

## **Note on trading and charging regime**

---

### **Trading**

Local authorities were able to engage in municipal trading before the implementation of section 95 of the Local Government Act 2003 (2003 Act), but the section 95 power is innovative and provides the opportunity for relevant authorities in England and Wales to engage in entrepreneurial commercial trading with private bodies and persons.

Pre 2003 trading powers can be found in:

1. Section 1 Local Authority (Goods and Services) Act 1970
2. Section 19 and 38 Local Government (Misc. Provisions) Act 1976
3. Civic Restaurants Act 1947

There are limits to these trading powers. For example, the 1970 Act trading powers are limited to:

- Specific activities and
- LA can only supply these to other Public Bodies.

Public Bodies are defined by a schedule and these include, schools and academies.

The 1970 Act made it permissible for the first time for local authorities and public bodies to supply goods, materials and services on commercial terms. But the Act is limited in scope. For example, it does not allow trading with the private sector or the public at large. It does allow provision for profit.

Local authorities rely on this Act in order to “avoid wastage from spare capacity and in order to obtain and share economies of scale”.

The option of **trading through a company** is expressly about making a **surplus**. Profits go back to the council in the form of **dividends** and **service charges** - that is, charges for goods, services, premises and so on provided to the company by the council.

### **Charging**

#### **The section 93 charging power and its application**

The section 93 charging power states that a relevant authority may charge for a discretionary service if the recipient of the service has agreed to its provision (section 93(1), LGA 2003).

The section 93 power works on the basis that, if it wishes, a local authority can charge for a discretionary service but individuals cannot be required to pay for a service they do not wish to receive or use. Anyone who requires the service agrees to take it up on those terms.

#### **Limitation on the charging power**

The section 93 charging power is not intended to provide a new income stream. Its aim is to allow local authorities to recover the costs of providing services or improvements to services that they might not otherwise have been able to justify providing or been in a position to provide

#### **Issue for the Council**

The 1970 powers have been around and there is a more profound reason why councils have not found it easier to make good use of them.

If we look at the list of potential contracts coming up for renewal (see 4.2 of PWC), we see that they are mainly in areas falling within the scope of services and goods the LA can provide under the 1970 Act.

But, for a variety of reasons the council has not found it possible to bid and secure these. Procurement regulations is one such reason. These contracts in the main have to be competed for because they are above the EU threshold.

For example, I believe that SHDC bid for West Devon Waste and didn't get it. It is possible that their failure to win that tender was partly due to pricing. In order to win these contracts, the LA will have to compete with not only other authorities but also, the private sector. This has proved difficult to LA because of a variety of reasons:

- Capacity,
- resource
- Capability etc.
- Most authorities can barely provide these services in-house.

### **My view**

It is not possible to build an in-house infrastructure that is capable of matching private sector and therefore compete effectively.

In fact, councils up and down the country have used these powers in providing services such as, HR, Legal and administration support to schools. They have never attempted to do so on a commercial basis.

A company will set up its operating base and determine on a case by case basis which contracts to bid for. It will in these circumstances build and develop capacity and resource to match those in the private sector. It can then secure contracts.

The government in a guidance issues in 2003 described the new power of trading as helping to "encourage local authorities in England to extend and improve the range of services they offer".