



BRODIES^{LLP}

Using your legal powers for income generation

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The agenda....

- Busting the myth about the need for a trading company
- 10 things you can do using your charging powers
- Taking a risk but acting with due diligence

Trading Companies Myth or Necessity?

Compare and contrast

- The Local Government Act 2003
- The Localism Act 2011
- The Local Government in Scotland Act 2003
- Local Authorities (Goods and Services) Act 1970

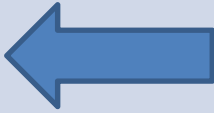

The Local Authorities (Goods and Services) Act 1970

- Intra – Public Sector Trading
- Not limited to cost recovery
- Must relate to a function of local government

The Local Government Act 2003

- Section 95 - Power to trade in function-related activities through a company
- Must be function based – consider the breadth
- Trade outwith the public sector must be conducted by a local authority trading company – NOT a MYTH!
- Charging powers – cost recovery only

Trade and collaboration E & W

Collaboration	Trade public/public	Trade Public/Private
Permissible	Permissible	Permissible
Lead Authority	No Trading Company Required	Trading company required
Joint Committee	Contractual relationship	
Joint Board		
	Function based	

Localism Act 2011

- Applies to E & W only
- General power of competence
- Commercial purposes – trading
- Trading must be through a company – fact not myth

Scottish Local Authorities and Trading

- Local Authorities (Goods and Services) Act 1970
- Intra – the “public market” – no restriction
- Otherwise – income subject to a financial limit
- Provides for consent to exceed these limits

Local Government in Scotland Act 2003

- No equivalent of LGA 2003 s95 – MYTH exposed
- Power to advance well-being
- Charging for discretionary services – but benefit to local area/inhabitants needs to be identified
- Compare to E & W – exercise of general power of competence – no requirement to identify a specific benefit
- Finally – regard to statutory guidance – due regard must be had

Approaches to trading

- The appetite and confidence in the power to trade varies from local authority to local authority
- Increased interest in the use of trading structures
- Broadening out of areas of service delivery

Horses for courses or if the myth fits.....

- Joint Ventures public/private – LLPs and tax transparency
- Fiscal advantages – VAT, gift aid, etc
- Downside – complex governance arrangements?
- Conflicts and confusion
- Set up costs

Time for Reform?

- Financial constraints
- Innovative approaches
- Greater clarity and improved confidence
- Level playing fields

Charging – ten things are for YOU to decide

- Generate income – subject to clear policy guidelines
- Influence behaviour – gym charges/parking charges
- Effect environmental improvements
- Promote improvements in health
- Address inequality – concessions and variable charges (PSED)
- Avoid discrimination EqIA
- Re-investment of surpluses – ALEOs, Charitable Trusts – service improvements – reduce deficit funding
- Maintain existing standards
- Promote , control or limit the uptake of services
- Improve quality of life – aids and adaptations



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