

LOCAL GOVERNMENT ACT 2000

EXPLANATORY NOTES

INTRODUCTION

Part V: Miscellaneous

Summary

Surcharge etc.

211. Part V of the Act makes a number of ancillary provisions relating to the audit framework for relevant authorities (as set out in the Audit Commission Act 1998). These include the repeal of the current surcharge provisions. They also remove the Secretary of State's power to sanction items of account; this enables the Secretary of State to protect individuals from surcharge. Part V also includes arrangements to introduce a new system of advisory notices to enable auditors to seek a court decision about the legality of what an authority proposed to do. This replaces existing arrangements enabling auditors to issue prohibition orders.

Welfare services

212. Part V of the Act includes provision for a new framework within which local authorities will work jointly with other agencies and partners to plan and commission welfare services for vulnerable people. It creates a new central government grant to replace the current fragmented funding arrangements for welfare services with one single budget from April 2003.

213. Funding which will be transferred to the new grant includes:

- Housing Benefit paid in respect of support services;
- Housing Corporation Supported Housing Management Grant;
- Home Office Probation Accommodation Grants;
- grants made by DETR to Home Improvement Agencies;
- relevant elements of DSS Resettlement Programme Revenue and of local authority Total Standard Spending.

Other provisions

214. Part V introduces a specific power that will enable relevant authorities to pay compensation to individuals where they are satisfied that maladministration has, or may have, occurred. There is also provision to enable both the Secretary of State and the National Assembly for Wales (NAW) to make orders to confer a power on relevant authorities to offer insurance against indemnity to their members and officers.

215. This Part of the Act provides for changes to Part VA of the Local Government Act 1972 relating to access to information. It also provides for changes necessary to the Local Authority Social Services Act 1970 resulting from measures in Part II of this Act and provisions on allowances and pensions for local authority members.

216. Part V also allows local authorities to charge parents in receipt of Working Families' Tax Credit and Disabled Person's Tax Credit for the childcare provided by these authorities. This would not apply to parents whose children are defined as "in need" by section 17(10) of the Children Act 1989 or people on benefits who currently receive free local authority childcare; these parents will continue to receive local authority childcare free of charge.
217. Finally, Part V also amends section 2A of the Local Government Act 1986, which prohibits local authorities from promoting homosexuality.

Background

Surcharge etc

218. The White Paper *Modern Local Government: In Touch with the People*¹ set out proposals to repeal the existing surcharge provisions contained within sections 17 and 18 of the Audit Commission Act 1998; these provisions enable the auditor to surcharge councillors for recovery of unlawful items of expenditure. It also suggested replacing the current system of prohibition orders (set out in sections 20 to 23 of the 1998 Act) with advisory notices.

Welfare services

219. The Government's proposals for a new role for local authorities to take a lead in partnership working to address support needs in the community were set out in the consultation paper *Supporting People: a new policy and funding framework for support services*². The responses to the proposals were published in the paper *Summary of analysis of responses to the 'Supporting People' consultation document*³.
220. The provisions on welfare services follow the proposals that were put forward in the consultation document. They address a number of issues in the current system of funding:
- they respond to the 1997 court ruling on the role of Housing Benefit in funding support services;
 - they are based on a system of joint commissioning at local level. This will replace current funding arrangements where support is funded through a variety of funding streams;
 - they allow more transparency about support needs and provision around the country.
221. The new system of funding will clarify what is happening in this area, as well as allowing checks on the quality of support provision.
222. The new powers in Part I facilitate these new arrangements both by ensuring that local authorities have broader powers to provide support services for people who may need them, and by creating a framework for community strategies.
223. The proposals are consistent with the principles of promoting independence, as set out in the White Paper *Modernising Social Services*⁴, and with the proposals for welfare reform set out in the Green Paper *New ambitions for our country: a new contract for welfare*⁵.
- ### Social services functions
224. The proposals for changes to the Local Authority Social Services Act 1970 are consistent with the White Paper *Modernising Social Services* (see footnote 16).

¹ Cm 4014, July 1998.

² Published December 1998, DSS. Also available on the DSS website (www.dss.gov.uk).

³ Published July 1999, DETR.

⁴ Cm 4169, November 1998.

⁵ Cm 3805, March 1998.

Recoupment by local authorities of cost of providing day care

225. Section 18 of the Children Act 1989 gives local authorities the power to provide day care for pre-school children and out of school care or supervised activities for children attending school. Local authorities have a duty to provide day care and supervised activities outside school hours for children in need in their area. They also have the discretion to provide a similar service to children in their area who are not in need. These services were to be provided free to parents in receipt of Income Support, income-based Jobseeker's Allowance, and (prior to the introduction of the Tax Credits Act 1999) Family Credit or Disability Working Allowance.
226. The Tax Credits Act came into force in October 1999. This led to the replacement of Family Credit and Disability Working Allowance with Working Families' Tax Credit (WFTC) and Disabled Person's Tax Credit (DPTC) respectively. These tax credits provide working families with income to purchase childcare. It is illogical, therefore, that they should receive local authority childcare free of charge. The childcare tax credit element of WFTC is worth 70% of eligible childcare costs, up to a maximum of £70 a week for families with one child and £105 for families with two or more children. This purchasing power should provide income to local authorities to expand childcare provision.

Prohibition on promotion of homosexuality: bullying

227. Section 2A of the Local Government Act 1986 (inserted by section 28 of the Local Government Act 1988) prohibits local authorities from intentionally promoting homosexuality, from publishing material with that intention, or from promoting the teaching in maintained schools of the acceptability of homosexuality as a "pretended family relationship".
- *Maintained schools* are defined by paragraph 13 of Schedule 30 to the School Standards and Framework Act 1998 (previously defined by paragraph 63 of Schedule 37 to the Education Act 1996).

Commentary on sections

Section 90: Surcharge etc.

228. *Section 90* has the effect of repealing the current surcharge provisions set out in the Audit Commission Act 1998 and also the Secretary of State's power to sanction an item of account. The changes will affect all bodies to which the surcharge provisions apply.
229. Although the term 'surcharge' is not used in the 1998 Act, it describes the existing powers of the auditor to recover financial losses from individuals on the basis that he or she is responsible for the authority incurring unlawful expenditure or has caused loss to the authority through misconduct.
230. Removal of the relevant surcharge provisions from section 17 of the 1998 Act does not affect the auditor's ability to apply to the courts for a declaration that an item of account is contrary to law. However, in future, the Standards Board and Adjudication Panel, rather than the auditor, will determine whether there has been misconduct and any issue would be pursued through them under the provisions in Part III of this Act.
231. This section also removes the Secretary of State's power to sanction an item of account. The granting of sanction protected individuals authorising unlawful expenditure from the possibility of surcharge by preventing the auditor from applying to the court for a declaration that an item of account is unlawful. Removing the surcharge provisions removes the need for the Secretary of State to grant sanction.

Section 91: Advisory notices

232. *Section 91* replaces sections 20 to 23 of the Audit Commission Act 1998, revoking the existing arrangement for prohibition orders and replacing them with a system of

advisory notices. Advisory notices will apply to all bodies subject to audit under the 1998 Act, other than health service bodies.

233. The advisory notice gives auditors time to seek the opinion of the courts on the legality of an authority's actions where they consider that the authority is contemplating a decision or course of action that would result in unlawful expenditure or other financial loss. This section gives the auditor power to issue an 'advisory notice' in such circumstances, and specifies the form of the notice and how it should be served on the authority concerned.
234. An authority in receipt of a notice must first consider it. If it then decides that it wants to proceed with the action specified in the notice, this section requires the authority to provide the auditor with written notice of their intentions. Furthermore, it prevents the authority from proceeding with the activity for a period (of up to 21 days) specified by the auditor in the advisory notice. During this period, the auditor may then choose to seek an opinion from the court on the legality of the proposed course of action. The authority may then only proceed with the action if the court decides that it is lawful or if the auditor does not seek a court's opinion within the notice period.

Section 92: Payment in cases of maladministration

235. *Section 92* specifically enables relevant authorities to pay compensation where they are satisfied that maladministration has, or may have, occurred.

Sections 93 to 96: Welfare services

236. *Section 93* creates powers for the Secretary of State, with the consent of Treasury, to determine and pay a grant to local authorities to enable them to contribute to the cost of welfare services. Similar powers are given to the NAW.
237. Other powers conferred by this section include powers to determine the purpose of the grant, to attach terms and conditions to the grant, and to provide guidance and directions to local authorities. This section defines which local authorities will receive the grant.
238. *Section 93* also includes requirements for the Secretary of State (or NAW) to consult with local authorities, service providers and service users before issuing guidance or directions.
239. *Section 94* allows information about recipients of Housing Benefit, Income Support (IS) or income-based Job-seeker's Allowance (JSA) to be transferred to the local authority section administering the new grant, and to providers of welfare services. This transfer of information is necessary so that welfare services previously funded under Housing Benefit (or IS, or income-based JSA) can be funded under the new grant created in section 93. It will enable a smooth transfer to the new grant scheme.
240. *Section 95* makes it an offence to unlawfully disclose information received under section 94.
241. *Section 96* accordingly enables entitlement to Housing Benefit in respect of certain support services to be withdrawn. This section will apply to Scotland as well as England and Wales.

Sections 97 and 98: Further access to information provisions

242. *Section 97* amends the access to information provisions in Part VA of the Local Government Act 1972 to ensure that reports published for a meeting of a principal council and its committees contain a list of the background papers used in compiling the report.

243. *Section 98* allows the Secretary of State to vary, by order, provisions in Part VA of the Local Government Act 1972 so as to increase the number of days before a meeting of a principal council and its committees when papers need to be made publicly available.

Sections 99 and 100: Allowances and pensions for local authority members

244. *Section 99* provides that regulations under section 7 of the Superannuation Act 1972 may include provision for the payment of pensionable remuneration to certain councillors. This section also amends section 18 of the Local Government and Housing Act 1989 to provide for carers' allowances, and for pensions for members of local authorities. Regulations made under the amended section 18 may also require councils (other than parish councils and community councils) to establish an independent panel which will make recommendations on allowances. The regulations may also enable such panels to be set up by another body to make recommendations on allowances to a group of authorities or for the NAW to set up a panel to make recommendations to local authorities in Wales.

245. *Section 100* enables the Secretary of State to make regulations in relation to England on allowances for members of parish councils and, for members of all authorities, allowances for travel and subsistence, including:

- travel by bicycle;
- allowances for attending conferences; and
- reimbursement of expenses.

The NAW has similar powers in Wales.

Section 101: Indemnification of members and officers of relevant authorities

246. *Section 101* introduces a power for the Secretary of State to make provision to enable councils to indemnify their members and officers. The intention is to enable indemnity to be provided against any damages, cost or expenses which such member or officer may be liable to pay, or may reasonably have incurred, in connection with their membership of, or employment by, the council.

Section 102: Social services functions

247. *Section 102(1)* removes the statutory requirement for a local authority to discharge its social services functions through a social services committee (sections 2 to 5 of the Local Authority Social Services Act 1970) where the authority adopts one of the forms of executive in or under Part II of this Act. *Subsection (2)* removes the requirement that an authority's director of social services cannot discharge non-social services functions without the prior approval of the Secretary of State (section 6(5) of the 1970 Act). *Subsection (3)* inserts a definition of social services functions and replicates the order-making power in section 2(2) of the 1970 Act.

Section 103: Recoupment by local authorities of cost of providing day care

248. *Section 103* enables local authorities to charge parents receiving tax credits for local authority-provided childcare places. *Subsection (1)* limits the current scope of section 29(3) of the Children Act 1989 to services provided by local authorities under section 17 or section 18(1) or (5) of that Act, i.e. childcare for children in need.
249. *Subsection (2)* adds a new section to the 1989 Act which ensures that people in receipt of Income Support or income-based Jobseeker's Allowance pay no charges for services provided under section 18(2) or (6) (childcare for children not in need), in addition to the services under sections 17, 18(1) or (5).

*These notes refer to the Local Government Act 2000
(c.22) which received Royal Assent on 28 July 2000*

250. This section does not *require* local authorities to charge parents on tax credits. Authorities will still be required to have regard to parents' ability to pay when deciding upon any childcare charges.

Section 104: Prohibition on promotion of homosexuality: bullying

251. Section 2A of the Local Government Act 1986 (inserted by section 28 of the Local Government Act 1988) prohibits local authorities from intentionally promoting homosexuality, from publishing material with that intention, or from promoting the teaching in maintained schools of the acceptability of homosexuality as a "pretended family relationship".
252. *Section 104* amends section 2A by clarifying that it does not prevent head teachers, teachers or governors of maintained schools from taking steps to prevent any form of bullying.