

---

## **DRAFT CONSULTATION GUIDANCE ON THE POWER TO PROMOTE WELL-BEING**

### **1 SUMMARY**

- 1.1 This report bring to Members' attention the draft guidance now produced by Central Government in connection with the power to promote or improve economic, social or environmental well-being. The Government has invited any comments on the consultation draft by 9<sup>th</sup> February, 2001.

### **2 INTRODUCTION**

- 2.1 The Local Government Act 2000 creates a new power for 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. This power came into force on 18<sup>th</sup> October, 2000.
- 2.2 In deciding how to exercise this power, authorities in England must have regard to any guidance issued by the Secretary of State. This guidance has now been produced for consultation purposes.
- 2.3 The guidance outlines that Local Authorities will also need to have regard to their own 'community strategy' for promoting the economic, social and environmental well-being of their areas and the achievement of sustainable development in the U.K.

### **3 DETAILED CONSIDERATIONS**

- 3.1 The introduction of the new power of well-being forms an important part of the Government's wider approach to the modernisation of local government, which is designed to ensure that:
- councils are empowered to lead their communities;
  - council's 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 the community in local decisions;

- 
- 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.
- 3.2 The Government's programme for the reform of public services 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)
- 3.3 In the Government's view, 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 boundaries 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 limitation of councils' contribution to the improvement of their communities' quality of life.
- 3.4 The Government's purpose in introducing this well-being power is to reverse that approach, and to encourage innovation and closer joint working between local authorities and their partners. The new power is intended to be wide-ranging, enabling local authorities to improve the quality of life and health of their local communities.
- 3.5 However, there are two specific limitations on the well-being power. Local authorities can do anything which they consider will promote or improve the economic, social or environmental well-being of their area as long as they:
- observe any express restrictions, limitations or prohibitions contained in other legislation;
  - do not use the power to raise money.
- 3.6 The breadth of the power is such that councils may wish to regard it as a 'power of first resort'. Rather than hunting for a specific power

---

elsewhere in the statute to take a particular action, councils can instead look to the well-being power in the first instance and ask themselves:

- Does the proposed action promote well-being in our area?
- Does it involve the raising of money?
- Is it explicitly prohibited by any other legislation?
- Are there any explicit limitations and restrictions in other legislation?

3.7 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 other legislation.

3.8 The draft guidance outlines that a local authority will be able to use the power to promote well-being where it considers that 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.

3.9 Each of the three components can be used either separately or in combination. In exercising the well-being power, a local authority must have regard to its community strategy. As the guidance now produced on 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. 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.

3.10 Local authorities must 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. 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.

- 
- 3.11 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'.
- 3.12 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, importantly, to any other group of people, unless it is specifically restricted from doing so.
- 3.13 The well-being 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.
- 3.14 Possible uses of the well-being power include the following:
- incur expenditure,
  - give financial assistance to any person,
  - enter into arrangements or agreements with any person,
  - co-operate with , or facilitate or co-ordinate the activities of any person,
  - exercise on behalf of any person any function of that person, and
  - provide staff, goods, services or accommodation to any person.
- 3.15 Unlike Section 137 of the Local Government Act 1972, there is 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.

- 3.16 However, the Government does not consider that the 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 under Section 101 of the 2000 Act conferring power on local authorities to provide such indemnities.
- 3.17 The well-being power is designed to support the efforts of councils and their partners to work more closely together. 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. The well-being provision provides councils with the powers they need to extend this partnership approach.
- 3.18 This ability for a local authority to undertake a function on behalf of another body does not transfer any statutory responsibility of 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.
- 3.19 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 shareholder. In the Government's view, such dividends would not amount to raising money.
- 3.20 The well-being provision not only confers 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 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.
- 3.21 In order to achieve best value, councils need the widest possible range of means of service delivery. But this does not apply only councils' efforts to promote well-being. It applies equally well to any and all of their functions. In recognition of this, the Government will shortly publish proposals to make a similar range of means available for the discharge of all council functions – not just the promotion of well-being.

- 
- 3.22 Local authorities are also able to use the well-being power in a way that affects areas outside of their own boundaries, if that action contributes to well-being in their own area. This is seen as a key power in relation to local authorities' partnership working with the health sector, since most 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.
- 3.23 The general prohibition on using the well-being power as a means of raising money is a broadly drafted restriction which seeks to ensure that a local authority can only obtain the funds to pursue well-being objectives 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 the setting of council tax levels. Similarly, the well-being power does not confer new powers to borrow money.
- 3.24 It also prevents local authorities from using the well-being power to charge for services they provide in pursuit of well-being objectives. 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 being carried out into local government finance. However, they have appreciated that there is a case that local authorities should have a greater ability to charge for discretionary services than they currently enjoy and therefore intend to make regulations under the Local Government and Housing Act 1989 to provide local authorities with the power to charge for certain discretionary services, including those provided by virtue of the well-being power. Work will begin on these regulations in 2001 following the consultation on local government finance.
- 3.25 The well-being power is an enabling, rather than a regulatory, power. There are no provisions 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.
- 3.26 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. Local authorities will, therefore, need to continue to rely on their existing broad range of powers to create by-laws, such as the powers under the Local Government Act 1972 which enable them to create by-laws for "good rule and government and for the suppression of nuisances".

- 3.27 The power for 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. However, as the power to promote well-being does not apply to parish and town councils, they retain their existing power to incur expenditure for the benefit of their area under section 137. The existing power under section 137(3) to contribute to the funds of charities operating in the U.K., not for profit bodies providing public services in the U.K., and mayoral appeals will be retained for all authorities.

#### **4 OFFICER COMMENTS**

- 4.1 Any guidance, albeit in draft form, which helps to outline the breadth of the new well-being power is to be welcomed. The power is a wide ranging one and the draft guidance, without being too prescriptive, attempts to outline the key parameters, with examples. However, it is interesting to contrast this approach, in terms of content, illustrated by the guidance on this and community planning, with that coming forward on new political structures. Both this and the community planning guidance attempt to be as informative and yet as non-prescriptive as possible, whilst that relating to new political structures remains very detailed.
- 4.2 Much emphasis is placed in the draft guidance on partnerships and the need to work with other organisations to secure well-being, but it is important for the Government to ensure that these other organisations also receive similar advice and guidance and work within a similar legislative framework to ensure that this does in fact happen.
- 4.3 At this stage, a key concern of officers relates to how this power and the guidance now produced by Central Government will be interpreted by external audit and the Audit Commission in the guidance that it issues. It is fine for the Government to suggest a flexible and innovative approach to the use of the well-being power; however, in practice much will depend upon the attitude and actions of the Audit Commission and external audit as to whether such flexibility and innovation takes place.

#### **5 CRIME AND DISORDER IMPLICATIONS**

- 5.1 The use of this power could help the Authority in terms of delivering its responsibilities on crime and disorder issues.

#### **6 ENVIRONMENTAL IMPLICATIONS**

- 
- 6.1 Again, the use of this power could help the Authority to secure environmental benefits within the District.

**7 RESOURCE IMPLICATIONS**

- 7.1 Nothing specific at this stage.

**8 PARISH IMPLICATIONS**

- 8.1 The power does not apply to parish and town councils, which retain their existing powers under section 137 of the Local Government Act 1972.

**9 RECOMMENDATION**

It is proposed that the Sub Committee **RECOMMENDS**

its response to the draft consultation guidance on the power to promote well-being.

Paul Warren

Chief Executive

---

**Background Papers:**

DETR letter dated 7<sup>th</sup> December 2000  
DETR Draft Guidance to Local Authorities - Power to Promote or Improve Economic, Social or Environmental Well-being

For further information please contact Paul Warren on:-

Tel:- 01702 318199  
E-Mail:- paul.warren@rochford.gov.uk