

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (CATEGORISATION) (ENGLAND) ORDER 2006
2006 No. 3096

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Description

The Order categorises local authorities in England into one of ten categories according to performance, following a report of the Audit Commission dated 31st August 2006.

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

None

4. Legislative Background

4.1. Under Section 99(1) of the Local Government Act 2003 ("the Act"), the Audit Commission must from time to time produce a report on its findings in relation to the performance of English local authorities in exercising their functions. The report must categorise each authority according to how the authority has performed in exercising its functions.

4.2. Where the Secretary of State receives such a report from the Audit Commission, section 99(4) of the Act enables her to make an order categorising the English local authorities in accordance with their categorisation in the report.

5. Extent

This instrument applies in relation to English local authorities only.

6. European Convention of Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy Background

7.1. The December 2001 Local Government White Paper *Strong Local Leadership - Quality Public Services* announced a new Comprehensive Performance Assessment (CPA) framework to assess local authorities' delivery of national and local priorities. CPA provides local people with more information about the performance of their council, and enables Government to apply measures appropriate to councils' performance - including more support for weaker authorities and less regulation for high performers. The Audit Commission has been independently carrying out these assessments, which have been rolled out to all English local authorities since

December 2002. The Audit Commission placed councils into one of five categories - excellent, good, fair, weak and poor - and published these results on their website.

- 7.2. In December 2005 The Audit Commission published a revised CPA framework (CPA – The Harder Test) for England's 150 single tier (i.e. unitary district, unitary county and London borough) councils and county councils. Under CPA – The Harder Test Framework councils receive an overall performance category ranging from 0 to 4 stars, with 4 stars being the highest. The scoring system also assesses the direction of each council's overall improvement using the following direction of travel labels: improving strongly; improving well; improving adequately; and not improving adequately (or not improving). District councils (in areas where there are also County Councils) continue to be assessed according to the ratings of excellent – poor.
- 7.3. The entitlement of local authorities to exercise certain powers, subject to their performance, depends on how they are categorised by orders made under s99(4) of the Act. Categorisation orders categorise local authorities by their performance and are made regularly following announcements of revised CPA results by the Audit Commission. Categorisation orders can only be made on receipt of a report from the Audit Commission and in making such orders, the Government cannot depart from the categorisations in the Audit Commission's report (except to correct clerical or typographical errors).
- 7.4. There are various provisions which are contingent on the Audit Commission's categorisations being made statutory via the categorisation order:
- The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 (S.I.2004/1705) came into effect on 29th July 2004 and provides fair, good and excellent authorities with new powers to trade. This Order is being amended at the same time as the making of the Categorisation Order to provide powers to trade for one, two, three and four star authorities¹.
 - The Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005 (S.I. 2005/157) came into effect on 1st February 2005 and granted excellent authorities exemptions from certain statutory requirements to make plans and strategies. This Order is being amended by affirmative resolution and is not therefore being made at the same time as the Categorisation Order. This Order will grant exemptions from the Homelessness Strategy, Youth Justice Plan and Home Energy Conservation Report to three and four star authorities, and exemptions from the other plans and strategies in the Order to four star authorities.
 - The Children and Young Peoples' Plan (England) Regulations 2005 (SI 12005/2149) which came into effect on 1 September 2005 exempts excellent authorities from the statutory requirement to produce this plan. This Order is being amended at the same time as the making of the Categorisation Order to provide an exemption to four star authorities².
 - The Joint Municipal Waste Strategies (Disapplication of Duties) (England) Regulations 2004 (SI 2004/3242), which came into effect on 1 January 2005, granted excellent authorities exemption from this statutory requirement. The Strategy is being

¹ The changes to the Power to Trade Order are being made in the Local Government (Best Value Authorities) (Power to Trade)(Amendment)(England) Order 2006 No. **To be inserted**

² The changes are being made by the **details to be inserted once have number from DFES LSS**

amended at the same time as the making of the Categorisation Order to grant exemption to four star authorities³.

- 7.5. The Government made the first categorisation Order in July 2004, and replaced it with a second Order in December 2004, followed by a third Order in April 2005, and a fourth Order on 30 August 2005 to reflect new and changing CPA results. Each Order has revoked the previous Order, and the present Order now revokes the fourth Order. It includes categorisations for all local authorities that have had a CPA result published by the Audit Commission as at 31st August 2006.
- 7.6. This Order includes all the results for the single tier and county councils assessed under the 'Harder Test', up to 31st August 2006 including results for 3 councils which were revised following review in June 2006.
- 7.7. CPA 2005 is a harder test, so comparisons cannot be made to ratings for single tier and county authorities in the fourth Categorisation Order, which were made under the previous CPA system. However, there have been some changes in terms of access to the performance related freedoms and flexibilities under CPA 2005, announced on 13th September 2006.
- 7.8. 8 authorities who were previously categorised as good are now 4 star authorities, namely; Buckinghamshire County Council, Devon County Council, Essex County Council, Leicester City Council, Redcar and Cleveland Borough Council, Stockport Metropolitan Borough Council, Surrey County Council and Sutton London Borough Council. These authorities will have full access to the package of freedoms and flexibilities.
- 7.9. 11 authorities who were formerly categorised as fair or weak are now three star authorities, namely; Bournemouth Borough Council, Coventry City Council, Dudley Metropolitan Borough Council, Ealing London Borough Council, Enfield London Borough Council, Haringey London Borough Council, Milton Keynes District Council, Rotherham Metropolitan Borough Council, Salford City Council, Walsall Metropolitan Borough Council and Wolverhampton City Council. These will have access to most freedoms and flexibilities including exemption from some statutory planning requirements and the power to trade.
- 7.10. 6 authorities who were formerly categorised as weak are now two star authorities, namely; Birmingham City Council, Hillingdon London Borough Council, Lambeth London Borough Council, Oldham Metropolitan Borough Council, Plymouth City Council and Swindon Borough Council. These will have access to some freedoms and flexibilities including the power to trade and freedom over how to spend some fixed penalty notices.
- 7.11. The Government intends to regularly update the Categorisation Order to reflect any new categorisations made following further updated CPA assessments, and plans to update the Order after revised results are published in February 2007. In the meantime, the Government does not want to delay the provision of freedoms and flexibilities to authorities who have moved into higher categories.

³ The changes are being made by the **to be inserted once have number from DEFRA LSS**

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

Jean Sheward at the Department of Communities and Local Government (Tel: 020 7944 8116 or e-mail, Jean.Sheward@communities.gsi.gov.uk, can answer any queries regarding this Statutory Instrument.