

# ANNEX I

## Local Authority Fees and Charges

11. Local authorities in England currently raise £6.2 billion through fees and charges, which amounts to 11% of their income from all sources. The Audit Commission has drawn attention to the importance of fees and charges both as a source of revenue for local authorities and as an instrument of policy. This annex sets out the Government's proposals for dealing with the deficiencies that the Audit Commission identified both in local authorities' use of their existing powers to charge and in their freedom to charge.

### Background

12. The Environment, Transport and Regional Affairs Committee touched on the question of fees and charges in its report last year on local government finance. In its evidence to the Committee, the Local Government Association had noted that the amount that the UK was already raising through fees and charges was in line with the norm for Europe. Most councils argued that they were at "saturation point" in terms of fee levels and what services they could charge for. The Committee also received evidence suggesting that charging might result in low income groups finding it difficult to use local authority facilities. Given this, the Committee said that it did not expect the introduction of new charges for services to be a major source of income for local authorities. It also recommended that charges should be "means-sensitive" to minimise the impact on people with low incomes. The Government broadly agreed with the Committee's recommendations, but said that it wished to consider further other aspects of the way in which councils used existing fees and charges and that it looked forward to considering the results of the Audit Commission's report on the subject.
13. The Audit Commission's report, *The Price is Right?*, was published in September 1999. The report noted the importance of fees and charges both as a source of revenue for local authorities and as an instrument of policy. It identified a number of examples of good practice, but found that in general local authorities rarely managed their charges well. For instance, charges were seldom meaningfully reviewed, 65 per cent of prices simply being increased each year in line with inflation. Councillors had little information to help with charging decisions and less than one-third were told the impact of past price changes. Some councils did not understand user needs and priorities and only 16 per cent conducted regular market research.
14. The Commission found that there were wide variations in charges, with similar types of authority charging, for instance, between £1.15 and £4 for an adult to swim and between £100 to £450 for burials. There was little evidence that charging policies were being driven by policy priorities or systematic planning. Charges were often set in isolation from service plans and specific objectives were rarely set for charges. As the Audit Commission pointed out, without objectives councils cannot judge their success.

- I5 In the Commission's view, councils needed to refocus their attention and learn from those which were at the leading edge on fees and charges. They needed to establish clear principles for charging, identifying which services should be charged for, which users should be charged and what the levels of subsidy should be. Councils needed to integrate charging into service management and forge links with corporate objectives, set clear objectives and targets to quantify success in charging, build an understanding of users and markets, improve decision making by taking into account the likely impact of changes to charges, and innovate via imaginative use of charging structures.
- I6. The report also recommended that the Government should:
- a) In the short term, make generic regulations, under section 150 of the Local Government and Housing Act 1989 (the "1989 Act") allowing local authorities to charge for all discretionary services;
  - b) In the longer term, undertake a fundamental review of the general approach to charging.
- I7. The Commission thought that Best Value provided an excellent opportunity to use charges to deliver priorities, improve services and generate income.

## Making Better Use of Existing Powers

- I8. The Government agrees that the requirements of the Local Government Act 1999 in respect of Best Value will encourage local authorities to make better use of their existing charging powers. In carrying out their Best Value Reviews, authorities will for example need to consider the options for charging and take account the views of the local community. Subsequent inspections will consider the extent to which an authority's use of charging powers is likely to deliver Best Value.
- I9. The Government will therefore expect authorities to develop a clear corporate policy on charging and to reflect this in the way in which they carry out Best Value Reviews. In reporting on their performance against the Best Value corporate health indicators, authorities should also indicate what income is expected to be raised by new and existing charges. The Government does not believe it necessary to make charging policies an indicator in their own right. It would however consider taking statutory powers to enable the Secretary of State to give guidance on the use of charging powers, where such powers do not already exist, and where other means have proved insufficient.

## Extending the Power to Charge for Discretionary Services

- I10. The Government also accepts the Audit Commission's recommendation that there needs to be a greater degree of order and certainty in local authorities' powers to charge, although it is not possible to extend these in quite the way the Commission envisaged.

- I11. Section 150 of the 1989 Act allows charges to be authorised by regulations, if there is no other statutory power or duty to make a charge. It applies to all discretionary and mandatory services which do not currently have a power to raise charges. Regulations under section 150 may leave the charges to the authorities' discretion or may impose a maximum, either through a scale of amounts to cover different prescribed cases, or a sum, or a method of calculating the amount.
- I12. Section 151 allows discretionary powers to make charges (for discretionary or mandatory services), contained in other legislation, to be amended or removed by regulations. The amount of any charges, authorised by regulations under this section, is subject to the same constraints as apply to charges under section 150.
- I13. Section 152 precludes regulations being made under sections 150 or 151 for education in schools, fire-fighting, registration of electors, conduct of elections and police functions (except the removal etc of vehicles).
- I14. The approach used so far, of considering each proposal for changed powers separately, without reference to any explicit underlying principles, has resulted in slow and over-modest changes. So far, only six sets of regulations have been made under section 150 of the 1989 Act:
- the Houses in Multiple Occupation (Charges for Registration Schemes) Regulations 1991;
  - the Local Authorities (Recovery of Costs for Public Paths Orders) Regulations 1993;
  - the Local Authorities (Charges for Land Searches) Regulations 1994;
  - the Local Authorities (Charges for Overseas Assistance and Public Paths Orders) Regulations 1996;
  - the Local Authorities (Transport Charges) Regulations 1998;
  - the London Local Authorities (Charges for Stopping Up Orders) Regulations 2000.

No regulations have been made under section 151.

- I15. The slow progress and piecemeal approach of changes made under section 150 are unsatisfactory and the Government believes that in principle local authorities should be able to charge for the provision of discretionary services. The only question then is whether and by what means these powers should be controlled.
- I16. The Audit Commission's proposal that generic regulations should be made under section 150 covering all discretionary services cannot be carried out under the legislation as it currently stands, as proposed changes have to be considered on a case-by-case basis. However, the breadth of a 'prescribed service' is essentially limited only by the requirement that the description of the service must leave no doubt about exactly which functions are covered by it (although it must not be so broad as to include any functions for which there is already a power to charge, since this would put it outside the scope of section 150). A general power to charge for discretionary services could, therefore, be provided by means of regulations under section 150 which listed the services concerned in a way which met these requirements.

- I17. The regulations made so far have all imposed limits which either explicitly prevent profits from being made or would seem to prevent them in practice. The Government's caution in extending local authorities' powers to levy fees and charges stems from concern about the possibility of their exploiting their monopoly position by over-charging for services or entering into unfair competition with the private sector. There are also technical considerations in that the way in which charges are levied affects the way in which they score as public expenditure.
- I18. On the face of it, there should be little difficulty in extending local authorities' powers to charge for discretionary services. Unlike regulatory functions, discretionary services are not those in which local authorities enjoy a monopoly. Also, providing a service free is worse in terms of unfair competition than being able to charge for it, although being able to charge is more likely to encourage local authorities to offer the service. However, the range of discretionary services will be considerably extended by the new well-being power, contained in the Local Government Act 2000, which will allow councils to provide a wide range of new services to promote the well-being of their area. The Act provides no powers specifically to charge in conjunction with well-being. Instead, the Government proposes that charging for specific services provided under the well-being power should be authorised by means of section 150 of the 1989 Act.
- I19. The concurrent review of local authority trading has concluded that one motivation for local authorities to provide goods and services to others was in relation to small value, small volume goods and services to disadvantaged parts of their community, which the market has failed to provide in the past and is unlikely to be able to do so in the future. These kinds of services may satisfy the legitimate ambitions of authorities under well-being, while at the same time limit unfair competition with other providers. However the use of section 150 would still precipitate the need to define the functions covered by this description.
- I20. Section 150 could, potentially, be used to extend significantly councils' powers to charge for discretionary services provided under the well-being and other statutory powers. There is, therefore, a strong case for putting in place a system to ensure that powers to charge for discretionary services are properly used. At the very least, there should be a requirement that local authorities adopt and review a corporate charging policy, which can be audited. It should also ensure that authorities are not given a free hand to generate income that would be classified as a tax for public expenditure purposes. Additional reassurance could be provided by issuing guidance that clarified how authorities should use their powers to charge and giving examples of best practice. It should ensure that charging takes account of impact on users and business and does not place unacceptable burdens on the poorer members of society. The last could be addressed through the use of concessionary rates by the authority, where appropriate; these are already widely used.
- I21. There are no powers to issue statutory guidance under section 150. If this were considered necessary, a new general power to charge for discretionary services could be sought.

## Powers to Charge for Mandatory Services

- I22. In its NHS Plan, the Government has said that it will issue statutory guidance to councils to reduce the current unacceptable variations in charges for home care.

- I23. More generally, in examining the case for extending local authorities' powers to charge for mandatory services, the Government will need to consider whether the charging regime provides an appropriate balance between charges and taxes (council tax and non-domestic rates). There are important issues here, including local accountability, democracy and the acceptability of charging for services which may seem to the electorate to be funded by the taxes that they pay.
- I24. The Audit Commission has suggested that a suitable model for this might be one along the lines of the New Zealand model outlined in *The Price is Right?* Legislation introduced by the New Zealand Government in 1996 obliged each authority to draw up ten-year financial plans within which the 'user pays' principle is paramount. Councils are obliged to consider who benefits from each of their activities and assess the extent to which particular activities convey a benefit to the public at large or to particular individuals. They use the classification:
- *general benefits to the entire community – which should be principally funded by taxation;*
  - *direct benefits to identifiable groups – funded jointly between taxation and users; and*
  - *negative effects – funded as much as possible from users (for example polluter pays).*

Where a degree of private benefit is identified, councils are required to consider whether a specific user charge would be appropriate.

- I25. There might be a case for piloting any changes to charging for these services in high-performing authorities. In the longer term, there might also be a case for providing such authorities with greater freedom in relation to charging for mandatory services. The Government will consider what further work is needed on charges for mandatory services.

## Conclusions

- I26. The Government proposes that:
- local authorities should develop corporate charging policies under Best Value which they should keep under review. Policies and income generated should be disclosed in authorities' Best Value Performance Plans;
  - local authorities should be given powers to charge for discretionary services, including those provided under the new well-being power introduced by the Local Government Act 2000. Such new charging powers may need to be subject to safeguards to prevent undue risk exposure for the taxpayer or unfair competition with the private sector. Charging should be enabled by using the existing powers under section 150 of the 1989 Act, but a new power could be introduced, if it is considered necessary to issue statutory guidance to local authorities.
- I27. It will consult on draft regulations on charging for discretionary services, and will consider what further work is needed on charging for mandatory services.