



Local Government Act 2003

2003 CHAPTER 26

PART 8

MISCELLANEOUS AND GENERAL

CHAPTER 1

MISCELLANEOUS

Charging and trading

93 Power to charge for discretionary services

- (1) Subject to the following provisions, a best value authority may charge a person for providing a service to him if—
 - (a) the authority is authorised, but not required, by an enactment to provide the service to him, and
 - (b) he has agreed to its provision.
- (2) Subsection (1) does not apply if the authority—
 - (a) has power apart from this section to charge for the provision of the service, or
 - (b) is expressly prohibited from charging for the provision of the service.
- (3) The power under subsection (1) is subject to a duty to secure that, taking one financial year with another, the income from charges under that subsection does not exceed the costs of provision.
- (4) The duty under subsection (3) shall apply separately in relation to each kind of service.
- (5) Within the framework set by subsections (3) and (4), a best value authority may set charges as it thinks fit and may, in particular—
 - (a) charge only some persons for providing a service;
 - (b) charge different persons different amounts for the provision of a service.

Status: Point in time view as at 31/01/2008.

Changes to legislation: Local Government Act 2003, Cross Heading: Charging and trading is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) In carrying out functions under this section, a best value authority shall have regard to such guidance as the appropriate person may issue.
- (7) The following shall be disregarded for the purposes of subsection (2)(b)—
 - (a) section 111(3) of the Local Government Act 1972 (c. 70) (subsidiary powers of local authorities not to include power to raise money),
 - (b) section 34(2) of the Greater London Authority Act 1999 (c. 29) (corresponding provision for Greater London Authority), and
 - (c) section 3(2) of the Local Government Act 2000 (c. 22) (well-being powers not to include power to raise money).
- (8) In subsection (1), “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

94 Power to disapply section 93(1)

- (1) The appropriate person may by order disapply section 93(1)—
 - (a) in relation to particular descriptions of best value authority or particular best value authorities;
 - (b) in relation to the provision of a particular kind of service by—
 - (i) all best value authorities,
 - (ii) particular best value authorities, or
 - (iii) particular descriptions of best value authority.
- (2) The power under subsection (1) includes power to disapply for a particular period.

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

- (1) The appropriate person may by order—
 - (a) 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, and
 - (b) make provision about the persons in relation to whom authority under paragraph (a) is exercisable.
- (2) No order under this section may authorise a best value authority—
 - (a) to do in relation to a person anything which it is required to do in relation to him under its ordinary functions, or
 - (b) to do in relation to a person anything which it is authorised, apart from this section, to do in relation to him for a commercial purpose.
- (3) An order under this section may be made in relation to—
 - (a) all best value authorities, particular best value authorities or particular descriptions of best value authority;
 - (b) all things authorised to be done for the purpose of carrying on a particular function, particular things authorised to be done for that purpose or particular descriptions of thing authorised to be so done.
- (4) Power conferred by an order under this section shall only be exercisable through a company within the meaning of Part 5 of the Local Government and Housing Act 1989 (c. 42) (companies in which local authorities have interests).

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- (5) A best value authority on which power is conferred by an order under this section shall be treated as a local authority for the purposes of Part 5 of the Local Government and Housing Act 1989 if it would not otherwise be such an authority, but only in relation to a body corporate through which it exercises, or proposes to exercise, the power conferred by the order.
- (6) In its application by virtue of subsection (5), section 70(1) of the Local Government and Housing Act 1989 (c. 42) (power to make provision about what a company under the control, or subject to the influence of, a local authority does) shall only apply in relation to the doing for a commercial purpose of the thing to which the order under this section relates.
- (7) In this section—
- “best value authority” does not include—
- (a) a police authority established under section 3 of the Police Act 1996 (c. 16),
 - (b) the Common Council of the City of London in its capacity as a police authority,
 - (c) the Metropolitan Police Authority, or
 - (d) the London Development Agency;
- “ordinary functions”, in relation to a best value authority, means functions of the authority which are not functions under this section.

96 Regulation of trading powers

- (1) The appropriate person may by order impose conditions in relation to the exercise by a best value authority of—
- (a) a power to do anything for a commercial purpose, or
 - (b) a power to do anything for such a purpose through a company.
- (2) In exercising such a power as is mentioned in subsection (1), a best value authority shall have regard to such guidance as the appropriate person may issue.
- (3) An order under this section may be made in relation to—
- (a) all best value authorities,
 - (b) particular best value authorities, or
 - (c) particular descriptions of best value authority.
- (4) In this section, “best value authority” does not include—
- (a) a police authority established under section 3 of the Police Act 1996,
 - (b) the Common Council of the City of London in its capacity as a police authority,
 - (c) the Metropolitan Police Authority, or
 - (d) the London Development Agency.
- (5) In subsection (1)(b), “company” has the same meaning as in Part 5 of the Local Government and Housing Act 1989.

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97 Power to modify enactments in connection with charging or trading

- (1) If it appears to the Secretary of State that an enactment (whenever passed or made), other than section 93(2) or 95(2), prevents or obstructs best value authorities—
 - (a) charging by agreement for the provision of a discretionary service, or
 - (b) doing for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions,
 he may by order amend, repeal, revoke or disapply the enactment.
- (2) The Secretary of State may by order amend, repeal, revoke or disapply an enactment (whenever passed or made), other than section 93, which makes in relation to a best value authority provision for, or in connection with, power to charge for the provision of a discretionary service.
- (3) The power under subsection (1) or (2) to amend or disapply an enactment includes power to amend or disapply an enactment for a particular period.
- (4) An order under this section may be made in relation to—
 - (a) all best value authorities,
 - (b) particular best value authorities, or
 - (c) particular descriptions of best value authority.
- (5) An order under subsection (1)(b) may be made in relation to—
 - (a) all things authorised to be done for the purpose of carrying on a particular function,
 - (b) particular things authorised to be done for that purpose, or
 - (c) particular descriptions of thing authorised to be so done.
- (6) An order under subsection (1)(b) may not be used to authorise a best value authority to do in relation to a person anything which it is required to do in relation to him under its ordinary functions.
- [^{F1}(7A) In exercising a power under subsection (1) or (2), the Secretary of State must not make provision which has effect in relation to Wales unless he has consulted the Welsh Ministers.
- (7B) In exercising a power under subsection (1) or (2), the Secretary of State—
 - (a) must not amend, or repeal or disapply, Measures or Acts of the National Assembly for Wales without the consent of the National Assembly for Wales;
 - (b) must not amend, or revoke or disapply, subordinate legislation made by the Welsh Ministers (or the National Assembly for Wales established under the Government of Wales Act 1998) without the consent of the Welsh Ministers.
- (7C) Subsection (7B) does not apply to the extent that the Secretary of State is making incidental or consequential provision.]
- (8) The [^{F2}Welsh Ministers] may submit proposals to the Secretary of State that the power under subsection (1) or (2) should be exercised in relation to Wales in accordance with those proposals.
- (9) Subject to subsection (10), no order shall be made under this section unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.

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- (10) An order under this section which is made only for the purpose of amending an earlier order under this section—
- (a) so as to extend the earlier order, or any provision of the earlier order, to a particular authority or to authorities of a particular description, or
 - (b) so that the earlier order, or any provision of the earlier order, ceases to apply to a particular authority or to authorities of a particular description,
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) In this section—
- “discretionary service”, in relation to a best value authority, means a service which the authority is authorised, but not required, to provide;
 - “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));
 - “ordinary functions”, in relation to a best value authority, means functions of the authority which are not functions under section 95.

Textual Amendments

- F1** S. 97(7A)-(7C) substituted for (30.12.2007) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), **ss. 141(2)(a)**, 245(2)
- F2** Words in s. 97(8) substituted (30.12.2007) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), **ss. 141(2)(b)**, 245(2)

98 Procedure for orders under section 97

- (1) Before making an order under section 97, the Secretary of State shall consult—
- (a) such best value authorities as appear to him to be likely to be affected by his proposals, and
 - (b) such other persons as appear to him to be representative of interests likely to be so affected.
- (2) If following consultation under subsection (1) and, where the proposals relate to best value authorities in Wales, consultation under [^{F3}subsection (7A)] of section 97, the Secretary of State proposes to make an order under that section, he shall lay before each House of Parliament a document which—
- (a) explains his proposals,
 - (b) sets them out in the form of a draft order,
 - (c) gives details of consultation under subsection (1), and
 - (d) where the proposals relate to best value authorities in Wales, sets out the views of the [^{F4}Welsh Ministers].
- (3) Where a document relating to proposals is laid before Parliament under subsection (2), no draft of an order under section 97 to give effect to the proposals (with or without modification) shall be laid before Parliament until after the expiry of the period of sixty days beginning with the day on which the document was laid.
- (4) In calculating the period mentioned in subsection (3), no account shall be taken of any time during which —
- (a) Parliament is dissolved or prorogued, or

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- (b) either House is adjourned for more than four days.
- (5) In preparing a draft order under section 97 the Secretary of State shall consider any representations made during the period mentioned in subsection (3).
- (6) A draft order laid before Parliament in accordance with section 97(9) must be accompanied by a statement of the Secretary of State giving details of—
 - (a) any representations considered in accordance with subsection (5), and
 - (b) any changes made to the proposals contained in the document laid before Parliament under subsection (2).
- (7) Nothing in this section applies to an order under section 97 which is made only for the purpose mentioned in section 97(10).

Textual Amendments

- F3** Words in s. 98(2) substituted (30.12.2007) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\), ss. 141\(3\)\(a\), 245\(2\)](#)
- F4** Words in s. 98(2)(d) substituted (30.12.2007) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\), ss. 141\(3\)\(b\), 245\(2\)](#)

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