

LOCAL GOVERNMENT AND HOUSING COMMITTEE

LOCAL AUTHORITIES' GENERAL POWER TO PROMOTE ECONOMIC, SOCIAL AND ENVIRONMENTAL WELL-BEING

Purpose

1. This paper is for information.

Summary

2. This paper summarises the proposed draft guidance relating to the power available to county / county borough councils in Wales to promote or improve the economic, social, and environmental well-being of their areas, which will be introduced with the enactment of the Local Government Act 2000 on 28 July.

Background

3. Section 2(1) of the Local Government Act 2000 provides county/county borough councils in Wales with a new discretionary power to do anything which they consider is likely to promote or improve the economic, social and environmental well-being of their areas. This power will come into effect on 28 July, 2001 in Wales.
4. The well-being power is a broad and flexible power which is akin to the power of general competence advocated by local government. It will help reduce the uncertainty over the scope of local authorities' powers enabling them to undertake a wider range of initiatives for the benefit of their areas unless they are expressly precluded from doing so by statute. Because of the wide scope of the power, county /county borough councils will no longer be entitled to use Section 137 of the Local Government Act 1972 to incur expenditure for the benefit of their areas and the economic development provisions contained in Sections 33 - 35 of the Local Government and Housing Act 1989 will be repealed.
5. It is intended that councils' objectives in using the power should be compatible with the proposals in their community strategies. This will enable them to follow an integrated approach to meeting their areas needs and to enter into partnership arrangements such as carrying out functions jointly with others.

The Scope of the Power

6. The new power may be used :

6.1 To enable the local authority to incur expenditure and give financial assistance. This would enable local authorities to provide assistance to companies or persons by way of loans, grants or guarantees. Unlike Section 137 of the Local Government Act 1972, Section 2(1) of the 2000 Act contains no restriction on the amount of money local authorities can spend. They will be able to fund the activities of different organisations and invest in activities if they consider the expenditure contributes to the economic, social or environmental well-being of their local areas. The new power is not sufficient to enable local authorities to provide indemnities to members and officers to cover such matters as liabilities arising from their roles as company directors. Consideration will be given to issuing an order under Section 101(2) of the 2000 Act to confer a power on authorities in Wales (other than police authorities) to provide such indemnities to some or all their members and officers.

6.2 To enter into cooperation or coordination arrangements with others. This will enable local authorities to work with others in partnerships such as overarching strategic partnerships or, at the more local level, the National Assembly's Communities First initiative and to co-ordinate the activities of other bodies, including other local authorities and public bodies.

6.3 To exercise the functions of other bodies and provide them with staff, goods, services or accommodation. The new power will enable local authorities to develop efficient, effective, consumer friendly ways of providing public services. It will enable them to carry out functions on behalf of other bodies with their agreement. Although the Health Act 1999 already provides local authorities and health authorities with the power to carry out functions on behalf of each other, the well-being power extends this partnership approach to other bodies. The ability for a local authority to undertake functions on behalf of other bodies does not transfer any statutory responsibility or accountability for carrying out those functions. It does, however, give greater scope to councils and their partners to determine how best to discharge their functions. The power also enables local authorities to make available contributions in kind in the form of staff, goods, services and accommodation.

6.4 To form companies and other corporate bodies. This power enables local authorities to perform and participate in companies, trusts, charities, joint ventures, provided that they are satisfied that the formation of, or investment in, companies is likely to achieve the promotion or improvement, of the economic, social or environmental well-being of their areas. The formation of, and participation in, companies using this power will be subject to the control mechanisms set out in Part V of the Local Government and Housing Act 1989 and the accompanying Local Authorities (Companies) Order 1995. The Assembly is reviewing these controls in the light of the recent consultation on the future of local government finance (Simplifying the System: Local Government Finance in Wales).

6.5 To take action outside the Local Authority's area provided that it is likely to achieve the

objectives for which the power may be exercised. The power will enable local authorities to enter into collaboration with other authorities and bodies to foster initiatives at regional, inter-regional and sub-regional level. This power is important in promoting economic development and neighbourhood regeneration, transportation developments, joint working with health authorities and dealing with travellers, waste disposal, pollution, and crime matters. It is intended that proposals for joint working outside areas authorities provided that it is likely to achieve the objects for which the power may be exercised should be reflected in their community strategies. In addition, they should be expected to consult their neighbouring authorities before exercising these provisions outside their areas.

The Restrictions on the Power

7. The Local Government Act 2000 places limits on the use of the new power. These include:

7.1 Although there are no spending limits attached to the power, Local authorities will only be able to obtain the funds required to pursue their well-being objectives from existing sources of income. The power does not permit councils to levy new taxes, borrow or to charge for services they provide in pursuit of their well-being objectives. The power to charge is currently being looked at in the broader review of the local government finance system.

7.2 The power cannot be used to overcome express statutory restrictions on local authority activities; and

7.3 The National Assembly has a reserve power under Section 3 of the 2000 Act to prevent local authorities from exercising the power to take specific actions.

The removal of barriers to promoting well-being

8. Although the new power is very broad, it does not permit local authorities to circumvent restrictions contained in legislation. Section 5 of the Act gives the Secretary of State the power to amend, appeal, revoke or disapply any enactment which he considers promotes or obstructs local authorities from exercising their powers under Section 2(1) of the Act. This power adds to the Secretary of State's existing power under Section 16 of the Local Government Act 1999 to modify or exclude enactments that prevent authorities from achieving best value.

9. The Section 5 power will enable the Secretary of State subject to affirmative resolutions of both Houses of Parliaments, to remove or amend legislation that prevents local authorities from exercising their powers to promote wellbeing. This can be applied to individual local authorities or classes of authorities. It could allow the piloting of projects or to amend or disapply enactments for particular periods of time giving greater flexibility to the legislative

process.

10. The draft guidance will be consulting on whether there should be a formal application process from authorities operated by the National Assembly or whether existing mechanisms are sufficient to enable local authorities to indicate those statutory restrictions that prevent them from exercising the well-being power, such as the Partnership Council, or the Policy Agreements process which could be used to identify those statutory provisions that inhibit improved performance.

Consideration

11. The particular issues on which the Committee's views are requested include:

- Should the National Assembly confer a power on Welsh councils to provide indemnities for their officers and members in certain circumstances?
- Should councils be able to utilise voluntary contributions from individuals and organisations to enable them to meet their well being objectives?
- Should the use of the new power be tied to the objectives of community strategies?
- What role should the National Assembly play in relation to the Secretary of State's use of the Section 5 powers?

Cross Cutting Themes

12. The well-being powers of the 2000 Act will contribute to the effective operation of local government and the public sector as a whole in Wales. It would provide the means by which local authorities can contribute to tackling cross-cutting issues and meeting the aspirations of their areas. The powers were the subject of extensive consultation prior to the enactment of the 2000 Act and the Assembly will be consulting widely on the draft guidance relating to the implementation of the power in Wales.

Action

13. The Committee is asked to note the proposed content of the draft guidance and offer views on it.

Contact

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