

2009 No. 2393

LOCAL GOVERNMENT, ENGLAND

The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009

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| <i>Made</i> - - - - | <i>2nd September 2009</i> |
| <i>Laid before Parliament</i> | <i>8th September 2009</i> |
| <i>Coming into force</i> - - | <i>1st October 2009</i> |

The Secretary of State^(a), in exercise of the powers conferred by sections 95, 96 and 123 of the Local Government Act 2003^(b) 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 2009 and shall come into force on 1st October 2009.

(2) This Order applies to the following best value authorities in England^(c)—

- (a) a local authority;
- (b) a fire and rescue authority constituted by—
 - (i) a scheme under section 2 of the Fire and Rescue Services Act 2004^(d) (power to create combined fire and rescue authorities), or
 - (ii) a scheme to which section 4 of that Act applies (combined authorities under the Fire Services Act 1947);
- (c) a metropolitan county fire and rescue authority; and
- (d) the London Fire and Emergency Planning Authority.

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.

(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.

(a) The powers under sections 95 and 96 of the Local Government Act 2003^(c.26) are exercisable by the appropriate person. The Secretary of State is the appropriate person, in relation to England, by virtue of section 124 of that Act.
(b) 2003 c.26.
(c) See section 124 of the Local Government Act 2003 and section 1(1) and (2) of the Local Government Act 1999 (c.27). Section 1(2) was amended by the Local Government and Public Involvement in Health Act 2007 (c.28), sections 136(1)(a), 144(2) and Schedule 8, Part 1, paragraphs 1, 2(1), (2)(a) and (3)(a).
(d) 2004 c.21.

(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 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.

Revocation of regulations

3.—(1) The Regulations listed in paragraph (2) are revoked.

(2) The Regulations are—

- (a) the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004(a);
- (b) the Local Government (Best Value Authorities) (Power to Trade) (England) (Amendment) Order 2004(b);
- (c) the Local Government (Best Value Authorities) (Power to Trade) (England) (Amendment No. 2) Order 2004(c);
- (d) the Local Government (Best Value Authorities) (Power to Trade) (England) (Amendment) Order 2006(d);
- (e) the Local Government (Best Value Authorities) (Power to Trade) (England) (Amendment) Order 2007(e);
- (f) the Local Government (Best Value Authorities) (Power to Trade) (England) (Amendment No. 2) Order 2007(f).

Signed by authority of the Secretary of State for Communities and Local Government

Ian Austin

Parliamentary Under Secretary of State

Department for Communities and Local Government

2nd September 2009

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the power in sections 95 and 96 of the Local Government Act 2003 (“the Act”), provides that all best value local authorities in England, and fire and rescue authorities in England, are authorised to trade in any of their ordinary functions subject to certain conditions.

Regulation 2 sets out those conditions, which require 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.

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- (a) S.I. 2004/1705.
 - (b) S.I. 2004/2307.
 - (c) S.I. 2004/2573.
 - (d) S.I. 2006/3102.
 - (e) S.I. 2007/385.
 - (f) S.I. 2007/2543.

The Order revokes the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 (“the 2004 Order”) and all Orders that amended the 2004 Order. Prior to its revocation, the 2004 Order authorised only those English local authorities which had achieved a certain level of categorisation and named fire and rescue authorities in England to trade. The named fire and rescue authorities were only allowed to trade in specified services.

Two impact assessments of the effect that this instrument will have on the costs of business may be accessed at <http://www.communities.gov.uk/corporate/publications/impact-assessments/> or available from: Communities and Local Government, Fire & Resilience Directorate, 3rd Floor Eland House, Bressenden Place, London, SW1E 5DU and are annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website at www.opsi.gov.uk.

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STATUTORY INSTRUMENTS

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