

Appendix One

The Local Authorities (Goods & Services Act) 1970

This contains a very wide power that enables local authorities to enter into agreements with other local authorities or public bodies. There are many organisations that have been designated as public bodies, through other Statutes or Orders under the Goods and Services Act, including health bodies, schools, housing associations and community organisations.

It is permissible to make a profit under this legislation and many Authorities have made considerable use of the powers, securing economy of scale by providing services to each other. The power can be used for the purposes of :-

- supplying goods or materials
- administrative professional technical services
- the use of vehicles plant or apparatus
- works of maintenance in connection with land or buildings

Case law and particularly the YPO case (R v Yorkshire Purchasing Organisation ex parte British Educational Supplies Limited ([1998] ELR 195) confirmed that the power could be widely used and that there was no implied limitation which only permitted trading where surplus capacity was used. It also put beyond doubt that local authorities can trade for profit.

Charging for Discretionary Services - Section 93 Local Government Act 2003

Section 93 gives a specific power to charge for discretionary services where "the Authority is *authorised*... to provide a service" but not under a duty to provide it and the person receiving the service has agreed to its provision.

If an authority wishes to make a charge under section 93 it will also be necessary to identify the power to provide the service as well. The power is available to any Best Value Authority as defined in the Local Government Act 1999, and to any Welsh improvement authority, parish council, parish meeting of a parish which does not have a separate parish council, and community council. Classic examples of where this power can be used relate to leisure services, parks and countryside facilities, museums, galleries, theatres and concert halls. It could also be used to provide advisory services, for example in relation to business advice, planning advice or additional support to elderly residents or young families. The well being power in the Local Government Act 2000 can also be helpful in making a link between a specific statutory power and section 93.

Calculating the Charges

There is a restriction on the amount of charge which can be paid, to the effect that taking one financial year with another, income should not exceed the cost of provision. Although the recovery period has been recognised as three

years, there is flexibility in the legislation about how the costs are calculated. Costs would normally be assessed in accordance with best value accounting methods and Government guidance but can include all overheads including corporate and democratic core costs and the cost of assets required to deliver the service. It is also worth remembering that charges could be set at different levels for different people. It would be quite lawful to charge nothing for some beneficiaries of the service and a higher charge for others.

This is therefore an extremely useful power which can be used flexibly. Before embarking on this route, an authority needs to ask itself:

- What is its power to undertake the activity?
- Is another charging power available? If so reliance cannot be placed upon section 93.
- Is there a prohibition on a charge being levied?

Commercial Trading - Section 95 Local Government Act 2003

Section 95 enables the Secretary of State to authorise Best Value Authorities to do "for a commercial purpose" anything which they are authorised to do for the purpose of carrying out any of their ordinary functions. This is done under a "Trading Order". A local authority must have the power to undertake the activity before deciding whether or not to trade. The trading power cannot be used where a local authority is required to do something (ie has a duty to do something) for example the provision of education services where they have to be provided free of charge. Nor can it be used where a commercial activity is already authorised, for example the sale of spare computer capacity under s38 Local Government (Miscellaneous Provisions Act) 1976. Trading activity can only be undertaken through a company regulated under the Local Government and Housing Act 1989.

Where a company is set up it will have to comply with the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995 and these set out propriety controls which include transparency in respect of accounting arrangements, providing information to the local authorities' internal and external auditors and making minutes of meetings available.

Summary

Power	Profit/Cost Recovery	Public Bodies	Private Bodies
Goods and Services Act 1970	Profit	Yes	No
Charging – S93	Cost Recovery	Yes	Yes

Trading – S95 – only through a company	Profit	Yes	Yes
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