

USING YOUR LEGAL POWERS FOR INCOME GENERATION

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ENLIGHTENED THINKING

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?



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- 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 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

LOCALISM ACT 2011

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

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	

THE LOCAL AUTHORITIES (GOODS AND SERVICES) ACT 1970

Local authority trading in Scotland

- Intra – the “public market” – no restriction
- Otherwise – income subject to a financial limit
- Provides for consent to exceed these limits
- Not limited to cost recovery
- Must relate to a function of local government

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

- No equivalent of LGA 2003 s95
- 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

CHARGING – TEN THINGS ARE FOR YOU TO DECIDE

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

