

**Power to promote or improve economic,
social or environmental well-being**

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Note: The responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to Communities and Local Government in May 2006. All references to ODPM in the following pages now refer to Communities and Local Government.

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Chapter 1: Overview and Context of Part I of the Local Government Act 2000

Introduction

1. Part I of the Local Government Act 2000¹ creates a new discretionary power for principal local authorities in England and Wales to do anything they consider likely to promote or improve the economic, social or environmental well-being of their area. The power came into force on 18 October 2000.

2. The introduction of this new power forms an important part of the Government's wider approach to the modernisation of local government. This approach is designed to ensure that:

- councils are empowered to lead their communities;
- councils' political decision-making processes are efficient, transparent and accountable;
- there is continuous improvement in the efficiency and quality of the services for which councils are responsible;
- councils actively involve and engage local people in local decisions; and
- councils have the powers they need to ensure that they can promote and improve the well-being of their areas and contribute to sustainable development.

3. The Local Government Acts 1999² and 2000 provide the statutory underpinning to deliver these goals.

4. The Government does not view the modernisation of local government as an end in itself, but rather as one of the means by which the quality of life of communities and individuals can be improved. Measures such as the strengthening of councils' community leadership role and the introduction of best value support the Government's ambitious programme for the reform of public services, which is designed to ensure that services are delivered in ways that:

- are responsive to the concerns and needs of local communities;
- improve continuously, especially in areas where there has been a pattern of under-performance;
- are co-ordinated in ways which minimise duplication, maximise effectiveness, and present a concerted response to the causes of complex problems such as social exclusion and neighbourhood renewal; and
- suit the needs of the consumer or citizen (rather than the convenience of the provider).

The power of well-being

5. If local authorities are to play their full part in the achievement of these goals, they need the necessary statutory powers to do so. For many years, innovative actions by local authorities have been stifled by concerns over the scope of their powers. While some legislation contains deliberate and specific constraints on local authority activities, there has been considerable

uncertainty over the extent of the enabling powers that have been conferred on councils. The result has been a necessarily cautious approach to innovation and joint action, and a concomitant limitation of councils' contribution to the improvement of their communities' quality of life.

6. The Government's purpose in introducing the well-being power is to reverse that traditionally cautious approach, and to encourage innovation and closer joint working between local authorities and their partners to improve communities' quality of life. The purpose of this guidance is therefore to acquaint local authorities with the breadth of the new power, and to encourage innovative and imaginative use of it. In particular, each local authority will want to consider how the power can promote the sustainable development of its area by delivering the actions and improvements identified in its community strategy, which could include tackling social exclusion, reducing health inequalities, promoting neighbourhood renewal and improving local environmental quality. Authorities will also wish to consider how the new power can help them to contribute locally to shared national priorities, such as action to combat climate change and encourage the conservation of biodiversity, and to contribute to shared priorities within other plans such as Health Improvement Programmes.

7. The new power is wide-ranging, and enables local authorities to improve the quality of life, opportunity, and health of their local communities. Further information is set out in chapter 2. Specific examples of the kind of action that can be taken are set out in section 2(4) of the Act. These include incurring expenditure, providing staff, goods or services to any person, entering into partnership arrangements and carrying out the functions of other bodies. This list is for illustrative purposes only, and does not in any way limit how local authorities can use the new power.

8. Section 2 builds on the provisions in the Health Act 1999,³ reinforced in the NHS Plan⁴, which provide health authorities and local authorities with a power to work with one another where there is a clear crossover between the services being commissioned and provided by the local authority and NHS bodies. Joint working under the Health Act can take the form of pooled budgets, lead commissioning and integrated provision of services. The well-being provision extends the ability of local authorities to work in partnership with other bodies, in addition to the NHS.

9. There are two specific limitations on the well-being power, which are set out in section 3 of the Act. The power does not have any spending limits attached to it, but cannot be used to raise money. Neither can it be used to circumvent prohibitions, restrictions or limitations contained on the face of legislation. The Secretary of State also has a reserve power under section 3 to prevent local authorities from exercising the power to take specific actions. Chapter 3 of this guidance provides more information on these restrictions.

10. The breadth of the power is such that councils can regard it as a 'power of first resort'. Rather than searching for a specific power elsewhere in statute in order to take a particular action, councils can instead look to the well-being power in the first instance and ask themselves:

- Is the proposed action likely to promote or improve the well-being in our area? (see paragraphs 22-30)

- Is the primary purpose of the action to raise money? (see paragraphs 65-70)
- Is it explicitly prohibited on the face of other legislation?
- Are there any explicit limitations and restrictions on the face of other legislation? (see paragraphs 63 and 64) If the answer to the first question is 'Yes' and to the next two questions 'No', then a council can proceed with the proposed action, subject to the answer to the fourth question, i.e. any restrictions or limitations that may apply by virtue of being spelt out on the face of other legislation.

11. In determining how to use the new power, an authority will need to have regard to this statutory guidance. It must also have regard to its community strategy, which it has a duty to prepare under section 4 of the Act. This requirement is not intended to limit the scope of the well-being power, nor to encourage a 'checklist' approach to its use; it is rather intended to encourage local authorities to consider the effect that any particular use of the power will have on the achievement of the goals and objectives contained in their community strategy (see paragraphs 24-26). Local authorities do not have to wait until their community strategies are in place before being able to exercise the power.

Context

12. Following extensive consultation, the Secretary of State has now issued statutory guidance to local authorities on preparing community strategies,⁵ and the two sets of guidance can usefully be read in conjunction with each other. The Government also issued on 27 March 2001 non-statutory guidance on the 'local strategic partnerships'⁶ with whom it expects local authorities to work in order to prepare community strategies (see paragraph 36).

13. The creation of the new power confers a new function on local government, namely that of promoting or improving community well-being. As with all other functions, it will be subject to the general duty of best value⁷. How authorities set about meeting the requirements of best value in relation to the well-being power will be a matter for them; but they will in particular wish to reassess their best value review programme to ensure that it is cast in sufficiently strategic terms to support the delivery of improved well-being in the area, in particular concentrating on cross-cutting issues such as community safety, promoting neighbourhood renewal and tackling social exclusion. Paragraphs 46-49 explain how the broader approach to best value links to the introduction of the well-being power.

14. It is obviously not possible at this stage to envisage every way in which authorities might choose to exercise the power. A power that encourages innovation has an inherent potential to be used in new and unforeseen ways. There are a number of restrictions which Parliament has laid down over the years in legislation in order to limit the scope of specific functional powers granted to local authorities. However, the piecemeal accretion of restrictions, regulations and limitations is now placing unhelpful restraints on local authorities' effectiveness. Also, over time, as modernised authorities begin to use the well-being power to develop innovative approaches to service delivery, it is likely that other restrictions will be identified as being unnecessarily obstructive, preventing sensible initiatives to promote community well-being or secure best value.

15. The power in section 5 for the Secretary of State to amend, repeal or revoke restrictions that obstruct the use of the well-being power provides a means by which the Government could respond to such developing circumstances, without needing to wait for primary legislation. In addition, section 16 of the Local Government Act 1999 enables the Secretary of State to modify or repeal legislation that prevents local authorities from achieving best value and to grant new powers to local authorities accordingly. The Government has also introduced local Public Service Agreements⁸ to explore how any relaxation in the statutory or administrative framework and financial incentives can drive further improvements in service delivery. Taken together, the powers in the 1999 and 2000 Acts provide an opportunity to deal with unnecessary restraints to local authorities' effectiveness. Additional information about the section 5 power and arrangements for its use can be found in chapter 4 of this guidance.

16. The way in which the section 2 powers will be exercised by a council will partly depend on its new constitution under Part II of the 2000 Act. Details of the arrangements to be adopted under Part II and what this means for the well-being power are set out in the Annex to this guidance; separate guidance on executive arrangements⁹ sets out the ways in which local authorities can choose to exercise their functions and the contributions of individual councillors, as well as how they should take into account the views of the wider community.

17. The LGA have published a Power Pack to help local authorities explore how they can use the power to promote the well-being of their communities¹⁰. Further information on the power is available from the Improvement and Development Agency (IDeA)¹¹.

18. This guidance takes into account the responses to the comments received on the draft guidance published last year. A more detailed report on the outcome of the consultation exercise is being published separately.

¹ Available via the ODPM website at the Local Regions area of the site. The Act is also available from The Stationery Office at £11.30 (ISBN 0-10-542200-2); contact 0870 600 5222. Explanatory Notes to the Act (ISBN 0-10-562000-9; £7.25) are also available from the same sources.

² Available via the ODPM website at www.communities.gov.uk/local-regions The Act is also available from The Stationery Office at £7.25 (ISBN 0-10-542799-3); contact 0870 600 5222. Explanatory Notes to the Act (ISBN 0-10-562799-2; £5.00) are also available.

³ Available at www.legislation.hmso.gov.uk/acts1999/19990008.htm

⁴ *The NHS Plan: a plan for investment, a plan for reform*; Cm 4818; Department of Health, July 2000. The NHS Plan addresses reform with far-reaching changes across the NHS, and investment in the NHS with sustained increases in funding. The stated purpose and vision of the Plan is to give the people of Britain a health service fit for the 21st century - a health service designed around the patient. This document is available from The Stationery Office (ISBN 0-10-148182-9), priced at £15, and can also be accessed via www.doh.gov.uk/nhsplan/default.htm

⁵ Copies are available from the ODPM website at (www.communities.gov.uk/local-regions), or from ODPM's distribution section (contact details listed at the front of this document).

⁶ Non-statutory guidance on local strategic partnerships emphasises that they are cross-sectoral umbrella partnerships bringing together the public, private, community and voluntary sectors to provide a single, overarching local co-ordination framework within which other, more specific partnerships can operate. The guidance is available on the ODPM website via at www.communities.gov.uk/local-regions/

⁷ The duty of best value is set out in section 3(1) of the Local Government Act 1999. More information can be obtained on the ODPM website at at the Local Regions area of the site.

⁸ More information is available on the Local Regions area of the ODPM site., including copies of *Local Public Service Agreements: a prospectus for local authorities*.

⁹ Two volumes of a guidance pack on *New Council Constitutions* were issued by DETR in October 2000; each volume is priced at £90 and can be obtained from The Stationery Office (ISBN 0-11-753566-4 for the combined pack). More information, including copies of the guidance and regulations contained in the pack, can be found at www.communities.gov.uk/groups/odpm_localgov/documents/page/odpm_locgov_605625.hcsp

¹⁰ *Leading Communities: using the new power to promote well-being*. LGA, December 2000. Also available on the LGA web site at <http://www.lga.gov.uk/index.htm>

¹¹ Website available at www.idea.gov.uk

Chapter 2: Scope of the Power to Promote Well-Being

Who can use the power to promote well-being? - section 1

19. Section 1(a)¹² states that the power to promote well-being, which is the responsibility of the executive under executive arrangements, applies to the following types of local authorities in England:

- county councils;
- district councils (which includes shire district councils, metropolitan district councils, and other unitary district councils);
- London borough councils;
- the Common Council of the City of London in its capacity as a local authority; and
- the Council of the Isles of Scilly.

20. The power does not apply to parish and town councils in England, who retain their existing power to incur expenditure for the benefit of their area under section 137 of the Local Government Act 1972.

21. The National Assembly for Wales will be issuing separate guidance to Welsh local authorities.

Promotion or improvement of well-being - section 2

22. Section 2(1) enables a local authority to use the power to promote well-being where it considers this will achieve any one or more of the following three objectives:

- the promotion or improvement of the economic well-being of their area;
- the promotion or improvement of the social well-being of their area;
- the promotion or improvement of the environmental well-being of their area.

23. The power is drafted in this way in order to maximise its flexibility. Each of its three components can be used either separately or in combination. As noted earlier, however, the power provides an important opportunity for councils to tackle complex problems, such as neighbourhood renewal and social exclusion, in a sustainable way. It is also recognised that an integrated approach to improving economic, social and environmental well-being is essential to improving health and reducing inequalities.

24. Section 2(3) states that in exercising the well-being power a local authority must have regard to its community strategy prepared under section 4. As the guidance relating to community strategies makes clear, such strategies are expected to take an integrated

approach to the economic, social and environmental well-being of the area, and thereby contribute to sustainable development in the United Kingdom. Such strategies provide a mechanism for an authority and its partners to identify the priorities of their local communities, to reflect these in a long-term vision for the community, to identify a set of specific objectives, and to draw up an action plan for the partnership to follow in order to achieve these objectives.

25. The requirement in section 2(3) is intended to ensure that local authorities consider the impact that using the new power will have on the achievement of the aims and objectives of the community strategy (including the contribution to sustainable development). However, this does not mean that a council has to wait until its community strategy is in place before using the well-being power. The guidance on Preparing Community Strategies recognises that it will take time to put these strategies in place. Where a local authority does not yet have its community strategy in place, it is not prevented from exercising the power to promote well-being.

26. The new power provides a strong basis on which to deliver many of the priorities identified by local communities and embodied in community strategies. The Government would expect a council to think very carefully before using the power in a way which ran counter to the aims and objectives in its strategy. However, the need to take account of the community strategy does not mean that each and every use of the power must be referenced in the strategy.

27. The Government does not intend to define what actions would constitute the promotion of economic, social or environmental well-being, although it should be made clear that it considers these terms to be sufficiently broad to encompass both cultural well-being and the promotion or improvement of the health of a council's residents or visitors to the area. It is for the local authority itself to decide whether any particular action would promote or improve well-being, taking account of their local circumstances and the wishes and needs of their communities. A local authority would, of course, need to interpret these terms in accordance with the general principle of 'Wednesbury reasonableness'¹³.

28. The power can also be used instead of existing, more specific powers. For example, where a local authority has a discretionary power to provide a specific service which improves the well-being of a defined group of people, the well-being power can now be used to provide that service to that group and also to any other group of people, unless it is specifically restricted on the face of legislation from doing so (see paragraphs 63 and 64).

Who must benefit? - section 2(2)

29. Section 2(2) explains that the power can be used in relation to, or for the benefit of, any one or more of the following categories:

- the whole of the authority's area;
- a part of the authority's area;
- all persons resident or present in the authority's area;
- any person resident or present in the authority's area.

30. The provisions have been drafted to provide maximum flexibility. The Interpretation Act 1978¹⁴ makes it clear that the term 'person' includes 'a body of persons corporate or unincorporate'. It therefore includes local authorities, police, health and parks authorities, businesses, voluntary groups and other local organisations that are themselves separate legal entities. It also encompasses all individuals and particular groups of people within a community (including faith, black and minority ethnic communities, women, older people, young people and children, and disabled people). The definition of 'persons present' in an area includes groups such as tourists, commuters and travellers.

Possible uses of the well-being power - section 2(4)

31. Section 2(4) states:

'The power under subsection (1) includes power for local authorities to -

- a. incur expenditure,
- b. give financial assistance to any person,
- c. enter into arrangements or agreements with any person,
- d. co-operate with, or facilitate or co-ordinate the activities of any person,
- e. exercise on behalf of any person any functions of that person, and
- f. provide staff, goods, services or accommodation to any person.'

32. This is not an exhaustive list of the sorts of activities that could be undertaken under the well-being power. Section 2(6) states explicitly that 'Nothing in subsection (4) or (5) affects the generality of the power under subsection (1).'

Power to 'incur expenditure' and to 'give financial assistance to any person'

33. Subparagraphs (a) and (b) can be taken together. They make it clear that councils can regard the section 2 provisions as a broad spending power. When undertaking any activity in pursuit of one, a combination of, or all the elements of well-being, the well-being power enables local authorities to incur expenditure, and specifically identifies the provision of financial assistance as one means of doing so.

34. In contrast to the provisions in section 137 of the Local Government Act 1972, section 2(1) of the 2000 Act contains no restriction or limitation on the amount of money a local authority can spend. Authorities will be able to fund the activities of different groups and bodies, as well as invest in such activities, if they consider that this expenditure contributes to the economic, social or environmental well-being of the local area. Such financial assistance may be given by any means authorities consider appropriate, including by way of grants or loans, or by the provision of guarantees.

35. The Government does not consider that the section 2 power is sufficient to enable authorities to grant indemnities against personal financial loss to their members or officers in all the circumstances in which such indemnities would be appropriate. In order to put this issue beyond doubt, the Government intends, following consultation, to make an order later in 2001 under section 101 of the 2000 Act conferring power on local authorities to provide such

indemnities.

Power to 'enter into arrangements or agreements with any person' and to 'co-operate with, or facilitate or co-ordinate the activities of any person'

36. The Government is committed to improving the quality and responsiveness of local public services. The importance of successful strategic co-ordination and of active community involvement is increasingly recognised, nationally and locally. Recent non-statutory guidance on local strategic partnerships stresses the importance of establishing successful overarching partnerships which bring together the public, private, community and voluntary sectors, building on existing good practice wherever possible. These will provide an opportunity to bring together new and existing partnership working arrangements, to help reduce 'partnership fatigue' at local level. One key role for local strategic partnerships will be preparing and implementing community strategies. In the most deprived areas, local neighbourhood renewal strategies will form an important element of community strategies; these will set out who needs to do what to turn round the most deprived neighbourhoods in the locality. More information is set out in *A New Commitment to Neighbourhood Renewal*, the action plan for the National Strategy for Neighbourhood Renewal¹⁵.

37. The well-being power is designed to support the efforts of councils and their partners to work more closely together on these and other initiatives, by providing councils with powers to make arrangements or agreements with any person and by allowing them to co-operate with, or facilitate or co-ordinate the activities of any person. Such provisions are designed to make it easier for councils and their partners to work together, and thus to secure better service provision.

Power to 'exercise on behalf of any person any functions of that person' and power to 'provide staff, goods, services or accommodation to any person'

38. Part of the closer working that the well-being power facilitates, and that the Government wants to see, involves identifying efficient, effective and consumer-friendly ways of providing public services.

39. Subparagraph (e) facilitates this aim by clarifying that the well-being power enables local authorities to take on functions currently undertaken by other service providers. The Health Act 1999 (see paragraph 8) already provides local authorities and health authorities with power to carry out functions on behalf of one another, by agreement. The well-being provision provides councils with the powers they need to extend this partnership approach to other bodies, in addition to the NHS.

40. This ability for a local authority to undertake a function on behalf of another body does not transfer any statutory responsibility or accountability for the carrying out of that function. It does, however, give greater scope to councils and their partners to determine how best to discharge their functions.

41. The provision in subparagraph 2(4)(f) leaves local authorities in no doubt that, in addition to providing financial assistance, they can also provide other forms of assistance including staff, goods and services and accommodation, i.e. they can make such a contribution 'in kind'.

Power to form companies and other corporate bodies

42. The well-being power will also enable local authorities to form or participate in companies, trusts, or charities, including joint venture companies, provided that they are satisfied that the formation of, or participation in, a particular company is likely to achieve the promotion or improvement of the economic, social or environmental well-being of the authority's area. Such participation could give rise to dividend payments to the authority as a shareholder. In the Government's view, such dividends would not amount to raising money for the purposes of section 3(2) (see paragraphs 65-70). Indeed, an authority may be acting contrary to its fiduciary duty to local taxpayers if it failed to ensure such a return on its investment.

43. Formation of and participation in companies using this power, like any other, 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 Government is considering how these controls apply to the various categories of local authority companies within the context of developing the prudential system of regulating capital finance as set out in *Modernising Local Government Finance: a green paper*[15]¹⁶. Transactions by local authority companies would still need to be regulated under any new system of capital controls, since their expenditure has the same impact in the national accounts as that of authorities themselves. Nevertheless, the prudential system being proposed will increase the overall scope for local authorities to use their own resources to finance additional borrowing and therefore enhance local decision-making and accountability.

44. The Local Government Act 2000 repeals the economic development powers contained in sections 33 to 35 of the Local Government and Housing Act 1989. Section 33 gave local authorities specific authority to set up and participate in companies for the purpose of economic development. With the introduction of the well-being power, section 33 (and the accompanying regulatory provisions in sections 34 and 35) are no longer needed.

45. Sections 34 and 35 were repealed on 18 October 2000. Section 33 will be repealed on 28 July 2001. Leaving section 33 on the statute book until then will in no way limit or circumscribe the well-being power in section 2(1), and has been retained to allow councils time to become familiar with the new power.

Best value

46. While the introduction of sections 2 and 3 of the 2000 Act confer a broad new function on councils - the promotion of well-being - they are deliberately drafted in such a way as to also provide councils with considerable scope over the means they use to discharge that function. Put another way, the well-being provisions not only confer new powers on councils to achieve a certain end (the promotion of well-being), they also expand the range of means available to councils to pursue that end. So, in pursuit of well-being, councils are able to establish companies and other forms of corporate body, to create pooled budgets, to undertake lead or joint commissioning, and to integrate the provision of their services with those of other service providers.

47. The well-being provisions have been drafted in this way because, in order to achieve the duty of best value, councils need the widest possible range of means of service delivery.

However, this should not apply only to councils' efforts to promote well-being. It applies equally well to any and all of their other functions. In recognition of this, the Government will shortly publish proposals to extend the range of means available for the discharge of all council functions. The consultation paper will contain proposals to provide new and amended powers to promote and facilitate the achievement of best value through partnership working. Also, it will include proposals for best value authorities to provide a wider range of goods and services to partners, both in the public and private sectors.

48. The powers to achieve this are contained in section 16 of the Local Government Act 1999, which enables the Government to confer on authorities any power which it considers necessary or expedient to achieve best value. While the well-being power is confined to principal councils, the powers in section 16 can be used to confer new powers on all best value authorities, including police, fire and passenger transport authorities as well as principal councils. So, all best value authorities will be able to benefit from the proposed extension of powers under section 16. This provision also enables the Government to extend authorities' powers to provide joint services to others.

49. In addition to the proposals outlined above, the consultation paper will contain guidance on 'good practice' in the use of innovative means of service delivery such as pooled budgets, lead and joint commissioning, integrated service provision, and trading. The process of providing new powers under section 16 should generate further information on good practice.

Action outside an authority's area and in multi-tier areas - section 2(5)

50. Section 2(5) states:

'The power under subsection (1) includes a power for a local authority to do anything in relation to, or for the benefit of, any person or area situated outside their area, if they consider that it is likely to achieve one or more of the objects in that subsection.'

51. The meaning of this subsection is largely self-explanatory. It enables local authorities to use the power in a way that affects areas outside their own boundaries, if that action contributes to well-being in their own area. The Government wants local authorities to be able to act in the interests of communities and to be certain of their legal right to do so. To address community concerns they will need to work closely with other bodies that provide local services and with other tiers of local government.

52. This subsection will open up the scope for:

- more collaborative working within local authorities and local strategic partnerships;
- co-operation between neighbouring local authorities and local strategic partnerships;
- initiatives at the regional, cross-regional and sub-regional level (such as the provision of sub-regional leisure facilities, or to address issues which do not recognise administrative boundaries, such as the prevention of pollution and the conservation of biodiversity).

53. This is a key power in relation to local authorities' partnership working with the health sector, since most local authorities are not coterminous with health authorities. The power

provides opportunities for action between neighbouring health and local authorities and other sub-regional agencies or services where the health and well-being of certain groups cut across traditional service boundaries: for example, travelling communities, people that live and work/study in different authorities, people in a local authority using health services in another area and so on. It also enables joint action to protect the well-being and health of communities at risk from environmental pollution, crime, economic decline or health hazards when these communities reside across authorities' boundaries.

54. The guidance on local strategic partnerships stresses that both unitary and multi-tier areas will need to consider whether they could be most effective by working across more than one local authority area. A single community strategy can cover several authorities' areas of responsibility. Similarly, the most effective approach for some neighbouring authorities with similar priorities and circumstances may be to work together with partners and local people within a single local strategic partnership framework.

55. Community strategies, and the local strategic partnerships that draw them up, will provide the framework in which co-operation between neighbouring or multi-tier councils can be identified and implemented. Guidance on the duty to prepare a community strategy and on local strategic partnerships stresses the importance of different tiers of local authorities working closely together to address community needs - and it is in this context that we would expect authorities to determine whether to use their well-being powers outside their boundaries.

56. This subsection opens up the possibility that councils will use the powers in ways that are perceived as detrimental by other local authority tiers or neighbouring areas. Use of the power in this way should be avoided. Councils will be expected to consult and take the views of the other authority into account prior to exercising the power outside their own boundaries. Any council planning to use the well-being power in a way that has a major impact beyond its boundaries should assess these impacts, in consultation with the relevant authorities. Similarly, county and district councils should seek to ensure that each are consulted on, and support, the action that they are proposing to take under the power.

London and the Greater London Authority

57. Section 30(1) of the Greater London Authority Act 1999¹⁷ provides that the Great London Authority (GLA) has power to do anything which it considers will further any one or more of its principal purposes. The principal purposes are set out in section 30(2) and cover:

- the promotion of economic development and wealth creation in Greater London;
- the promotion of social development in Greater London;
- the promotion of the improvement of the environment in Greater London.

58. Section 32 requires the GLA to consult with the London boroughs and other bodies as appropriate in a particular case (although their consent is not required before the power in section 30(1) can be exercised). Similarly, London boroughs will wish to consider how any action taken by the GLA will affect their own proposals, and ensure that any action taken to promote well-being is co-ordinated to avoid unnecessary duplication.

¹² See annex.

¹³ This relates to the actions of a local authority or other public body in exercising its discretion, and relates to whether the body has acted irrationally (rather than ultra vires). The definition was given by Lord Greene in the *Wednesbury* case (1948 1 KB 223):

'When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged in the courts in a limited class of case ... When discretion of this kind is granted, the law recognises certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any court of law ... If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act makes it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters. There have been in the cases expressions used relating to the sort of thing that authorities must not do ... bad faith, dishonesty - those of course stand by themselves ... Discretion must be exercised reasonably. He must call his own attention to the matters which he is bound to consider, and exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he must truly be said, and often is said, to be acting unreasonably.'

¹⁴ Schedule 1 (definitions).

¹⁵ *A New Commitment to Neighbourhood Renewal - National Strategy Action Plan*. Cabinet Office, January 2001. Copies are available from the Social Exclusion Unit or may be downloaded from www.cabinet-office.gov.uk/seu/index/publish.htm

¹⁶ DETR, September 2000. Also available via the ODPM website

¹⁷ Available at www.legislation.hmso.gov.uk/acts1999/1990029.htm.

Chapter 3: Limits and Restrictions on Use of the Well-Being Power

59. The power to promote well-being is a wide-ranging one. It is not subject to any expenditure limit, neither is there a need to demonstrate any direct or commensurate benefit (as there was under section 137 of the Local Government Act 1972). It is, however, subject to some restrictions on its use, which are set out in detail below.

Limit on circumventing express statutory restrictions - section 3(1)

60. Section 3(1) states that 'the power under section 2(1) does not enable a local authority to do anything that they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment (whenever passed or made).'

61. The definition of 'enactment' includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978¹⁸.

62. Local authorities can only do what they are empowered to do by statute, and any other action would be considered by the courts to be ultra vires. The new power does not change this situation, but it does significantly extend the vires of local authorities. Under the new power, councils are able to undertake any activity that promotes the well-being of their area, except where they are specifically restricted from doing so by any prohibition, restriction or limitation spelt out in other legislation. Examples illustrating this are set out below.

63. 'Contained in any enactment' means spelt out explicitly on the face of the legislation¹⁹. It does not apply to any limits to local authority powers which might be implied or inferred from the way in which those powers have been drafted. So, for instance, section 93 of the Transport Act 1985 (as amended by Schedule 11 of the Transport Act 2000) confers a power on councils to establish public transport travel concession schemes for certain groups of people. If this provision stated on the face of the Act that authorities could not establish such schemes for any other group of people, then that prohibition would also constrain the use of the well-being power. However, the 1985 Act contains no such prohibition: so authorities can now use the well-being power to establish concessionary fare schemes for any person or group of people, if they consider it appropriate after taking their own legal advice.

64. Some legislation contains general restrictions or limitations which mean that local authorities may only undertake activity in respect of certain matters, or only if they comply with certain conditions. In terms of secondary legislation, local authorities' use of the well-being power will need to observe the requirements of Part V of the Local Government and Housing Act 1989, the Local Authority Companies Order 1995, the Local Authority (Capital Finance) Regulation 1997, and other such provisions. Limitations can also come from other, broader statutory requirements - for example, the requirement to achieve best value. Other than such explicit restrictions or limitations, however, as set out in paragraph 28, a local authority can use the well-being power in place of other, more specific, permissive powers.

Limit on raising money - section 3(2)

65. Section 3(2) states:

'The power under section 2(1) does not enable a local authority to raise money (whether by precepts, borrowing or otherwise).'

66. Section 3(2), therefore, places a general prohibition on using the well-being power as a means of raising money. This is a broadly drafted restriction which seeks to ensure that where a local authority has to obtain funds before it can pursue well-being objectives, it can only do so through existing sources of income. So, for instance, the well-being power does not permit a council to levy a new tax, although the way local authorities plan to use the power can influence annual discussions/decisions on setting of council tax levels. Similarly, the well-being power does not confer new powers to borrow money or to charge for services they provide in pursuit of well-being objectives - but nor does it in any way restrict councils' existing powers to do so.

67. The Government considers that the effect of the provision in section 3(2) is to prevent local authorities from using the power in section 2(1) primarily to raise money. Where authorities use the power for a different purpose, but incidentally receive income as a result, that does not, in the Government's view, amount to raising money. Thus a local authority might give financial assistance to a struggling local enterprise by purchasing shares to provide it with capital. If, as a result of the authority's investment the enterprise subsequently becomes successful and the authority later receives income from its shares by way of dividend, this does not, in the Government's view, amount to raising money within the meaning of section 3(2). Similarly, the following actions may not amount to 'raising money' if the receiving of income by the authority is incidental, and not the primary purpose of their use of the power in section 2(1):

- lending money and charging interest;
- jointly obtaining sponsorship for a partnership project;
- receiving an indemnity from an organisation for costs which may be incurred; and
- receiving revenue income from a trust.

68. Although the well-being power does not itself permit charging, the Government is of the view that local authorities may still receive contributions on a voluntary basis from partner organisations, as such contributions or cost recovery would not be considered to be 'raising money' per se.

69. The Government did not consider that a general power to charge was appropriate in the context of the well-being legislation, in the light of the broader review then being carried out into the local government finance system. But the Government did appreciate that there was a case that local authorities should have greater ability to charge for discretionary services than they currently enjoy, and therefore has made clear its intention to make regulations under section 150 of the Local Government and Housing Act 1989 to provide local authorities with power to charge for certain discretionary services, including those provided by virtue of the well-being power. The consultation on Modernising Local Government Finance is now complete, and work will begin on these regulations in 2001.

70. Where an authority chooses to use its powers under section 2 to set up a company (see paragraphs 42 and 43), that company as a separate entity is not subject to the restrictions provided by section 3(2). In practice, this means that such a company can charge for any services it provides to others. Local authorities' powers to trade under the Local Government (Goods and Services) Act 1970 are unaffected by those in Part I of the 2000 Act. The Government will be consulting on proposals to extend these trading powers for best value purposes, using section 16 of the Local Government Act 1999 (see paragraphs 46 - 49).

Creation of regulations and by-laws

71. The well-being power is an enabling, rather than a regulatory, power. There are no provisions in sections 2 or 3 which would enable local authorities to enforce any regulations made under the power. This omission is deliberate. The Government's intention is that the power should be used to take positive actions that promote community well-being. The power could, of course, be used in tandem with existing regulatory provisions (many of which enable councils to tackle social or environmental problems such as noise nuisance, anti-social behaviour, environmental health hazards and so on).

72. The Government does not consider that the well-being power can be used to create by-laws for the regulation of conduct, since it is usual to require specific provision for such regulatory rules. Authorities will wish to take their own advice, but - subject to consideration of individual cases - the Secretary of State does not intend to confirm any by-laws made in purported reliance on the power in section 2. Local authorities should, therefore, continue to rely on their existing range of powers to create by-laws.

Reserve power for the Secretary of State to prevent specific actions - section 3(3)

73. The Secretary of State has reserve powers under section 3(3) to make an order to prevent local authorities from using the well-being power to carry out particular actions. There are no plans at present to make such orders.

¹⁸ The definition of 'enactment' in section 21(1) of the Interpretation Act includes subordinate legislation, namely 'Orders in Council, orders, rules, regulations, schemes, warrants, by-laws and other instruments made or to be made under any Act'.

¹⁹ Hilary Armstrong, the Minister for Local Government and the Regions, stated in the Committee stage of the Local Government Bill (Commons Standing Committee A, Tuesday 9 May 2000) : 'I assure the hon Members ... that the clause as drafted is clear about which prohibitions, restrictions and limitations will apply to the power of well-being: they are only those contained in legislation, nothing else. All prohibitions, restrictions and limitations in legislation are by definition expressly stated... The clause is structured in a way that ensures that it is clear to authorities that the restrictions are only those contained in legislation, and nothing else.'

Chapter 4: Removal of Barriers

Removal of legislative barriers to the promotion of well-being - section 5

74. Although the new power is very broad and should go a long way in freeing up local authorities to address the needs of their communities, it does not permit them to circumvent restrictions contained in legislation (see paragraphs 60-64).

75. The Government recognises that the gradual accretion over many years of piecemeal limitations and restrictions may limit local authorities' effectiveness. Section 5, therefore, gives the Secretary of State the power to amend, repeal, revoke or disapply any enactment which he considers 'prevents or obstructs local authorities from exercising their power under section 2(1)'.

76. This power adds to the Secretary of State's existing power under section 16 of the Local Government Act 1999 to modify or exclude enactment's that prevent authorities from achieving best value and to confer new powers on best value authorities for this purpose. A consultation paper will be published shortly, based on the powers contained in section 16 which will include proposals to extend the circumstances in which best value authorities may work in partnership with others in the public, private and voluntary sectors. To facilitate this, the Government will consider amending and/or repealing those enactment's considered to impede best value partnership working. In addition, the proposals in the Regulatory Reform Bill will offer a further power by which unnecessary burdens can be amended or repealed.

77. Section 5 will allow the Secretary of State, subject to an affirmative resolution of both Houses of Parliament, to remove or amend legislation that prevents local authorities from exercising their power to promote well-being. This can be applied to individual local authorities, classes of authorities, or all authorities, as the Secretary of State (through Parliament) sees fit. It will therefore allow the piloting of projects to be initiated before possible freedoms are rolled out on a wider basis. The power can also be used to amend or disapply an enactment for a particular period of time.

Application process to the Secretary of State under section 5

78. The Government hopes that local authorities will come forward with examples where they believe they are being impeded from using the new power effectively by legislation. Local authorities who wish to put forward suggestions for orders under section 5 can do so by writing directly to the Secretary of State. They may also put forward ideas through the local PSA process (see paragraph 80 below). Alternatively, authorities may wish to feed their suggestions through the LGA, in the context of the Central-Local Partnership (CLP).

79. Action is already being taken by Government and the LGA to identify the restrictions that prevent local authorities from joining up services on a local level - for example, Health Action Zones²⁰ and the LGA's New Commitment to Regeneration are both identifying barriers to successful and coherent service delivery. In addition, the CLP has sponsored an initiative, led

by the Cabinet Office, to reduce regulatory burdens. Six practitioner forums have already been held to identify opportunities for deregulation and an action plan will be submitted to CLP later this year.

80. The local Public Service Agreement (PSA) programme is also highlighting barriers to improved service delivery. Local authorities who sign up to local PSAs will agree to meet challenging targets to deliver national or local priorities, in return for greater operational freedom and flexibility, some up-front financial incentives, and rewards for success. At least some of the freedoms and flexibilities sought are likely to require use of the provisions in section 5. The Government has therefore been discussing with the 20 local authorities who are piloting local PSAs in 2001/02 what inhibits their efforts to raise performance, including legislative barriers. The Government intends to extend local PSAs, on a voluntary basis, to other county councils, metropolitan districts, London boroughs and unitary authorities from 2002/03. More details of how the scheme will operate will be published in due course, following evaluation of experience with the pilot.

81. In order to consider any requests or suggestions regarding possible uses of the section 5 power, Government will need to know:

- details of the specific legislation containing the restriction which the authority wishes to amend or repeal;
- details of the proposed changes to the legislation;
- a brief explanation of the problems that the local authority perceive with the restriction, including how it currently prevents the authority from promoting well-being;
- where the authority are making the case for removal of the restriction solely for their own authority, the justification for this, including the anticipated impact of the proposed changes in terms of improved outcomes or performance;
- evidence of local people's and/or partners' support for the proposed changes;
- where known, whether any other action would have to be taken to replace or supplement the amendment or repeal (e.g. changes to the accompanying statutory guidance).

82. The LGA will be publishing a 'toolkit' containing advice on the use of section 5 and other deregulatory order making powers. This will assist local authorities in establishing what actions might be possible under the three new deregulatory powers.

Procedure for section 5 orders - section 9

83. The Government wishes to remove unnecessary statutory constraints on the exercise of the well-being power. The value of the section 5 power is that the Government will not have to wait for primary legislation in order to put proposals to remove such constraints before Parliament. Nevertheless, because of the breadth of the section 5 power, the process of making orders under this section is a thorough one. Broadly, this requires the Secretary of State:

- before making the order, to consult such local authorities, representatives of local

government and such other persons as appear to him to be likely to be affected by his proposals;

- to lay before each House of Parliament a document explaining his proposals, setting out the draft order and giving details of any consultation carried out;
- to allow 60 days for Parliament to scrutinise the document before a draft order is laid.

The draft order will then be subject to affirmative resolution by both Houses.

84. It is not clear at this stage how great the scope for the effective use of the section 5 powers will be, or how frequently the power will need to be used. Requests for the use of the power may form part of a local authority's proposals in its local PSA, although this is not the only route.

85. The Government therefore does not, at present, see a need to set a timetable for the development of, consultation on, and laying of section 5 orders. Requests or suggestions for the use of the power can therefore be submitted to the Department at any time.

86. The Government will then need to consider, in consultation with the LGA, the timing and frequency with which particular orders are laid.

Repeal of section 137 of the Local Government Act 1972 - section 8

87. The power for principal authorities to incur expenditure under section 137 of the Local Government Act 1972 has been repealed by section 8 of the 2000 Act, as it is superseded by the new power to promote well-being. This repeal came into effect on 18 October 2000. As the power to promote well-being does not apply to parish and town councils, they retain their existing power to incur expenditure (of up to £3.50 per local elector) for the benefit of their area under section 137.

88. However, the existing power under section 137(3) to contribute to the funds of charities operating in the UK, not for profit bodies providing public services in the UK, and mayoral appeals will be retained for all authorities.

²⁰ HAZnet, the learning system for HAZs, provides a number of useful examples of innovative service development and delivery for local authorities looking to maximise the use of the new powers in their own areas. It can be accessed at <http://www.haznet.org.uk>

Annex

Part II of the Local Government Act 2000: Executive Arrangements

Part II of the Local Government Act 2000 places all principal councils under a duty to consult local people on, and draw up proposals for, a new constitution. With the exception of district councils in the area of a county council with a population of less than 85,000 as estimated by the Registrar General on 30 June 1999 (small shire district councils), each council's new constitution must involve the creation and operation of an executive with separate overview and scrutiny committees to hold the executive publicly to account and to assist in policy development.

The executive can take one of three broad forms:

- an elected mayor with a cabinet;
- a leader with a cabinet; or
- an elected mayor with a council manager.

An additional option of a streamlined committee system with integral overview and scrutiny (alternative arrangements) is also available to small shire district councils.

In all forms of constitution, the full council will set the policy and budgetary framework on the basis of proposals from the executive (under executive arrangements) or the relevant policy committee(s) (under alternative arrangements). The policy framework formally consists of a number of statutory and non-statutory plans and strategies, including the overarching community strategy. Therefore, the full council must approve the community strategy following proposals from the executive or, as the case may be, the relevant policy committee(s). Further information on this can be found in chapter 2 of the guidance on Part II.

Under all forms of new constitution, overview and scrutiny committees will publicly hold the executive to account and assist in wider reviews of policy and strategy. In particular, overview and scrutiny committees have powers to review or scrutinise matters which extend beyond the council's statutory powers but which nevertheless affect the council's area or its inhabitants (see chapter 3 of the Part II guidance). The Secretary of State encourages overview and scrutiny committees to use this power as part of their role in developing the community strategy and as part of wider scrutiny of the way in which the executive exercises the well-being power. The Government also intends, when Parliamentary time allows, to provide new roles for overview and scrutiny committees in reviewing local healthcare provision.

Under a new constitution which includes executive arrangements, the executive - as the clear, accountable, corporate leadership for the council - will lead the search for best value and be the focus for partnership working with other local public, private and voluntary sector bodies. As such, the power in section 2 of the 2000 Act is the responsibility of the executive under

executive arrangements, and is subject to all the same legislation as any other function which is the responsibility of the executive (see chapter 5 of the Part II guidance). This means that, unless the executive is minded to use the power in a manner which is contrary to the council's policy or budgetary framework (see below), then only the executive can determine how the power is to be exercised. Decisions which are contrary to the policy and budgetary framework must, under executive arrangements, be taken by the full council.

Within the executive, functions (including the well-being power) may be exercised by an individual member of the executive, the executive collectively, or a committee of the executive. Functions which are the responsibility of the executive can also be delegated to officers. Who decides on these delegations depends on the form of the executive in operation. In addition, the executive, committees of the executive and individual members of the executive may also make arrangements for functions to be discharged by area committees or another local authority, or to be discharged jointly with one or more other local authorities.

