Categorisation) (England) Order 2004 [Statutory**

## **Instrument 2004 No. 1704]**

In order to give effect to the Secretary of State's restriction on an authority's ability to trade should they be categorised as 'weak' or 'poor' a further order has been issued using the Secretary of States powers under S. 99 ( 4) of the LGA Act 2003. The additional SI is '**The Local Authorities (Categorisation) (England) Order 2004 [Statutory Instrument 2004 No. 1704]**' which has been laid before parliament on the 8<sup>th</sup> July to come into effect on the 29<sup>th</sup> July 2004. The SI lists in its appendices Excellent, Good, Fair, Weak and Poor authorities. This formality was widely anticipated.

### **Government Guidance**

Government guidance on Trading has not yet been published though APSE members will recall we have consulted members on the draft guidance, which was issued in May 2004. Once guidance is issued it will be given effect by

S. 96 (2) to which authorities must have regard in its activities.

### **Conclusions**

APSE has consistently campaigned for authorities to be given the power to charge and trade. The finalisation of the Statutory Instrument giving effect to the new powers is therefore significant. However, as referred to in APSE briefing 04/27, there remain many difficulties with the new powers and member authorities are asked to refer back to briefing 04/27 for a more detailed analysis.

Please also note that the APSE Best Value Advisory Group to be held in Manchester on the 21<sup>st</sup> July will include a special presentation on the new trading powers. The Advisory Group is free to member authorities. In addition at APSE's annual seminar in Plymouth ( 7<sup>th</sup> to 10<sup>th</sup> September ) Stephen Cirell a partner with leading public sector law firm Evershed's will lead a major plenary session on Trading and Charging. For details of the seminar please contact the APSE secretariat.

Both Statutory Instruments are available on the HMSO website [www.hmso.gov.uk](http://www.hmso.gov.uk) or alternatively Mo Baines at the APSE offices (email: [mbaines@apse.org.uk](mailto:mbaines@apse.org.uk) ) will forward an email copy on request.

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