

**EXPLANATORY MEMORANDUM TO THE  
LOCAL AUTHORITIES (CATEGORISATION) (ENGLAND) (NO.2) ORDER 2004  
2004 No. 3211**

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 November 8, 2004.

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

None

**4. Legislative Background**

This Order is the second use of the power under section 99(4) of the Local Government Act 2003, following a report of the Audit Commission of 8 November. This Order revokes and replaces SI 1704/2004 the 'Local Authorities Categorisation Order 2004' which came into force on 29 July 2004.

**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 Many of these 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 income derived from fines.
- 7.4 The Local Government Act 2003 provides a power to enable Government to make available to local authorities, by reference to their CPA category, certain statutory freedoms. The procedure is essentially a two-stage process. 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. The Government can then 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.
- 7.5 Updating the Categorisation Order enables authorities in the qualifying categories to automatically access statutory freedoms provided by other orders, e.g. Trading Powers Order which gives best value authorities the power to trade for commercial purpose. It is worth explaining further the arrangements where updated Categorisation Orders mean authorities move out of qualifying categories. 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 arrangements allowing local authorities a specified period in which they are able to retain the freedom, despite having moved out of the qualifying categories. Government hopes that authorities are able to address areas of weakness during this period in order to return to their previous categorisation. Provision of such periods may be made in the Orders granting the freedom, not in the Categorisation Order, and will be determined by the conditions of the individual freedom.
- 7.6 The Audit Commission is in the process of rolling out CPA to district councils and final announcements on district CPA results are expected by the end of 2004. However, the Government does not want to delay the making of this Order as it will enable nearly fifty local authorities to access new freedoms. The Government intends to make a further Categorisation Order to reflect the latest categorisations, including the completed roll out of CPA to district councils and updated categorisations for county and single-tier district councils, early next year.

## **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**

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