

EXPLANATORY MEMORANDUM TO THE
Local Authorities (Categorisation) (England) Order 2004

2004 No. 1704

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

The Order categorises local authorities in England into five categories according to performance, following a report of the Audit Commission dated July 1, 2004.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

This Order is the first use of the power under section 99(4) of the Local Government Act 2003, following a report of the Audit Commission of 1st July 2004 (that report superseded a report of the Audit Commission dated 15th June 2004 which was not used as the basis for an Order under section 99(4)).

5. Extent

This instrument applies to English local authorities only.

6. European Convention on Human Rights

This instrument is subject to negative procedure and does not amend primary legislation. Accordingly no certificate as to compatibility is required.

7. Policy background

7.1 The Local Government White Paper of December 2001 *Strong Local Leadership - Quality Public Services* set out the measures Government proposed to put in place to strengthen local government by increasing its accountability and effectiveness at service delivery. At the heart of this was a new assessment framework - Comprehensive Performance Assessment (CPA) to promote the delivery of national and local priorities. CPA is carried out independently by the Audit Commission who have consulted widely on the methodology. The Government said that CPA would enable it to target a package of measures to authorities based on their performance - including more support for weaker authorities and less regulation for high performers.

7.2 In November 2002 the Government announced a package of freedoms and flexibilities which was broadly welcomed by local government. It announced

some significant freedoms for all authorities regardless of CPA result - a new prudential borrowing regime, a power to charge for discretionary services and less plan requirements. The announcement also set out additional freedoms for high performers who have the capacity and track record to make use of them to provide better services to local people.

- 7.3 Of these extra freedoms, some are 'administrative' - for example, providing an inspection holiday by coming to agreements and arrangements with the relevant inspectorates. However, many of the additional freedoms relate to statutory regulations, requirements and controls - for example, further freedom from statutory plan requirements, new powers to trade and increased flexibility to spend fine income.
- 7.4 Many of the order making powers necessary to provide these statutory freedoms are subject to the lengthy and resource intensive "super-affirmative" order making process. This would have meant, when the Audit Commission announced authorities had moved up or down a CPA category, Government would have had to make entirely new orders. Where these orders are super-affirmative, it could have been months before authorities whose performance had improved received freedoms, or Government was able to remove freedoms where authorities' performance had declined.
- 7.5 The Local Government Act 2003 provides a new power to enable Government to expedite the provision of freedoms to local authorities according to CPA category. The procedure is essentially a two stage process. First, following receipt of a report from the Audit Commission, the Government can make an Order (the 'Categorisation Order') under s.99(4) listing authorities by CPA category. The Government cannot depart from the categorisations in the Audit Commission's report. Secondly, the Government, can also make Orders providing statutory freedoms which draw on the categorisation order by referring to CPA categories. The Categorisation Order is subject to negative resolution procedure and so these can be made relatively quickly in order to reflect the latest CPA categorisations. The Government will discuss with the Audit Commission the timetable for updating the Categorisation Order and will be looking to strike a reasonable balance between keeping the Categorisation Order as up to date as possible without making the process unnecessarily onerous.
- 7.6 Updating the Categorisation Order will automatically provide authorities moving up into the relevant CPA categories with the statutory freedoms provided by other orders. It is worth explaining further the arrangements where revised Categorisation Orders mean authorities move out of Categories relevant to freedoms. The Government recognises that immediate withdrawal of freedoms could in some cases be detrimental. Government will therefore consider, for each individual freedom, the provision of transitional arrangements allowing local authorities a 'period of grace' in which they are able to retain the freedom, despite having moved out of the categories necessary to obtain it. Government hopes that authorities are able to address areas of weakness during this period in order to return to their previous categorisation. Provision for transitional arrangements will be made in the principal Orders granting the freedom, not in the Categorisation Order.

Transitional arrangements will vary based on the conditions of the individual freedoms.

- 7.7 The Categorisation Order does not refer to all local authorities as not all authorities currently have a CPA result. The Audit Commission is in the process of rolling out CPA to district councils - final announcements on district CPA results are currently scheduled for 16 December 04. However, local authorities are keen to use the new freedoms and the Government does not feel it should delay provision for the substantial number of authorities who have a CPA categorisation. As mentioned previously, the Government will update the Categorisation Order to reflect the latest categorisations including the further roll out of CPA to district councils.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector will be that high performing local authorities will receive additional freedoms and flexibilities. Local authorities have welcomed these freedoms and are keen to make use of them as soon as possible to help improve the delivery of public services to local people.

9. Contact

Andrew Whitehead at the Office of the Deputy Prime Minister Tel: 020 7944 3846 or e-mail: Andrew.Whitehead@odpm.gsi.gov.uk can answer any queries regarding the instrument.