

**2004 No. 1705**

**LOCAL GOVERNMENT, ENGLAND**

**The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004**

<i>Made</i> - - - -	<i>5th July 2004</i>
<i>Laid before Parliament</i>	<i>8th July 2004</i>
<i>Coming into force</i> - -	<i>29th July 2004</i>

The First Secretary of State, in exercise of the powers conferred by sections 95, 96 and 123 of the Local Government Act 2003(a), hereby makes the following Order:

**Citation, commencement and application**

1.—(1) This Order may be cited as the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 and shall come into force on 29th July 2004.

(2) Subject to paragraph (3), this Order applies to best value authorities in England(b) which—

- (a) are local authorities within the meaning of section 1(2) of the Local Government Act 1999(c); and
- (b) 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”; or
  - (iii) “fair”.

(3) This Order does not apply to a best value authority that is—

- (a) a non-metropolitan county council;
- (b) a non-metropolitan district council for an area for which there is no county council; or
- (c) the Council of the Isles of Scilly.

when acting in its capacity as a fire authority.

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(a) 2003 c. 26.

(b) In relation to Wales, the powers conferred by sections 95(1) and 96(1) of the Local Government Act 2003 are exercisable by the National Assembly for Wales. *See* section 124 of that Act for the definitions of “appropriate person” and “best value authority”. *See also* sections 95(7) and 96(4) of that Act for authorities and bodies that are not best value authorities for the purposes of those sections.

(c) 1999 c. 27.

### **Power to trade in function-related activities**

2.—(1) Subject to paragraphs (2) and (3), a best value authority is authorised to do for a commercial purpose anything which it is authorised to do for the purpose of carrying on any of its ordinary functions<sup>(a)</sup>.

(2) Before exercising the power conferred by paragraph (1), the authority shall—

- (a) prepare a business case in support of the proposed exercise of that power; and
- (b) approve that business case.

(3) A best value authority shall recover the costs of any accommodation, goods, services, staff or any other thing that it supplies to a company<sup>(b)</sup> in pursuance of any agreement or arrangement to facilitate the exercise of the power conferred by paragraph (1).

(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.

### **Transitional arrangements**

3. Where a best value authority ceases to be within one of the categories specified in article 1(2)(b)—

- (a) anything which the authority is in the process of doing by virtue of article 2, at the time this Order ceases to apply to it, may be completed; and
- (b) any agreement or arrangement entered into for the purpose of facilitating the exercise of the power conferred by article 2(1), shall cease to have effect at the end of the period of two years beginning with the date on which this Order ceases to apply to the authority.

Signed by authority of the First Secretary of State

5th July 2004

*Nick Raynsford*  
Minister of State  
Office of the Deputy Prime Minister

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<sup>(a)</sup> See section 95(7) of the Act for the meaning of “ordinary functions”.

<sup>(b)</sup> See section 95(4) of the Act for the meaning of “company”.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order applies to local authorities in England which, by an order made under section 99(4) of the Local Government Act 2003 (“the Act”), have been categorised on the basis of their performance as “excellent”, “good”, or “fair”. This Order does not apply to the authorities referred to or specified in article 1(3), when acting in their capacity as fire authorities.

Article 2 authorises a local authority to which the Order applies to trade in any of its ordinary functions subject to conditions requiring the prior preparation and approval of a business case, and the recovery of any costs incurred by the authority in anything it supplies, including accommodation, goods, services or staff, to a company through which the trading power is exercised. Under section 95(4) of the Act, the power to trade must be exercised through a company.

Article 3 makes transitional provision. Where a local authority’s performance is re-categorised as below “fair”, this Order will cease to apply to it. However, it will be allowed to complete anything started in exercise of the power to trade. Any agreements or arrangements which have been entered into will be allowed to continue for a period of two years.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business may be accessed at: [www.odpm.gov.uk](http://www.odpm.gov.uk); or available from: ODPM Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (tel: 0870-1226-236; fax: 0870-1226-237); e-mail: [odpm@twoten.press.net](mailto:odpm@twoten.press.net).

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