

CJC RESPONSE TO THE LOCAL GOVERNMENT BILL

- 1 This is the response of the CJC to the Consultation Paper on the proposed Local government Bill.
- 2 We have no objection to our response being passed on to whoever the Department wishes.

Local authority companies - clause 18

- 3 The Bill includes powers for Ministers to order LACos to be treated as 'controlled'. The effect of doing this is of course to include their borrowings, for the purposes of the capital controls, with those of controlling local authorities. The notes make clear that these would be reserve powers, and we share Ministers' hope that they will never be needed. There are however three ways in which these powers might usefully be amended, even while held in reserve.
- 4 Firstly, we see **no need for the Bill to define LACos as including trusts**. Similar powers to include trusts were included in previous legislation, but were never exercised. This no doubt reflected the low levels of borrowing by trustees of any sort, even charitable trustees. This is of course because they retain unlimited personal liability for all trust debts, so can only borrow at prohibitively high rates of interest.
- 5 Retaining these obscure statutory prohibitions, even if they are never used, is nevertheless off-putting to the very people who are in practice most likely to be attracted by trustee status. We therefore believe that it would help to encourage the formation of trusts if these could be seen to be beyond the reach even of reserve powers.
- 6 In addition, current definitions of control (and influence and regulation) are arcane and in some respects subjective, for example 'giving directions as to the operating and financial policies of the company', and they often cause difficulty and mystification. It would be reassuring if Ministers could now undertake to dispense with them altogether, and to **amend the Bill by including more straightforward definitions**, for example by reference simply to percentages of shares held, or of directors appointed.
- 7 Finally, it would be helpful if Ministers could, in the interests of reducing the burden of bureaucracy, look for ways of **dispensing altogether with statutory technical terms which are not needed even for a reserve system of capital controls**. The term arms-length company, for example, is absurdly complex, and in any case now conflicts with the definition of arms-length housing management organisation.

Accounting practices - clauses 21 & 22

- 8 **We are pleased to note Ministers' intention to rely as far as possible on local authority practices and concepts**, and thereby to avoid the need for accounting definitions in secondary legislation. This was avoided altogether for revenue accounts during the CCT regime, when Ministers relied instead on observance of the accounting provisions of the Code of Practice for CCT, drawn up by the CJC. We are confident that local authority practices and concepts will prove more than adequate for any new requirements now; and that Ministers will again need only to point to the importance of observing them.

Trading - clause 102

- 9 The Notes make clear that Ministers intend the availability of new trading powers to depend on favourable CPAs. We hope however that these restrictions will be flexible enough to take account of the different levels of commercial risk involved in different types of trading.
- 10 Perhaps the greatest practical need is for power for trading between neighbouring local authorities, and between county councils and their district councils, for work and services within the functions of both parties. The risks, opportunities, and client and end-user expectations will usually be well known to all the parties.

- 11 We therefore believe it would be constructive **to allow such trading for all types of work and services within the functions of both parties**, either without limitation by reference to the CPAs of contractor local authorities; or subject to less stringent limitations than for trading with more diverse clients.
- 12 It would also be helpful if the Bill could be amended to **refer to trading simply as 'trading', and not as 'commercial trading'**. Many authorities want trading powers in order to provide the business base necessary to support viable and efficient in-house services; in other words to obtain good value-for-money for themselves, at the same time as for others. 'Commercial' does not do justice to such an undertaking.
- 13 Dropping the term commercial trading would at the same time help to avoid some unnecessary confusion. Until recently DTLR used the term 'commercial functions' for a different but related purpose ie to identify services which authorities charge for, such as leisure facilities and conference centres, and which the present Consultation Document now calls 'discretionary services'.

Innovative arrangements

- 14 Several innovative arrangements were outlined last year in the Consultation Paper 'Working with others to achieve best value'. All would need legislation, and like many other practitioners we were hoping to see them in the current Local Government Bill. We hope the Bill can be amended to provide for them. The outlined innovations which are most widely looked for are

3.16 - **joint partnership boards** (which could exercise functions even if non-local authority members have voting rights)

Annex B.5 - provision for **employee share ownership schemes**

Annex B.20 - power to **delegate functions to companies**

Will Werry, chair, CJC