EXPLANATORY MEMORANDUM TO
The Local Government (Best Value Authorities) (Power to Trade) (England) (Amendment) Order 2007
2007 No 385

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 amends the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 ("the 2004 Order") to give effect to the creation of the Devon and Somerset Fire and Rescue Authority.

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

None

4. Legislative Background

4.1. The Secretary of State has the power, by Order, under section 95 of the Local Government Act 2003 to enable best value authorities[1] to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions subject to certain conditions. The primary conditions are that the power to trade only applies to discretionary functions and does not apply where another power enables the authority to trade in that respect.

4.2. The first Order made under this power was the 2004 Order which provided for certain local authorities in England to exercise the power to trade namely those local authorities who were categorised by order under section 99 of the 2003 Act as being "excellent", "good" or "fair". The Order did not apply to local authorities when acting in their capacity as a fire and rescue authority.

4.3. The 2004 Order was amended by the Local Government (Best Value Authorities) (Power to Trade) (Amendment) (England) Order 2004 to provide the power to trade to:

- certain named local authorities in England, when acting in their capacity as a fire and rescue authority
- certain named metropolitan county fire and rescue authorities in England and
- certain named fire and rescue authorities in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 ("the 2004 Act") or to which section 4 of that Act applies.

[1] For the purposes of section 95 Best Value Authorities are local authorities (namely county councils, district councils, parish councils, parish meetings, London borough councils, the Council of the Isles of Scilly, the Greater London Authority as it exercises its functions through the Mayor, county borough councils and community councils) and national park authorities, the broads authority, fire and rescue authorities, the London Fire and Emergency Planning Authority, waste disposal authorities, metropolitan county passenger transport authorities, and Transport for London.

The power to trade only applied in respect of certain named functions, namely those functions which authorities had been trading in previously using the purported power in the Fire Services Act 1947 which was repealed by the 2004 Act. The power to trade in relation to fire and rescue functions is only transitional and ceases to have effect on 30 September 2007.

4.4. The Local Government (Best Value Authorities) (Power to Trade) (Amendment No.2)(England) Order 2004 was made to correct an error in respect of the functions for which Essex County Council was authorised.

4.5. This Order amends the entry in the Schedule to the 2004 Order for Devon Fire Authority and omits the entry for Somerset County Council (in respect of fire and rescue functions) as a result of the creation of the combined Devon and Somerset Fire and Rescue Authority (by virtue of the Devon and Somerset Fire and Rescue Authority (Combination Scheme) Order 2006). The Order ensures that the combined authority is able to carry out all of the functions for which Devon Fire Authority and Somerset County Council were separately authorised.

4.6. The 2004 Order was amended by the Local Government (Best Value Authorities) (Power to Trade) (Amendment)(England) Order 2005 to provide the power to trade to local authorities (other than when exercising their functions as a Fire and Rescue Authority) categorised as 4 Stars, 3 stars, 2 stars and 1 star.

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 Due to the creation of the Devon and Somerset Fire and Rescue Authority an amendment to the Order is necessary in order to allow the combined authority to trade in specified services. The Devon and Somerset Fire and Rescue Authority Combination Scheme comes into effect fully on 1 April 2007.The one service specified for Somerset County Council in the 2004 Order is included within the services specified for Devon Fire Authority. No new services have been specified for the combined Authority.

7.2 Article 4 of the Order is transitional and ceases to have effect on 30 September 2007. Arrangements for the system under which fire and rescue authority trading will operate after 29 September 2007 are being considered and a full consultation will be undertaken.

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 is extremely limited and extends solely to Devon and Somerset Fire and Rescue Authority.

9. Contact

Anna Wadsworth at the Department of Communities and Local Government (Tel: 020 7944 5672 or e-mail: Anna.Wadsworth@comunities.gsi.gov.uk) can answer any queries regarding this Statutory Instrument.