

LOCAL GOVERNMENT ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Miscellaneous and General

Sections 93 to 98: Charging and Trading

Introduction

264. The sections provide a new power for best value authorities to charge for discretionary services and enable new trading powers to be conferred on such authorities.

Section 93: Power to charge for discretionary services

265. This provides power for best value authorities, as defined in the Local Government Act 1999, to charge for discretionary services. Discretionary services are those services that an authority has the power but not a duty to provide. An authority may charge where the person who receives the service has agreed to its provision. The power to charge under this provision does not apply where the power to provide the service in question already benefits from a charging power (93(2)(a)) or is subject to an express prohibition from charging (93(2)(b)).
266. [Section 93\(3\)](#) and (4) place a duty on best value authorities to ensure that, taking one year with another, the income from charges for each kind of discretionary service does not exceed the costs of provision.
267. [Section 93\(5\)](#) provides that, within the framework set by section 93(3) and (4), a best value authority may set the charges as it thinks fit, and may in particular charge only certain people for a service or charge different people different amounts.
268. In carrying out their functions under section 93, best value authorities are required to have regard to any guidance that may be issued (93(6)) by the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales.
269. [Section 93\(7\)](#) provides that certain prohibitions in other legislation preventing authorities from raising money are specifically disapplied in relation to the exercise of the charging power.

Section 94: Power to disapply section 93(1)

270. This section allows the Secretary of State, or (in relation to authorities in Wales) the National Assembly for Wales, to make orders disapplying the power to charge in section 93(1) in relation to particular authorities or descriptions of authority or particular services. Disapplication may be indefinite or for a particular period.

Sections 95 and 96: Power to trade in function-related activities through a company; Regulation of trading powers

271. [Section 95\(1\)](#) provides power for the Secretary of State, or (in relation to authorities in Wales) the National Assembly for Wales, to make an order enabling best value

*These notes refer to the Local Government Act 2003 (c.26)
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authorities (with the exception of those listed in subsection (7)) to trade in any of their ordinary functions. An order authorising trading may make provision about the persons with whom authorities may trade.

272. The power may not be used to authorise best value authorities to trade in a statutory service which they are already obliged to provide with a person to whom they are already obliged to provide it, or to use the new powers where there are existing trading powers.
273. Orders made under the power may relate to all best value authorities or to particular best value authorities or descriptions of best value authority. They may also relate to all activity in relation to a function, particular activities, or descriptions of activity. This will enable the scope of the trading powers to be related to an authority's performance categorisation under the Comprehensive Performance Assessment regime, where appropriate (sections 99(4) and 100(1) and (2)(e)).
274. The power to trade conferred by these provisions is only exercisable through a company within the meaning of Part 5 of the Local Government and Housing Act 1989 ("the 1989 Act") (companies in which local authorities have interests). Part 5 of that Act shall for the purpose of these provisions be deemed to apply to a best value authority which is not otherwise a local authority. Furthermore, that application of Part 5 is restricted to companies through which a best value authority operates the power under section 95(1) and limited to trading activities undertaken by such companies.
275. [Section 96](#) provides an order-making power to impose conditions on the exercise of any trading power by a best value authority, including where this is undertaken through a company. Best value authorities are required to have regard to any guidance that may be issued about the exercise of their trading powers.

Section 97: Power to modify enactments in connection with charging or trading

276. This section confers powers enabling the Secretary of State to modify or exclude the application of any enactment, except sections 93(2) and 95(2) of this Act, that restricts a best value authority's ability to charge for the provision of a discretionary service or carry out trading in its functions. The section also permits the Secretary of State to modify or exclude the application of any enactment that confers power on a best value authority to charge for a discretionary service. The effect of excluding such a power will be to substitute for the specific provision in question the general power to charge under section 93.
277. An order made under this provision may apply differentially to different authorities and different functions. It may not be used to authorise best value authorities to trade in a statutory service that they are already obliged to provide with a person to whom they are already obliged to provide it.
278. Orders made under this provision would be subject to the affirmative resolution procedure in both Houses of Parliament.
279. The section also makes provision about the Parliamentary procedure applicable to orders that amend earlier orders just for the purpose of causing them to apply, or not apply, in relation to particular authorities or authorities of a particular description. Orders amending earlier orders in this manner are to be subject to the negative resolution procedure in both Houses of Parliament.
280. The powers under this section will not be exercisable by the National Assembly for Wales (NAW). But the Secretary of State may not make any provision which has effect in Wales without consulting the NAW and may not make provision in relation to legislation made by the NAW without the consent of the NAW.

281. The NAW may submit its own proposals to the Secretary of State to the effect that any order made under these powers with provisions affecting Wales, should be in accordance with those proposals.

Section 98: Procedure for orders under section 97

282. The section describes further the affirmative resolution procedure the Secretary of State is to follow in making an order under section 97. He is required to consult such best value authorities or persons as appear to him to be representative of interests affected by his proposals and to lay before each House of Parliament for 60 days a document explaining his proposals, together with a draft order and details of the consultations that have been conducted including those with the NAW where the proposals relate to best value authorities in Wales. Thereafter, in preparing a draft order, the Secretary of State is required to consider any representations made during the 60 day period during which his proposals have been before the Houses of Parliament. The draft order laid before Parliament for approval must be accompanied by a statement by the Secretary of State, with details of the representations that he has considered and any changes made to his proposals.

Sections 99 and 100: Performance Categories

Section 99: Categorisation of English local authorities by reference to performance

283. **Section 99** requires the Audit Commission to produce reports on its assessment of English local authorities' performance, including placing authorities into one of a number of categories by reference to assessed performance. The Secretary of State may then make an order establishing the categorisation and identifying the authorities placed in each category. The Secretary of State has no power to place an authority in a category different to that in which it has been placed by the Audit Commission.

Section 100: Exercise of powers by reference to authorities' performance categories

284. **Section 100** covers the exercise of various powers that allow the Secretary of State to remove regulatory controls on authorities or to grant additional powers to them. In particular, subsection (1) makes it clear that the powers mentioned in subsection (2) may be exercised for the purpose of making provision that relates to authorities that are for the time being in a particular performance category under section 99. Where provision of that kind is made and an authority undergoes recategorisation, the result will be that the provision relating to the authority's old category will no longer apply to it and, instead, the authority will be subject to the provision that applies to its new category.
285. The powers mentioned in subsection (2) include the power to modify legislation that prevents or obstructs compliance with Best Value or the promotion of well being and the power to remove requirements to produce plans or strategies. They also include powers to specify: performance indicators and standards; frequency and content of Best Value reviews and performance plans; and non-commercial considerations for local authorities entering into contracts.
286. **Schedule 3** (introduced by subsection (3)) amends some of the provisions conferring the powers identified above. The amendments seek to ensure that the powers can be exercised flexibly and not only allow provision to be made for authorities in different performance categories but also for particular named authorities, which (for example) may be necessary for the purposes of giving effect to Local Public Service Agreements.
287. Subsections (4) to (7) provide that additional powers may subsequently be added to the list in subsection (2) by order, which will require the approval of both Houses of Parliament. Where any such additional power is not already capable of being exercised in relation to some English local authorities only or differently in relation to different authorities, an order under subsection (5) can amend the legislation conferring the

power to allow it to be used in those ways. This procedure will also require the approval of both Houses of Parliament.

Sections 101 and 102: Contracting-out: staff transfer matters, including pensions

288. The sections confer new powers on the Secretary of State, the National Assembly for Wales and Scottish Ministers to require best value authorities in England, Wales or Scotland, when engaged in contracting-out exercises, to deal with staff matters in accordance with directions. Section 101 also requires authorities to have regard to guidance on staff matters issued by the Secretary of State, the National Assembly for Wales or Scottish Ministers. The background to this is the commitment made, as part of a package of workforce measures, following the review of Best Value, to legislate to make statutory within local government the provisions in the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector and the Annex to it, A Fair Deal for Staff Pensions (this is available on the Cabinet Office website at: www.cabinet-office.gov.uk/civilservice/2000/tupe/stafftransfers.pdf). It is intended to use the direction making powers to ensure that contracting exercises are conducted either on the basis that TUPE will apply or, in circumstances where TUPE does not apply, that staff involved should be treated no less favourably than had the Regulations applied, unless there are exceptional circumstances, and that transferees will be offered either retention of the Local Government Pension Scheme (LGPS) or a broadly comparable scheme.

Section 101: Staff transfer matters: general

289. This allows for the Secretary of State, or (in relation to authorities in Wales other than police and fire authorities) the National Assembly for Wales, or (in relation to relevant authorities in Scotland) the Scottish Ministers, to issue directions to require best value authorities, in contracting with other persons for the provision of services or in circumstances where a contracted-out service is brought back into the public sector on the termination of a contract, to deal with staff transfer matters (employment or pensions) in accordance with any directions made. The section also requires authorities to have regard to guidance on staff matters issued by the Secretary of State, the National Assembly for Wales or Scottish Ministers.
290. The duty of best value as set out in the *Local Government Act 1999* or the *Local Government in Scotland Act 2003* is subordinate to this requirement. Directions or guidance made under the power may relate to all best value authorities or to particular descriptions of best value authority.

Section 102: Staff transfer matters: pensions

291. This provides that the Secretary of State, National Assembly for Wales and Scottish Ministers shall exercise their powers under section 101 to give directions so as to ensure that English, Welsh and Scottish local authorities, in contracting for the provision of services, secure specified pension benefits. These are, first, that the contractor is required to secure pension protection for employees of an authority who are transferring from the authority under TUPE or who, in a re-contracting case, transferred from the authority under TUPE when the services were first contracted out, have transferred under TUPE on each subsequent change in contractor and are again transferring under TUPE in connection with the contract with the contractor. Secondly, that the contractual terms for the securing of pension protection for a transferring employee are enforceable by the employee. Pension protection is secured where the employee's rights to acquire pension benefits are the same as, or broadly comparable to, those enjoyed by the employee before the transfer.

Sections 103 and 104: 2004 Local Government Elections

Section 103: Power to change date of local elections in England

292. This section permits the Secretary of State to move, by order, the dates of local elections (for principal councils and parish councils) and Greater London Authority (GLA) elections in 2004 so that they are held on the same day as the European Parliamentary general election due in 2004. Ordinary local and GLA elections (i.e. elections other than by-elections) would normally be held on the first Thursday in May (6th May in 2004), whilst in 2004 the European Parliamentary elections have to be held in the period 10th to 13th June. Subsection (1)(a) enables the Secretary of State to leave ordinary parish council elections to take place on 6th May, or to move with them to June with the GLA and other ordinary local elections.
293. A by-election generally has to take place within a specified period after a vacancy occurs. In the event that local elections are moved to June, subsection (2)(a) would (for example) allow the Secretary of State's order to provide that by-elections should not take place during the period from 6th May 2004 until the June election date.
294. Section 16(1) of the Representation of the People Act 1985 provides that where parish council, principal council and European Parliamentary elections would otherwise all take place on the same day, the parish council elections are to be postponed for 3 weeks. Subsection (2)(b) would allow the Secretary of State's order to override that provision with the result that all of the elections could take place on the same day in June.
295. Local authorities, joint authorities and police authorities are required to hold annual meetings. In a year where a local authority has an ordinary election, the date of the meeting is linked to, but follows, the date of the election. In other years, and in every year for a police authority, the period within which its annual meeting has to be held allows for by-elections, or elections of its locally elected members, to take place on the first Thursday in May. Subsections (2)(c) and (3) will allow the Secretary of State's order to cater for those meetings being moved to after the June elections in areas where ordinary elections are not held in 2004 but by-elections might be.
296. Some statutory provisions assume that there will be a single ordinary date of election for councillors throughout England and Wales. Subsection (4) enables the Secretary of State to make an order providing, for example, for the sensible working in England of such provisions in the event of the National Assembly for Wales making an order under section 104 moving some or all of the Welsh local elections in 2004 from May to June.
297. Paragraph 7 of Schedule 7 to the Act extends the power under section 15(5) of the Representation of the People Act 1985 so that, in the event of local and GLA elections being moved in 2004, regulations about combining those elections with the European Parliamentary general elections in that year will be able to modify any of the legislation governing any of the combined elections. The references to Gibraltar (both in paragraph 7 of Schedule 7 and in section 129(4)) allow for the European Parliament (Representation) Act 2003 having been enacted. For as a result of that Act, combined 2004 elections will be governed by law which extends not only to each part of the United Kingdom but also to Gibraltar.

Section 104: Power to change date for elections in Wales

298. This section permits the National Assembly for Wales to move, by order, the dates of local elections (either the principal council elections, the community council elections, or both sets of elections) in 2004 so that they are held on the same day as the European Parliamentary general elections due in 2004. Ordinary local elections (i.e. elections other than by-elections) would normally be held on the first Thursday in May (6th May 2004) whilst in 2004 the European Parliamentary elections have to be held in the period 10th to 13th June.

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299. A by-election generally has to take place within a specified period after a vacancy occurs. In the event that local elections are moved to June, subsection (2) (a) would (for example) allow the National Assembly for Wales' order to provide that by-elections should not take place during the period from 6th May 2004 until the June election date.
300. Section 16(1) of the Representation of People Act 1985 provides that where community council, principal council and European Parliamentary elections would otherwise all take place on the same day, the community council elections are to be postponed for 3 weeks. Subsection (2) (b) would allow the National Assembly for Wales' order to override that provision with the result that all of the elections could take place on the same day in June.
301. Some statutory provisions assume that there will be a single ordinary date of elections for councillors throughout England and Wales. Subsection (3) enables the National Assembly for Wales to make an order providing, for example, for the sensible working in Wales of such provisions in the event of the Secretary of State making an order under section 103 moving some or all of the English local elections in 2004 from May to June.
302. Paragraph 7 of Schedule 7 to the Act extends the power under section 15(5) of the Representation of the People Act 1985 so that, in the event of local elections being moved in 2004, regulations about combining those elections with the European Parliamentary general elections in that year will be able to modify any of the legislation governing any of the combined elections.

Sections 105 and 106 (and Schedules 4 and 5): Valuation Tribunal Service
Introduction

303. Valuation Tribunals (VTs) are independent bodies established under Schedule 11 to the Local Government Finance Act 1988, although they have existed in one form or another since 1948. Their purpose is to hear appeals against rating, council tax valuations and liability. There are 56 Tribunals in England, served by 25 administrative offices, grouped into 14 regional units with around 160 staff.
304. Tribunals are organised broadly on a county or metropolitan area basis. Members are appointed jointly by local authorities and presidents of local VTs. Each VT may appoint a clerk and other employees and maintain a permanent office, although some VTs maintain joint offices and appoint the same clerk and staff. The Office of the Deputy Prime Minister undertakes a range of administrative functions on behalf of the VTs, including accommodation, pay and technical finance matters.
305. A quinquennial Financial Management and Policy Review of the VTs in 1999 recommended that their administration should be brought together in a regional structure and that a management board supported by a small national office should provide central direction. The purpose of this provision is to implement that recommendation.

Section 105: The Valuation Tribunal Service

306. **Section 105** establishes a new non-departmental public body, the Valuation Tribunal Service. The Service has power to carry out administrative functions for the VTs in England only, including accommodation, staffing (including clerks), information technology, equipment and training needs. The Service also has power to give general advice about procedure in relation to proceedings before tribunals in England.
307. The Service is under a general duty in carrying out its functions to do what, in its opinion, is best to secure the efficient and independent operation of VTs in England.
308. The Secretary of State may provide guidance to the Service about the carrying-out of its functions. Following consultation with the Service, he may also provide directions for the purpose of securing the effectiveness of the Service in carrying out its functions.

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Once issued, the Service will be required to comply with any directions and have due regard to any guidance in carrying out its functions.

309. The Service will be required to consult with the valuation tribunals about the carrying out of its functions to ensure consistency and best practice.

Schedule 4: The Valuation Tribunal Service

310. [Schedule 4](#) makes further provision in relation to the Service.
311. The Secretary of State will appoint between six and ten members to form the Service. At any time, the majority of members of the Service must be presidents or chairmen of the VTs. The rest of the Service need not be presidents or chairmen of VTs but must have suitable qualifications or experience. The Secretary of State will appoint a Chairman and a Deputy.

Disqualification from membership of the Service

312. A person will be disqualified from being appointed to the Service or from remaining a member of the Service if he is an employee of the Service or is married to one, he is subject to a Bankruptcy Restrictions Order in England or Wales, he is an undischarged bankrupt in Northern Ireland or Scotland or he has been convicted of an offence in the last five years and sentenced to imprisonment for three months or more. Bankruptcy restrictions orders will be made under Schedule 4A to the Insolvency Act 1986 (inserted by Schedule 20 to the Enterprise Act 2002). Under section 268 of the Enterprise Act 2002, the Secretary of State may by order amend pre-8th November 2002 legislation that imposes bankruptcy-related disqualifications. Orders under that section may remove disqualifications or extend them to, or replace them with disqualifications of, persons subject to bankruptcy restrictions orders, and may also provide for disqualifications to be applied at a specified person's discretion. Although paragraph 2(1)(c) of Schedule 4 (disqualification of bankrupts in Northern Ireland or Scotland) will not be pre-8th November 2002 legislation, paragraph 25 of Schedule 4 provides for it to be treated as though it were such legislation for the purposes of section 268. So an order under that section will be able to modify paragraph 2(1)(c) should bankruptcy restrictions orders, or a similar regime, be introduced in Northern Ireland or Scotland. An order modifying the identified disqualifications in paragraph 2(1)(c) of Schedule 4 cannot make those disqualifications applicable at the discretion of a specified person and will be subject to the negative resolution procedure.
313. Appointments must not exceed three years but a member may be re-appointed. The member may resign at any time. The chairman or deputy chairman of the Service will cease to hold that office if he ceases to be a member of the Service. A member of the Service who falls foul of one of the prescribed disqualification events will automatically cease to be a member. A member of the Service who was appointed by the Secretary of State as one of the majority of members who was a president or chairman of a VT will cease to be member of the Service if he ceases to be a president or chairman of a VT. Furthermore, where a member fails to attend Service meetings without reasonable excuse over a continuous period of three months, his appointment will cease.
314. The Secretary of State may also terminate a member's appointment where he is unfit or unable to carry out his functions.
315. The Secretary of State will have the power to re-appoint a person a member of the Service, provided he did not cease to be a member because he was disqualified by reason of conflict of interest, or in connection with his bankruptcy, he was convicted of an offence and received a sentence of imprisonment of three months or more, or he was absent from meetings for the prescribed period.
316. The Secretary of State will determine how much remuneration members should receive from the Service. The Service has power, if so required by the Secretary of State, to pay

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pensions to members and former members, or to establish pension schemes for such people. The Service, if so required by the Secretary of State, will make compensation payments to a member leaving the Service.

Staff of the Service

317. The Service will have a Chief Executive. The first Chief Executive will be appointed by the Secretary of State in consultation with the chairman or chairman designate of the Service. Future Chief Executive appointments will be made by the Service subject to consent from the Secretary of State.
318. The Service can appoint such other staff and pay remuneration and allowances to its staff, as it thinks appropriate. The Service will determine how much remuneration such staff should receive, subject to the Secretary of State's consent.
319. The Service can set up a pension scheme and pay pensions for the staff of the Service. However, VT employees (for example, clerks to VTs) are eligible to join the Local Government Pension Scheme. It is envisaged that Service employees (including the Chief Executive) will also be eligible to join this scheme.
320. Currently all staff are locally employed by the valuation tribunal they work for. The new body will become the employer of all staff. Where the Service proposes to appoint a clerk for a VT, it must obtain the consent of the VT before it may do so.

Committees of the Service

321. The Service has the general power to delegate performance of its functions to committees and its employees, by specific written authorisation. Committees will be able to delegate their functions to their sub-committees and Service employees, and sub-committees will be able to delegate their functions to Service employees. Non-Service members will be allowed to sit on committees so that specialist expertise may be utilised in appropriate cases. The Service may pay such remuneration and allowances as the Secretary of State may determine, to members of committees and sub-committees who are neither members nor employees of the Service.

Interests of members of the Service

322. A member who has an interest in any matter that is brought up for consideration at a meeting of the Service, committee or sub-committee must disclose his interest to the meeting. His interest will be minuted and that member shall not take part in the deliberation or decision regarding that matter. The member can give a general notification that he has an interest in a company, firm or other organisation. If he takes reasonable steps to ensure that his interest is notified in a notice which is read and considered at the meeting, he does not need to attend the meeting in person. The Secretary of State has power to allow the member to take part in considering matters in which the member has an interest subject to such conditions as he considers appropriate.

The Service's finances

323. The Secretary of State may pay grants and loans as he thinks fit to cover the expenses incurred by the Service in performance of its duties. However, the Service will not be able to borrow money from any other source without the consent of the Secretary of State.
324. The Service will be subject to the normal provisions applying to public bodies in relation to the keeping of proper accounts, the role of the Comptroller and Auditor General, and the presentation to Parliament of reports at the end of the financial year.

Section 106 and Schedule 5: Transfer to Service of property, rights and liabilities

325. As a result of the establishment of the Service, there will be a need to make a formal transfer of property, rights and liabilities from its sponsoring Department (who currently own many of the assets used by the administration offices which support the Valuation Tribunals), and from individual valuation tribunals, to the Valuation Tribunal Service. This means that all tribunal offices and associated assets and the associated contractual liabilities arising from them will need to be formally transferred via a transfer scheme or schemes. It is envisaged that this will take place on the day the provisions establishing the Service comes into force. More detail about transfer schemes is given by Schedule 5.

Sections 107 to 111: Audit Commission

Sections 107 and 108: Auditors' public interest reports

326. These sections make amendments to the Audit Commission Act 1998 regarding the publication, and handling by local authorities, of public interest reports prepared by appointed auditors. They provide for the auditor to have direct responsibility for publishing reports and making copies available more widely than just to the authority concerned. They also reduce the time authorities have to respond to these reports to ensure that the matters to which such reports refer are considered promptly by authorities.

Section 107: Auditors' public interest reports: time allowed for consideration

327. This section amends the Audit Commission Act 1998 and reduces from four months to one month the time limit within which local authorities must consider, in a meeting open to the public, the contents of public interest reports prepared under section 8 of that Act by appointed auditors. The existing provision whereby an auditor may allow longer for consideration of such reports is to be retained.

Section 108: Auditors' public interest reports: publicity

328. An auditor may, under section 8 of the Audit Commission Act 1998, make a report in the public interest on any matters coming to his notice during an audit which he considers should be brought to the attention of the public. A report may be made at the conclusion of an audit, or where the auditor considers it appropriate the matter may be made the subject of an immediate report. The auditor must give a copy of the report to the audited body forthwith if it is an immediate report, or otherwise within 14 days of the conclusion of the audit. Where an audited body receives an immediate report any member of the public may inspect the report, make copies or require the body to supply a copy of the report, or any part of it, on payment of a reasonable fee. The auditor may also notify any person that he has made a report and supply a copy or any part of it to any person he thinks fit.
329. This section amends the Audit Commission Act 1998 to provide that auditors should assume responsibility for publishing all public interest reports, notifying persons they think fit that such reports have been published and supplying copies to members of the public on request. From the time a report is sent to an audited body, auditors should ensure that members of the public may inspect reports and have copies made available. The obligation on auditors to provide copies will last for one year, thereafter it will fall to the Audit Commission.

Section 109: Registered social landlords

330. This section confers on the Audit Commission powers to inspect housing services provided by registered social landlords (RSLs). Inspection of RSLs' housing services in England is currently undertaken by the Housing Corporation as part of its regulatory role. In future, a single housing inspectorate within the Audit Commission will be able to inspect all social housing landlords in England whether local authorities or RSLs.

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Such a single inspectorate would be able to ensure that local authorities and RSLs provide the same standards of service for all tenants of social housing, drawing on the expertise that the Audit Commission has built up. The powers conferred on the Commission also apply to RSLs registered with the National Assembly for Wales: inspection of those RSLs is currently undertaken by the Assembly.

331. Subsection (1) will be commenced in relation to RSLs registered with the Housing Corporation by commencement order made by the Secretary of State and, in relation to RSLs registered with the National Assembly for Wales, by commencement order made by the Assembly.
332. Subsection (1) adds two new sections to the Audit Commission Act 1998. The new section 41A defines what may be inspected in RSLs, gives the Audit Commission powers to publish reports and powers of access to premises and information, and requires it to consult the Housing Corporation (or, in Wales, the National Assembly) on its programmes of inspection. The new section 41B makes provision for the Commission to charge RSLs for inspection. The Secretary of State (or, in relation to RSLs registered with the National Assembly for Wales, the Assembly) may make an order authorising the Commission to charge fees, but only after consultation. If so authorised, the Commission would have to consult on the level of fees. The amendment made by subsection (3) of the section requires the Commission to balance its income and expenditure on RSL inspection over time. The amendment made by subsection (4) of the section authorises the Secretary of State and Assembly to pay grant to the Commission.

Section 110: Financial Year

333. At present the Audit Commission's financial year, determined by paragraph 11(5) of Schedule 1 to the Audit Commission Act 1998, runs from 1 November to 31 October. Section 110 amends paragraph 11(5) so that the Commission's financial year will run from 1 April to 31 March.
334. Paragraph 65 of Schedule 7 to the Act changes certain other dates mentioned in Schedule 1 to the Audit Commission Act 1998. These amendments are consequential on the change to the Commission's financial year.

Section 111: Delegation

335. **Section 111** inserts a new paragraph 11A in Schedule 1 to the 1998 Act, which provides that any of the Audit Commission's functions may be delegated to its committees and sub-committees and its officers and servants.

Sections 112 to 122: Other

Section 112: Standards Board for England: delegation

336. This section gives the Standards Board for England the power to delegate any of its functions to:
- an officer or servant of the Board;
 - a committee or sub-committee of the Board; or
 - an individual member of the Board.
337. The Standards Board is an independent body responsible for the promotion and maintenance of high standards of conduct by members and co-opted members of relevant authorities in England.
338. The Standards Board was set up and is governed by the Local Government Act 2000. The Board has a number of functions conferred by the Act, one of which is to consider

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a written allegation and decide whether the allegation should be referred to an ethical standards officer for investigation.

339. There is no provision in the Act which gives the Standards Board the ability to delegate functions. The number of complaints received by the Board and the ability to cope with the demands made by those complaints has led to the view that a power of delegation is required in order to allow Board members to fulfil their proper role of setting strategic guidance and direction.

Section 113 : Standards committees etc

340. This section enables local authority standards committees to appoint sub-committees. It also enables the monitoring officer of an authority to nominate another person to carry out duties when the monitoring officer believes he himself ought not to carry out those duties.
341. The Local Government Act 2000 required each relevant local authority to establish a standards committee. Standards committees have the general functions of promoting high standards of conduct, and of assisting members to observe the authority's code of conduct.
342. The 2000 Act also envisages that standards committees could in certain circumstances consider reports of alleged misconduct by members of the authority and subsequently take actions against members found to have breached the code of conduct. This function of considering reports into misconduct allegations is to be provided for in regulations which the Secretary of State intends to make under section 66 of the 2000 Act. In order that standards committees will be able to regulate the number of members of the committee present when considering such cases, it is necessary to provide for the creation of sub-committees.
343. Regulations under section 66 of the 2000 Act will also provide for the investigation of misconduct allegations to be carried out by the monitoring officer of an authority. The 2000 Act gives this duty to the monitoring officer personally. However, there may be circumstances where it would be improper for the monitoring officer to conduct the investigation – for example if he or she (as the authority's principal legal adviser) has previously given advice to the member concerned on the application of the code. This section will allow the monitoring officer to nominate another person to conduct the investigation. The nominated person could be another employee of the authority, or someone outside – for example the monitoring officer of a neighbouring authority.

Section 114: Paid time off for Councillors etc not to be political donations

344. Where any salary is paid to an employee by an employer in respect of time off taken in order to undertake duties as a local councillor, this section ensures that the value of the salary is not classified as a political donation under the Political Parties, Elections and Referendums Act 2000 ("PPERA").
345. Schedule 7 to the PERA controls donations made to a person in his or her capacity as a councillor in connection with his or her political activities. It was previously considered prior to the passing of the Local Government Act 2003, that where an employee was a councillor, and was allowed paid time off work to carry out council duties, the pay for the time off constituted a controlled donation. This ran counter to the Government's intention that the provisions of the PERA should not apply to the receipt by a councillor of paid time off for carrying out his or her duty as a councillor. This section provides that the value of any salary paid to an employee by an employer in respect of time taken off in order to undertake "qualifying business" as a local councillor is not a donation for the purposes of Schedule 7 to the PERA.
346. "Qualifying business" relates to the business of the authority, whether conducted by the authority itself, its executive (or any committee or member of the executive) or any of

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its committees or sub-committees. Qualifying business also relates to any duties that a councillor may carry out for:

- other bodies to which the councillor has been appointed or nominated by the council of which the councillor is a member, and
 - any public bodies to which the councillor has been appointed, whoever makes the appointment.
347. The time off for which pay does not count as a political donation is time off for a widely defined range of duties, including the doing of anything for carrying out the functions of the council to which a councillor has been elected and the doing of anything for carrying out any functions of another council where that other council has delegated the discharge of those functions to the councillor's council.
348. The section applies retrospectively, so that any pay for time off which may have been granted to councillors since 16th February 2001, when the requirements of Schedule 7 to the PPERA came into force, is no longer considered a political donation.
349. The section extends (see section 129(5)) to England and Wales, and also to Northern Ireland and Scotland, but only partially in the latter case. For, although the section amends an earlier enactment that extends throughout the United Kingdom, a similar amendment has been made in Scotland by section 42 of the Local Government in Scotland Act 2003, which received Royal Assent on 11 February 2003. However, this Scottish Act is able to amend the earlier enactment only so far as it is part of the law of Scotland that can be amended by the Scottish Parliament. In particular, the Scottish Parliament cannot amend the law of Scotland to confer or remove functions exercisable otherwise than in or as regards Scotland. The earlier enactment, though, affects conduct throughout the United Kingdom. The section therefore amends the existing enactment, to the extent that it is part of the law of Scotland, only so far as the Scottish Parliament could not amend it. This means that the earlier enactment is fully amended throughout the United Kingdom.

Section 115: Overview and scrutiny committees: voting rights of co-opted members

350. **Section 115** and paragraph 80 of Schedule 7 modify the Local Government Act 2000 so as to provide local authorities in England with a power to grant voting rights to members of overview and scrutiny committees who are not members of the authority. The purpose of the change is to meet a commitment given in the Local Government White Paper of December 2001 (*Strong Local Leadership – Quality Public Services*).
351. **Section 115** inserts three paragraphs (paragraphs 12, 13 and 14) into Schedule 1 to the Local Government Act 2000.
352. **Paragraph 12** allows a local authority to permit co-opted members of an overview and scrutiny committee, being members of the committee who are not members of the authority, to vote at meetings of that committee. Such a permission may only be given in accordance with a scheme made by the local authority. Such a scheme may include provision for the maximum or minimum numbers of co-opted members with voting rights.
353. **Paragraph 13** grants the Secretary of State power to make regulations in relation to the exercise by authorities of the power to grant voting rights to co-opted members. It gives the Secretary of State:-
- the power to make regulations requiring authorities to include certain provisions within their schemes;
 - the power to make regulations requiring local authorities to notify the Secretary of State of the making, variation or revocation of schemes; and
 - the power to direct a local authority to vary its scheme.

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354. [Paragraph 14](#) requires an authority to make copies of its scheme available for inspection by members of the public at its principal office. An authority must also publish a notice recording the making or variation of the scheme, the details of the scheme, and details of how the scheme may be inspected by the public, in one or more local newspapers. If the scheme is revoked an authority must publish a notice indicating this.
355. [Paragraph 80](#) of Schedule 7 amends section 21(10) of the Local Government Act 2000 so that the provision in that section that members of an overview and scrutiny committee who are not members of the local authority may not vote is subject to paragraphs 12 to 14 of Schedule 1 to the Act, which are inserted by section 115.

Section 116: Local polls

356. This section confirms, by creation of an express power, the right of a local authority to conduct an advisory poll. There is no obligation on a local authority to hold such a poll, nor any requirement to act in accordance with the result of such a poll.
357. The extent of this express power is broadly drawn, allowing the local authority to hold a poll on any matter relating to the services for which it is responsible (including where these may be delivered by a third party), or the finance that it commits to those services, or any other matter that is one relating to the authority's power under section 2 of the Local Government Act 2000 (authority's power to promote well-being of its area).
358. The section also provides express freedom to a local authority in determining, for any poll it proposes to hold, who to poll and how the poll is to be conducted. The clause also provides for the Secretary of State in England and the National Assembly for Wales in Wales to be able to issue guidance, to which local authorities must have regard, on facilitating participation by disabled people in a local poll.

Section 117: Generally accepted accounting practice.

359. The Secretary of State and the National Assembly for Wales are empowered to amend legislation by order in the light of generally accepted accounting practice. For local government, the relevant practices are mainly those prescribed in the codes issued by the Chartered Institute of Public Finance and Accountancy. The power is likely to be used to update local government accounting arrangements in line with developments in national standards.

Section 118: Appropriate sum under section 137(4) of the Local Government Act 1972 :

360. [Section 118](#) amends section 137(4) of the Local Government Act 1972. Section 137 permits parish and town councils in England, and community councils in Wales, to spend up to a given amount in a financial year on items that are of direct benefit to their area in relation to which no other powers of expenditure exist. The amount is found by multiplying the appropriate sum by the relevant population of the authority's area. {The appropriate sum in England, which was set by section 137(4AA)(c), is £3.50 per elector, but this is due to be increased in advance of the Act, by statutory instrument, to £5.00 per elector in time for the financial year 2003/04. The appropriate sum is currently £5.00 per elector. This was set in England by the [Local Authorities \(Discretionary Expenditure Limits\)\(England\) Order 2000 \(SI 2002/2878\)](#) and in Wales by the [Local Authorities \(Discretionary Expenditure Limits\) \(Wales\) Order 2000 \(SI 2000/9000\)](#).
361. [Section 118](#) provides for the appropriate sum to be determined in accordance with a new Schedule 12B to the 1972 Act.
362. The Schedule states that the appropriate sum for the financial year in which the Act comes into force, will be £5.00. It also specifies that the sum will automatically be increased for each financial year thereafter in line with the annual change in the retail prices index. This is achieved by multiplying the appropriate sum for the preceding

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financial year by the ratio between the retail prices index for September of the preceding financial year and the corresponding figure a year earlier.

363. The Schedule also permits the Secretary of State to specify, by order, an alternative appropriate sum to that calculated with reference to changes in the retail prices index for parish and town councils in England; and for the National Assembly for Wales to specify an alternative appropriate sum for community councils in Wales.

Section 119: Use of fixed penalties for leaving litter and dog fouling offences.

364. **Section 119** makes provision in response to the commitment made in the Local Government White Paper of December 2001 (*Strong Local Leadership – Quality Public Services*). Subsection (1) of section 119 allows local authorities to retain any sums which they receive from fixed penalties for leaving litter and dog faeces; these fixed penalty receipts will no longer have to be paid to the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales). Under subsections (2) and (3)(a) & (b) of this section an authority will be able to use its fixed penalty receipts to pay for its statutory functions relating to litter and dog faeces, including the function of giving fixed penalty notices for leaving litter and failing to remove dog faeces.
365. The Secretary of State and the National Assembly for Wales are given the power to make regulations adding to the activities which an authority may finance using its fixed penalty receipts (see subsection (3)(c) of section 119). So, for example, an authority could be given the ability to spend its fixed penalty receipts on specified activities related to improving the local environment which are not carried out under the provisions mentioned in subsections (3)(a) and (b). However, the new regulation making power will be sufficiently wide to give an authority complete freedom as to how it spends its receipts (see subsection (4) of section 119). Note that the regulation making power is referred to in subsection (2)(f) of section 100 (exercise of powers by reference to English authorities' performance categories).

Section 120: Regulation of cosmetic skin piercing and skin-colouring businesses

366. **Section 120** amends section 15 of the Local Government (Miscellaneous Provisions) Act 1982 so that local authorities have powers to require persons carrying on the businesses of cosmetic piercing (referred to in the section as "cosmetic piercing") and semi-permanent skin-colouring, including micropigmentation, semi-permanent make-up and temporary tattooing, to register themselves and their premises and to observe byelaws on hygiene and cleanliness. This amendment brings these businesses under the same regulatory framework that already exists in the 1982 Act for acupuncture, tattooing, ear piercing and electrolysis. This section should be read in conjunction with Schedule 6 which contains transitional provisions.

Schedule 6: Regulation of cosmetic skin piercing and skin-colouring businesses

367. **Schedule 6** introduces transitional provisions to accompany section 120. The Schedule provides that:
- (a) the amendment does not by itself alter the descriptions of persons and premises already registrable under section 15 of the Local Government (Miscellaneous Provisions) Act 1982 for tattooing, ear piercing and electrolysis.
 - (b) the amendment does not affect pending local authority resolutions to apply section 15 of the 1982 Act in their area.
 - (c) where a local authority has already resolved that section 15 of the 1982 Act should be brought into force in their area for tattooing, ear piercing and electrolysis the local authority will nevertheless be able to apply the registration and byelaws regime to cosmetic piercing and semi-permanent skin-colouring.

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- (d) a person and business already registered for ear piercing shall be counted as registered for cosmetic piercing until cosmetic body piercing is subsequently provided when a new registration would be required.

Section 121: Fire brigade establishment schemes etc

368. **Section 121** repeals sections 19(3) to (6) and 19(8) of the Fire Services Act 1947 (FSA 1947) and paragraph (a) of section 7(2) of the Fire Services Act 1959 (FSA 1959) in respect of England and Wales. It removes the requirement on a fire authority to provide information on its establishment scheme annually to the Secretary of State, and to obtain the Secretary of State's approval before varying its establishment scheme by closing a fire station or reducing the number of fire appliances or firefighting posts. It also removes the Secretary of State's powers in relation to the making of establishment schemes, and the powers to order public local inquiries for the purposes of his functions under section 19. Section 7(2)(a) of the FSA 1959 applies section 19 to combined fire authorities newly created by combination scheme orders made under sections 5 and 6 of the FSA 1947. Part 1 of Schedule 8 details the extent of the repeals in the FSA 1947 and the FSA 1959.
369. Section 19(3) of the FSA 1947 is unnecessary as fire authorities provide information on their establishments by a number of other means. The repeal of sections 19(4), (5) and (6) will leave decisions on an establishment scheme to be taken locally by the fire authority. The Secretary of State's power under section 19(8) to hold a public local inquiry is also unnecessary; this power is retained under section 33(1) of the FSA 1947. (Section 19(1) and (2) of the FSA 1947 remain in force).
370. The repeal of section 19(3) to (6) and 19(8) of the FSA 1947 and section 7(2)(a) of the FSA 1959 is consistent with the approach on the removal of unnecessary requirements for consents set out in the Local Government White Paper "*Strong Local Leadership – Quality Public Services*" published in December 2001; and with the recommendation of the Independent Review of the Fire Service chaired by Professor Sir George Bain published in December 2002.

Section 122: Repeal of prohibition on promotion of homosexuality

371. **Section 122** repeals section 2A of the Local Government Act 1986 which prohibited local authorities from intentionally promoting homosexuality or publishing material with the intention of doing so or from promoting teaching in schools of the acceptability of homosexuality. A series of consequential provisions are also included in the Act to repeal provisions in other legislation that refer to section 2A.

General

Section 128: Commencement

372. Subsections (1) to (4) make express provision about the commencement of some of the provisions of the Act. Subsection (5) makes provision for sections 101 and 102 to come into force so far as they relate to Scotland. Subsection (6) provides for every remaining provision of the Act to be brought into force, so far as relating to England, by a commencement order made by the Secretary of State and, so far as relating to Wales, by a commencement order made by the National Assembly of Wales.