EXPLANATORY MEMORANDUM TO THE

LOCAL AUTHORITIES (CATEGORISATION) (ENGLAND) ORDER 2005

2005 No.694

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 7th March, 2005.

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 him to make an order categorising the English local authorities in accordance with their categorisation in the report.

4.3 This Order is the third use of the power under section 99(4), It follows the Audit Commission's latest report of 7th March 2005. This Order revokes and replaces the Local Authorities (Categorisation) (England) (No. 2) Order 2004 (SI 2004/3211) which came into force on 31st December 2004.

5. Extent

This instrument applies in relation 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 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. The Audit Commission has been independently carrying out these assessments,

which have been rolled out to all English local authorities since December 2002. The Commission place councils into one of five categories - excellent, good, fair, weak and poor - and publish these results on their website. 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.

7.2 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 Local Government Act 2003. 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).

7.3 There are various provisions which are contingent on the statutory categorisations in the categorisation order. The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 (S.I.1705/2004) came into effect on 29th July 2004 and provides fair, good and excellent authorities with new powers to trade. The Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005 (S.I. 157/2005) came into effect on 1st February 2005 granting excellent authorities exemptions from certain statutory requirements to make plans and strategies.

7.4 The Government made the first categorisation order in July 2004, and replaced it with a second order in December 2004 to reflect new and changing CPA results. The present Order now revokes the second order and includes categorisations for all local authorities that have a CPA result published by the Audit Commission as at 7th March 2005. It includes 12 new results for district councils in two-tier areas, and 46 revised results for county councils and district councils in single tier areas, announced by the Audit Commission on 16 December 2004. Against the second categorisation order, 45 councils have moved into higher categories, one council (Isles of Scilly) has moved down a category and one council (the London Borough of Ealing) does not appear in this Order.

7.5 This Order will enable 22 additional councils to access the powers to trade, and 11 additional councils to benefit from the exemptions from statutory plan requirements. Also consequent to this Order, the Isles of Scilly and the London Borough of Ealing will no longer have a categorisation granting them access to the powers to trade. However, the Power to Trade Order contains transitional provisions for authorities moving out of the qualifying categories permitting them to continue trading in existing arrangements, for a period of up to two years.

7.6 The London Borough of Ealing does not appear in this Order as their most recent CPA which resulted in a categorisation of "weak", has been quashed by the High Court, following a successful claim for judicial review against the Audit Commission. The Audit Commission is appealing against the decision and accordingly the London Borough of Ealing is not at present categorised. Other local authorities are monitoring the outcome of these proceedings in view of the possible implications for their own CPA results.

7.7 The Government intends to update the Categorisation Order to reflect any new categorisations whether made following further updated CPA assessments, or which may result following the outcome of the Audit Commission's appeal. However, in the meantime, the Government does not want to delay the provision of freedoms and flexibilities to authorities who have moved into higher categories.

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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