



## Power to promote well-being of the area: Statutory guidance for local councils





## Power to promote well-being of the area: Statutory guidance for local councils

February 2009

Department for Communities and Local Government: London

Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 020 7944 4400  
Website: [www.communities.gov.uk](http://www.communities.gov.uk)

© Crown Copyright, 2009

*Copyright in the typographical arrangement rests with the Crown.*

*This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.*

Any other use of the contents of this publication would require a copyright licence. Please apply for a Click-Use Licence for core material at [www.opsi.gov.uk/click-use/system/online/pLogin.asp](http://www.opsi.gov.uk/click-use/system/online/pLogin.asp), or by writing to the Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU

e-mail: [licensing@opsi.gov.uk](mailto:licensing@opsi.gov.uk)

If you require this publication in an alternative format please email [alternativeformats@communities.gsi.gov.uk](mailto:alternativeformats@communities.gsi.gov.uk)

Communities and Local Government Publications  
PO Box 236  
Wetherby  
West Yorkshire  
LS23 7NB  
Tel: 0300 123 1124  
Fax: 0300 123 1125  
Email: [communities@capita.co.uk](mailto:communities@capita.co.uk)  
Online via the Communities and Local Government website:  
[www.communities.gov.uk](http://www.communities.gov.uk)

February 2009

Product Code: 08 CED 05750

ISBN: 978 14098 1161 9

# Contents

<b>Chapter 1: Introduction</b>	<b>2</b>
<b>Chapter 2: Overview and context</b>	<b>3</b>
<b>Chapter 3: Eligibility to use the power to promote well-being</b>	<b>6</b>
<b>Chapter 4: Scope of the power to promote well-being</b>	<b>13</b>
<b>Chapter 5: Limits and restrictions on the use of the power to promote well-being</b>	<b>19</b>
<b>Chapter 6: Removal of barriers</b>	<b>23</b>
<b>Annex A: Example of a statement of intent as to community engagement</b>	<b>25</b>
<b>Annex B: Useful websites</b>	<b>27</b>

# Chapter 1: Introduction

1. This guidance is aimed at local councils<sup>1</sup> in England. It is concerned with the extension to those councils of the power to promote or improve the economic, social, or environmental well-being of their area (the “well-being power”)<sup>2</sup>. This guidance sets out the Government’s policy in relation to the exercise of the well-being power by those councils. The provisions extending the well-being power to local councils came into force on 31 December 2008. The provisions do not apply to community councils in Wales.
2. This document contains statutory guidance about the exercise of the well-being power<sup>3</sup> to which local councils using that power must have regard.
3. The Local Government and Public Involvement in Health Act 2007 (the 2007 Act) makes a number of changes to the provisions of part 1 of the Local Government Act 2000 (the 2000 Act). The effect of these changes is to extend the well-being power to local councils which meet the conditions prescribed in the Parish Councils (Power to Promote Well-Being) (Prescribed Conditions) Order 2008 (the Prescribed Conditions Order).
4. The Prescribed Conditions Order sets out the four conditions that a council must meet in order to be eligible to exercise the well-being power; it provides for an eligible local council to be an eligible council for a specified period. Transitional provisions apply where a council ceases to be eligible. The provisions in the order are discussed at chapter 3 (*Eligibility to Use the Power to Promote Well-Being*). The scope of the well-being power is discussed at chapter 4 (*Scope of the Power to Promote Well-Being*); the limitations on the use of the power are discussed at chapter 5 (*Limits and Restrictions on the Use of the Power to Promote Well Being*).
5. The 2000 Act gives the Secretary of State the power to amend, repeal or revoke restrictions that obstruct the use of the well-being power; this process is discussed in chapter 6 (*Removal of Barriers*).

1 “Local council” is used in this guidance to mean a parish council. Parish councils are statutory bodies and are the first tier of local government. Local councils can style themselves as parish, town, community, neighbourhood or village councils, however the term parish council is used in legislation.

2 Section 2(1) of the Local Government Act 2000.

3 Section 3(5) of the Local Government Act 2000.

# Chapter 2: Overview and context

6. The Local Government white paper 2006, *Strong and Prosperous Communities*, recognised that, as the first tier of local government, local councils have a vital role to play in improving local services and invigorating local democracy. The Government has worked closely with the local council sector on the suite of measures relating to parishes in part 4 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act). These reforms provide the statutory underpinning to help increase the capacity of local councils to deliver better public services and represent their communities' interests. Local people via local councils will have more say and ownership over how their communities are run and managed.
7. These measures make it easier to set up new local councils and promote diversity through the appointment of additional councillors. The extension of the well-being power is a central component of these reforms. The power will enable eligible councils to do anything which they consider is likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area. The Government's purpose in extending the well-being power to eligible councils is to give communities greater flexibility to act on their priorities and to facilitate joint working between local councils and their partners in the private and public sector. This will provide greater opportunities for local councils to improve the quality of life and health of their communities.
8. The introduction of the well-being power for principal authorities<sup>4</sup> enabled them to move away from their necessarily cautious approach to innovation and joint action which had previously limited their contribution to the improvement of the quality of life of their communities. It is hoped that the extension of the power will do the same in relation to local councils.
9. The well-being power is very broad; specific examples of the kind of action an eligible council may take are set out in section 2(4) of the Local Government Act 2000 (the 2000 Act). This includes, but is not limited to, incurring expenditure, providing staff, goods or services to any person, entering into partnership arrangements and carrying out the functions of other bodies; further information can be found in chapter 4. The breadth of the power removes the need for local councils to rely on other legislation in order to take particular action. Instead, local councils can look to the well-being power in the first

<sup>4</sup> In relation to England, a "principal authority" is a county council, a district council or a London borough council. This also includes unitary authorities.

instance – they can regard it as a “power of first resort”. Whilst the power does not have any spending limits, it cannot however be used to raise money. Nor can it be used to circumvent prohibitions, restrictions or limitations set out in legislation. Further information can be found in chapter 5.

10. To ensure that local councils using the well-being power have the relevant competency and capacity to take on the enhanced role and responsibilities that the power brings, the Government considered it prudent to put in place certain safeguards, which are set out in the Prescribed Conditions Order. This sets out the conditions (the prescribed conditions) that must be met by a local council before it can use the power. The prescribed conditions are concerned with ensuring that the council is effectively and properly managed, comprises a high proportion of elected councillors, has councillors and clerks who have received specific training in the use of the well-being power, and is in touch with the community it serves. Further information can be found in chapter 3.
11. The prescribed conditions are based on some of the criteria in the *Quality Parish and Town Council Scheme*<sup>5</sup>. The Quality scheme is administered by the National Association of Local Councils (NALC) on behalf of a range of national stakeholders and is open to all local councils in England. Quality status is intended to equip local councils to take on a stronger role in their communities. Achieving Quality status demonstrates to the community and any principal authorities who work with a Quality council, that the council has met certain minimum standards expected from a democratically representative, efficient and active local council. A local council does not need to have Quality status in order to meet the prescribed conditions. However, local councils who have obtained Quality status will be well placed to meet the conditions prescribed to become an eligible council.
12. Principal authorities were given the well-being power under section 2 of the 2000 Act. In exercising this power, section 4 of the 2000 Act (as amended by the Sustainable Communities Act 2007) requires a principal authority to prepare a sustainable community strategy for promoting or improving the well-being of its area. Section 4A(1) (inserted by section 78 of the 2007 Act) states that the duty to prepare a sustainable community strategy does not apply to eligible local councils. However, section 4A(2) provides that, in exercising the well-being power, an eligible local council must have regard to any sustainable community strategy prepared by a relevant principal authority.
13. The purpose of a sustainable community strategy is to set the overall strategic direction and long-term vision for the economic, social and environmental well-being of a local area: this typically covers between

<sup>5</sup> For further information on the scheme visit the National Association of Local Council's website, [www.nalc.gov.uk](http://www.nalc.gov.uk), or the Society of Local Council Clerks' website, [www.slcc.co.uk](http://www.slcc.co.uk).

10-20 years. The duty to involve (a legal requirement on principal authorities from 1 April 2009) should help strengthen how principal authorities consult and involve representatives of local people (including residents and workers), local councils, local businesses and Third Sector organisations on their sustainable community strategies.

14. The Local Government white paper 2006, *Strong and Prosperous Communities*, emphasised the need for sustainable community strategies and other local plans to take account of each other, as they are prepared. Many local councils have developed plans with their communities and local partners, such as are similar in scope to sustainable community strategies. These plans, together with the overarching sustainable community strategy, will provide a framework within which eligible councils can consider ways in which they wish to use the well-being power.

# Chapter 3: Eligibility to use the power to promote well-being

15. In order to use the well-being power, a local council must meet the four conditions set out below. It will be for each council itself to determine whether these conditions have been met. A council which meets the conditions and passes a resolution to this effect will be eligible to use the power (an eligible council). It will be able to use the well-being power for a specified period (the eligibility period) at the end of which it will need to meet the conditions again to continue to exercise the power. The conditions are imposed not to limit the number of local councils that can use the well-being power but to ensure that a council is best placed, in terms of its electoral mandate, the competencies of its clerk and councillors and its policies of community engagement, to make use of the power.

## Conditions

16. The conditions which are set out in the Prescribed Conditions Order require the council to have:
  - a qualified clerk
  - a minimum of two-thirds of vacancies on the council filled at the last ordinary elections
  - eighty per cent of councillors trained in the use of the well-being power; and
  - published a statement of intent as to community engagement

### Qualified clerk

17. The council must have a clerk who has obtained one of the following certificates:
  - the Certificate in Local Council Administration (CiLCA) awarded by the Monitoring and Verification Board ( M&VB); or
  - the Certificate of Higher Education in Local Policy awarded by the University of Gloucestershire; or where this qualification has been superseded by an equivalent qualification, the replacement qualification in force at the relevant time; or
  - the Certificate of Higher Education in Local Council Administration awarded by the University of Gloucestershire
18. Furthermore the clerk must have either passed the 2008 edition (or the edition in force at the time) of the CiLCA qualification, which includes

a section on the power of well-being, or if the clerk holds one of the above qualifications he/she may take this section on its own to supplement his/her existing qualification. A council will not be eligible unless the section of the 2008 CiLCA qualification (or the edition in force at the time) has been passed. It is not mandatory for the clerk to have attended the National Training Strategy (NTS) training module but it is recommended. See paragraphs 28-30 on the National Training Strategy.

19. It is expected that a council will employ a qualified clerk on a permanent basis, whether full-time or part-time. However, in order to provide sufficient flexibility, the scope of the condition does not prohibit a council from entering into a contract for services provided by a clerk, or employing a clerk on a fixed term contract, as long as that clerk possesses the relevant qualifications listed above. Nevertheless, to ensure the proper and effective use of the well-being power such arrangements should only be entered into on a temporary basis while the council seeks a permanent clerk.
20. When taking decisions on the use of the well-being power members of the council should have regard to the advice of their qualified clerk.

### **Electoral mandate**

21. At the last ordinary election to the council, at least two-thirds (or as nearly as may be) of the number of vacancies to be filled at that election must have been so filled. "As nearly as may be" means as close as possible. So the figure arrived at when calculating the number that is two-thirds, if it is not a whole number, should be rounded up to the nearest whole number. The table below illustrates the calculation:

Total no. of clrs (council size)	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Two-thirds of total council size	4	4	5	6	6	7	8	8	9	10	10	11	12	12	13	14

22. The application of this condition will be subject to changes to section 16 of the Local Government Act 1972 made by section 76 of the 2007 Act. Once commenced the amendment to section 16 will require a local council to have a minimum of five **elected** councillors in order for the council to be quorate. Once this provision comes into force the Department will issue guidance on its implications.
23. If the election was contested, ie the number of candidates was greater than the number of councillors to be elected, it is those persons who were declared to be elected in accordance with rule 14 of schedule 2 or rule 14 of schedule 3, as the case may be, to the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 who will count towards this condition.

24. If instead the election was uncontested, ie the number of candidates was fewer than the number of councillors to be elected, it is those persons who were declared to be elected in accordance with the rule mentioned above who will count towards the number required by this condition.

### **Trained councillors**

25. Eighty per cent (or as nearly as may be) of the members of the council must have received training in the use of the well-being power. As nearly as may be means as close as possible. So the figure arrived at when calculating the number that is 80 per cent, if it is not a whole number, should be rounded up to the nearest whole number. The table below illustrates the calculation:

Total no. of clrs (council size)	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
80% of total council size	4	5	6	7	8	8	9	10	11	12	12	13	14	15	16	16

26. This training must have been provided in accordance with the National Training Strategy (NTS). It is recommended that all members of the council should undertake training in the well-being module and in particular the council's elected members; however, co-opted and appointed councillors can be included in the "80% of councillors" total.
27. As 80 per cent of councillors should have completed training in the use of the well-being power for a council to qualify as an eligible council, it follows that the majority of councillors present and voting in respect of any decision relating to the use of the well-being power, should have received relevant training and are therefore competent in understanding its use.

### **The National Training Strategy (NTS)**

28. The Government's Rural white paper, *Our Countryside: The Future*, was published in November 2000 and gave a commitment to strengthening local councils and giving them a bigger role. The NTS was developed by sector stakeholders led by the Countryside Agency in 2001. Its purpose is to provide training and support for local councils to enable them to make the most of their role and to carry out their duties more effectively.
29. From April 2003, local councils that meet certain criteria have been able to apply for Quality status. One of the key criteria for this status is that the council has a qualified clerk. The Certificate in Local Council Administration (CiLCA) is part of the NTS and was developed to meet these criteria. The Monitoring and Verification Board assesses candidates for the CiLCA and awards that certificate. Its members

include the Commission for Rural Communities, the National Association of Local Councils and the Society of Local Council Clerks.

30. A structured two-hour training module which will enable both councillors and clerks to understand and advise on the power has been produced. The module has been developed alongside the guidance in order that there is synergy between the content in the module, the guidance and the content of the section in the 2008 CiLCA portfolio guide (or the edition in force at the time):
  - for councillors the training module will be attendance based and will meet the requirement in the order for councillors to complete the relevant training in the exercise of the well-being power
  - for clerks it would serve to prepare them for the 2008 CiLCA section (or the edition in force at the time), which will qualify the clerk to advise their council on the power

The aim is to offer County Training Partnerships (and other relevant stakeholders) a structured training module, which will be delivered to councillors and clerks. It will include guidance notes and learning objectives to provide attendees with a clear picture of what the power means to them as councillors and clerks, and to their councils and communities as a whole.

### **Statement of intent as to community engagement**

31. The council must have published a statement of intent as to community engagement before it is eligible to use the well-being power. This should outline how the council intends to engage with interested persons should it be eligible to use the well-being power. “Interested persons” are those persons who appear to the council to have an interest in matters relating to the economic, social and environmental well-being of its area. The Interpretation Act 1978<sup>6</sup> makes it clear that the term “person” includes “a body of persons corporate or un-incorporate”. It therefore includes relevant statutory bodies, eg police, health and parks authorities, and businesses, voluntary and community groups and other local organisations that are themselves separate legal entities. Interested persons also include all individuals whether or not they are represented within a community (including faith, black and minority ethnic communities, women, older people, young people and children, and disabled people).
32. The statement should be published so that it is brought to the attention of local people. It is up to the council to decide which method or methods of publication should be used. The council might wish to adopt one or more of the following methods: public notice boards, leaflets in public places, newsletters and magazines, articles in local newspapers or principal authority publications, or on the council’s website or the

<sup>6</sup> Schedule 1 (definitions).

principal authority's website. The council should choose a form or forms of publication which are best suited to the area that it serves.

33. The Prescribed Conditions Order requires that the statement of intent is published in order for councils to meet this condition. This means that councils should ensure that if the statement of intent is no longer in the public domain it is republished ahead of the commencement of each period of eligibility. The order does not require an eligible council to update the content of the statement of intent before the commencement of the next period of eligibility. However, it is recommended that councils revise their statement in light of feedback from the community and of their own experience following the use of the power.
34. An example of a statement of intent as to community engagement can be found at annex A.

## Record Keeping

35. It is recommended that the use of the well-being power is documented in the minutes of meetings, in particular when making spending decisions. It is also recommended that the clerk maintains a record of the councillors who have received training on the use of the well-being power, and that at meetings where decisions on the use of the power are taken the minutes identify those councillors present and voting that have received the training.

## Resolution

36. Once a council has decided that it has met the prescribed conditions, it can only use the well-being power if it passes a resolution which confirms that the conditions have been met.
37. The meeting at which the resolution is passed must be a meeting of the full council and cannot be delegated to a committee or a sub-committee. In relation to the passing of this resolution, section 101(1) (a) of the Local Government Act 1972 does not apply in so far as it enables the council to discharge its functions to a committee or sub-committee. The resolution is to be passed in the usual way, ie by a simple majority of members present at the meeting and voting. To ensure the proper and effective use of the well-being power the majority of members in attendance and voting at the meeting should include councillors who have received training in the use of the well-being power.

## Eligibility period

38. If the council has both met the prescribed conditions and passed a resolution to this effect, it will be eligible to use the well-being power. Eligibility lasts for a set period of time. The eligibility period starts when the council passes the resolution and ends on the day before the next relevant annual meeting of the council. A relevant annual meeting is the annual meeting that is held by the council in a year of ordinary elections, which means that each eligibility period will usually last for a maximum period of four years.<sup>7</sup> At the end of the eligibility period, the council will cease to be eligible to use the well-being power.
39. The next eligibility period will begin when the council passes another resolution which confirms that it has met the prescribed conditions. This resolution can be passed at any time provided it is passed at a meeting of the full council. Once again, the eligibility period will last until the day before the next relevant annual meeting and so on. If the council meets the prescribed conditions on the day of the next relevant annual meeting and passes a resolution to this effect, it can continue to use the well-being power without break.
40. The eligibility period is based around the relevant annual meeting because the significance of these meetings in a council's calendar is likely to assist councillors and officers in determining the start and end of that period.
41. However, it is recognised that the Prescribed Conditions Order has come into force in a year when there are no ordinary elections for many councils. Eligible councils may want to start using the well-being power rather than to wait until their next relevant annual meeting to pass the resolution that will enable them to do so. Further, even where the day of a relevant annual meeting marks the start of a council's eligibility period, the council might not, on the day of the next relevant annual meeting, be able to meet the prescribed conditions. This could be because, for instance, the council recently held ordinary elections and there has been insufficient time for newly-elected councillors to be trained in the use of the well-being power.
42. In both cases, a council is likely to need to pass the resolution at a later meeting of the full council which need not be an annual meeting. Where this is the case the eligibility period will still end on the day before the next relevant annual meeting.
43. It is recommended that councils strive to meet the conditions at all times, not just at the meeting when it passes a resolution. Where during an eligibility period a council ceases to meet one or more of the conditions, the council will still be eligible to exercise the well-being power up until the end of that period of eligibility. However, the

<sup>7</sup> This is subject to any legislation that requires a council's election to be held in a year that was not expected to be a year in which it would hold ordinary elections.

council should take steps to once again meet all of the conditions as soon as practicable during the remainder of the period of eligibility.

44. If a council can no longer meet one or more of the prescribed conditions on the day of the next relevant annual meeting it will cease to be eligible. This means it will no longer be able to use the power of well-being in full, except for the purpose of completing ongoing arrangements begun whilst the council was eligible (see *Transitional provision* below).
45. Following the cessation of eligibility the council can take action so that it once again meets all of the conditions. The council can then at any date in the year pass a resolution and thus the next period of eligibility will begin.

## Transitional provision

46. Where a council has started any activity under the well-being power but has not completed it on the date of the cessation of its eligibility, under the transitional provision contained in the Prescribed Conditions Order, it will continue to be able to use the well-being power but only for the purpose of completing that activity. It may also be necessary for the council to rely on section 111 of the Local Government Act 1972<sup>8</sup> or its other powers to deal with matters arising in relation to the activity, whether arising before or after the transitional provision starts to apply.
47. The transitional provision should not be relied upon for any other purpose. During the transitional period councils should take steps to once again meet all of the conditions as soon as practicable.
48. Although the Government would envisage the majority of councils being continuously eligible to use the well-being power, councils should exercise caution before entering into contractual or financial relationships with others under the power, particularly, if the agreement or arrangements are likely to last for longer than the remainder of a period of eligibility and also if a council considers that it will not be able to meet the prescribed conditions at the end of that period. The inclusion of break clauses may allow a council to terminate a contract and other arrangements, but a council should be aware of the risk of legal action being taken against it.
49. When entering into contractual arrangements a council should seek legal advice.

<sup>8</sup> Section 111 (Subsidiary powers of the local authorities) of the Local Government Act 1972 states: (1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions. (2) For the purposes of this section, transacting the business of a parish or community meeting or any other parish or community business shall be treated as a function of the parish or community council. (3) A local authority shall not by virtue of this section raise money, whether by means of rates, precepts or borrowing, or lend money except in accordance with the enactments relating to those matters respectively.

# Chapter 4: Scope of the power to promote well-being

- 50. Sections 2 and 4 of the Local Government Act 2000 (the 2000 Act), set out the details of the well-being power and in so doing make reference to “local authorities”. Section 77 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act) has extended the power of well-being to “eligible parish councils”. For the purpose of this chapter references to “local authorities” have been replaced with references to “eligible councils”.
- 51. This chapter refers mainly to provisions in the 2000 Act. For the purpose of this chapter references to sections and/or subsections of legislation are references to sections of the 2000 Act, unless otherwise indicated.

## Who can use the power of well-being?

- 52. Section 1 has been amended to include eligible councils to the list of authorities that can use the power of well-being.<sup>9</sup>
- 53. The power does not apply in relation to parish meetings<sup>10</sup> and has not been extended to community councils in Wales.

## Promotion or improvement of well-being

- 54. Section 2(1) enables an eligible council to use the power to promote well-being where it considers this will achieve any one or more of the following three objectives:
  - a) the promotion or improvement of the economic well-being of its area
  - b) the promotion or improvement of the social well-being of its area
  - c) the promotion or improvement of the environmental well-being of its area
- 55. The power is drafted in this way in order to maximise its flexibility. Each of its three components can be used either separately or in combination.

<sup>9</sup> The other local authorities listed are county councils, district councils, London borough councils, the Common Council of the City of London and the Council of the Isles of Scilly. This definition includes unitary authorities.

<sup>10</sup> Parish meetings differ from parish councils in that they are not corporate bodies. They exist to discuss the affairs of the local community and do not have the full range of powers of parish councils except where express powers enable them to exercise certain functions.

56. An eligible council should use the power to undertake activity which in the proper judgment of the council is appropriate in respect of achieving the above objectives. In exercising the power, an eligible council should not put strain on other activity or services it provides. Local people should benefit from activities undertaken using the power without there being a disproportionate cost in terms of the council's resources or an unnecessary overlap with any of the activity that the council or other tiers of local government in the area are undertaking.
57. The power provides a strong basis on which to deliver many of the priorities identified by local communities evidenced for example by sustainable community strategies and community-led plans. Eligible councils are not required to prepare sustainable community strategies as the Government does not want to place an additional burden on local councils. However, section 4A(2) of the 2007 Act requires that, in exercising the well-being power, an eligible council must have regard to any sustainable community strategy prepared by a principal authority in whose area the council is situated. The Government would not expect an eligible council to use the power in a way which is inconsistent with the aims and objectives set out in that strategy. However, the need to take account of a principal authority's sustainable community strategy does not mean that each and every use of the power must relate to that strategy.
58. The Government considers the term "promotion of economic, social or environmental well-being" 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 council's area. It is for an eligible council itself to decide whether any particular action taken pursuant to the well-being power would promote or improve well-being, taking account of the local circumstances and the wishes and needs of the communities it serves. To this extent, the nature and appropriateness of the use of the well-being power will differ for each eligible council. An eligible council would, of course, need to interpret these terms in accordance with the general principle of "Wednesbury reasonableness"<sup>11</sup>.

<sup>11</sup> This relates to the actions of a local authority or other public body in exercising its discretion, and relates to whether the body has acted irrationally (rather than ultra vires). The definition was given by Lord Greene in the Wednesbury case (1948 1 KB 223):

"When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged in the courts in a limited class of case ... When discretion of this kind is granted, the law recognises certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any court of law ... If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters. There have been in the cases expressions used relating to the sort of thing that authorities must not do ... bad faith, dishonesty – those of course stand by themselves ... Discretion must be exercised reasonably. He must call his own attention to the matters which he is bound to consider, and exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he must truly be said, and often is said, to be acting unreasonably."

59. Unless it is specifically restricted on the face of legislation, the power can also be used instead of existing, more specific powers. For example where an eligible council has a discretionary power to provide a specific service to a defined group of people, or make a grant to a defined type of organisation, the well-being power can be used instead and can also be used to extend the service to other groups or make a grant available to other organisations, where it will improve the well-being of individuals, groups or the community as a whole.

## Who must benefit?

60. Section 2(2) explains that the power can be used in relation to, or for the benefit of, any one or more of the following categories:
- the whole of the council's area
  - a part of the council's area
  - all persons resident or present in the council's area
  - any person resident or present in the council's area
61. The provisions have been drafted to provide maximum flexibility. The definition of "persons present" in an area includes groups such as people working in the area, tourists, commuters and travellers.

## Possible uses of the well-being power

62. Section 2(4) states: "The power under subsection (1) includes power for eligible councils to:
- a) *incur expenditure;*
  - b) *give financial assistance to any person;*
  - c) *enter into arrangements or agreements with any person;*
  - d) *co-operate with, or facilitate or co-ordinate the activities of any person;*
  - e) *exercise on behalf of any person any functions of that person; and*
  - f) *provide staff, goods, services or accommodation to any person."*
63. This is not an exhaustive list of the sorts of activities that could be undertaken under the well-being power. Section 2(6) states explicitly that "Nothing in subsection (4) or (5) affects the generality of the power under subsection (1)."

***Power to “incur expenditure” and to “give financial assistance to any person”***

64. Subparagraphs (a) and (b) (of section 2(4)) as set out above can be taken together. They make it clear that eligible councils can regard the section 2 provisions as a broad spending power. When eligible councils undertake any activity in pursuit of one, a combination of, or all the elements of well-being, the well-being power enables them to incur expenditure, and specifically identifies the provision of financial assistance as one means of doing so.
65. In contrast to the provisions in section 137 of the Local Government Act 1972, section 2(1) of the 2000 Act contains no restriction or limitation on the amount of money an eligible council can spend. Councils 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. Such financial assistance may be given by any means councils consider appropriate, including by way of grants or loans, or by the provision of guarantees.

***Power to “enter into arrangements or agreements with any person” and to “co-operate with, or facilitate or co-ordinate the activities of any person”***

66. The well-being power is designed to support the efforts of eligible councils and their partners to work more closely together on initiatives, by providing councils with powers to make arrangements or agreements with any person and by allowing them to co-operate with, or facilitate or co-ordinate the activities of any person. Such provisions are designed to make it easier for councils and their partners to work together.

***Power to “exercise on behalf of any person any functions of that person” and power to “provide staff, goods, services or accommodation to any person”***

67. Subparagraph (e) clarifies that the well-being power enables eligible councils to take on functions currently undertaken by their partners.
68. This ability for an eligible council to undertake a function on behalf of another body does not transfer any statutory responsibility or 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.
69. The provision in subparagraph (f) leaves eligible councils in no doubt that, in addition to providing financial assistance, they can also provide other forms of assistance including staff, goods and services and accommodation, ie they can make such a contribution “in kind”.

## Power to form companies and other corporate bodies

70. The well-being power will also enable eligible councils to form or participate (but not to trade for a commercial purpose – see paragraph 92) 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 council's area. Such participation could give rise to dividend payments to the council as a shareholder. In the Government's view, such dividends would not amount to raising money for the purposes of section 3(2) (see paragraphs 86-92). Indeed, a council may be acting contrary to its fiduciary duty to local taxpayers if it failed to ensure such a return on its investment.
71. Formation of and participation in companies using this power, like any other, will be subject to the control mechanisms set out in part V of the Local Government and Housing Act 1989 (LGHA 1989) and the accompanying Local Authorities (Companies) Order 1995 of which only the propriety controls remain in force.<sup>12</sup> Transactions by local authority companies would still need to be regulated under any new system of capital controls, since their expenditure has the same impact in the national accounts as that of councils themselves. Clearly, eligible councils who are considering using the well-being power to form companies and other corporate bodies will wish to take legal advice before doing so.

## Action outside an authority's area and in multi-tier areas

72. Section 2(5) states that the power under subsection (1) includes a power for an eligible council to do anything in relation to, or for the benefit of, any person or area situated outside its area, if the council considers that it is likely to achieve one or more of the objects in that subsection.
73. The meaning of this subsection is largely self-explanatory. It enables eligible councils to use the power in a way that affects areas outside their own boundaries, if that action contributes to well-being in their own area. The Government wants eligible councils to be able to act in the interests of communities and to be certain of their legal right to do so. To address community concerns they will need to work closely with other bodies that provide local services and with other tiers of local government.
74. This subsection will open up the scope for:
- more collaborative working with other authorities and local strategic partnerships

<sup>12</sup> Powers secured in the Local Government and Public Involvement in Health Act 2007 enables the Government to repeal Part 5 of the LGHA 1989 to be replaced by secondary legislation setting out propriety controls using accounting definitions.

- co-operation between neighbouring local councils
  - initiatives to address issues which do not recognise administrative boundaries, such as economic development, the prevention of pollution and the conservation of biodiversity
75. Sustainable community strategies and local area agreements provide the statutory framework in which co-operation between neighbouring or multi-tier councils can be identified and implemented. Statutory guidance on the duty to prepare a sustainable community strategy and local area agreements<sup>13</sup> stresses the need for principal authorities to consult local councils and to address cross-boundary issues. In addition, from April 2009 principal authorities will have a duty to involve (by giving consideration to providing information, consulting and/or involving in another way) representatives of local persons in their functions. This includes involving bodies such as local councils.
76. The statutory guidance highlights how different tiers of local government and their partners need to work closely to address community needs and it is in this context that we would expect eligible councils to determine whether to use their well-being powers outside their boundaries. Any council planning to use the well-being power in a way that has a major impact beyond its boundaries should assess these impacts, in consultation with the relevant local councils, principal authorities and their partners. Newly established local councils in London will need to consider the strategies of the Greater London Authority (GLA), as well as the relevant principal authorities.

# Chapter 5: Limits and restrictions on the use of the power to promote well-being

77. Sections 2 and 4 of the Local Government Act 2000 (the 2000 Act) set out the details of the well-being power and in so doing make reference to "local authorities". Section 77 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act) has extended the power to "eligible parish councils". For the purpose of this chapter references to "local authorities" have been replaced with references to "eligible councils".
78. This chapter refers mainly to provisions in the 2000 Act. For the purpose of this chapter references to sections and/or subsections of legislation are references to sections of the 2000 Act, unless otherwise indicated.
79. The power to promote well-being is a wide-ranging one. It is not subject to any expenditure limit, neither is there a need to demonstrate any direct or commensurate benefit (as is required under section 137 of the Local Government Act 1972). It is, however, subject to some restrictions on its use, which are set out in detail below.

## Limit on circumventing express statutory restrictions

80. Section 3(1) states that "the power under section 2(1) does not enable eligible councils to do anything that they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment (whenever passed or made)".
81. The definition of "enactment" includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978. The definition of "enactment" in section 21(1) of the Interpretation Act includes subordinate legislation, namely "Orders in Council, orders, rules, regulations, schemes, warrants, bye-laws and other instruments made or to be made under any Act".
82. "Contained in any enactment" means spelt out explicitly on the face of the legislation. It does not apply to any limits to local council powers which might be implied or inferred from the way in which those powers have been drafted.
83. Eligible councils can only do what they are empowered to do by statute, and any other action would be considered by the courts to be ultra vires. The well-being power does not change this situation, but it

does significantly extend the vires of eligible councils. Under the power, eligible councils are able to undertake any activity that promotes the well-being of their area, except where they are specifically restricted from doing so by any prohibition, restriction or limitations contained in other legislation.

84. Some legislation contains general restrictions or limitations which mean that local councils may only undertake activity in respect of certain matters, or only if they comply with certain conditions. In terms of secondary legislation, eligible councils' use of the well-being power will need to observe the requirements of Part V of the Local Government and Housing Act 1989, the Local Authority (Companies) Order 1995, the Capital and Finance Accounting Regulations 2003 and other such provisions.
85. Other than such explicit restrictions or limitations, however, an eligible council can use the well-being power in place of other, more specific, permissive powers.

## Limits on raising money

86. Section 3(2) provides that: "The power under section 2(1) does not enable an eligible council to raise money (whether by precepts, borrowing or otherwise)," although the way eligible councils plan to use the power can influence annual discussions/decisions on the setting of precept levels.
87. Section 3(2), therefore, places a general prohibition on using the well-being power as a means of raising money. This is a broadly drafted restriction which seeks to ensure that where an eligible council has to obtain funds before it can pursue well-being objectives, it can only do so through existing sources of income. So, for instance, the well-being power does not permit a council to levy a new tax. Similarly, the well-being power does not confer new powers to borrow money or to charge for services it provides in pursuit of well-being objectives – but nor does it in any way restrict eligible councils' existing powers to do so (for instance where local councils are exercising the power to charge for discretionary services under section 93 of the Local Government Act 2003, as amended by the 2007 Act. See paragraphs 90-91).
88. The Government considers that the effect of the provision in section 3(2) is to prevent eligible councils from using the power in section 2(1) primarily to raise money. Where councils use the power for a different purpose, but incidentally receive income as a result, that does not, in the Government's view, amount to raising money. Thus, an eligible council might give financial assistance to a struggling local enterprise by purchasing shares to provide it with capital. If, as a result of the council's investment the enterprise subsequently becomes successful and the council later receives income from its shares by way of

dividend, this does not, in the Government's view, amount to raising money within the meaning of section 3(2). Similarly, the following actions may not amount to "raising money" if the receiving of income by the council is incidental, and not the primary purpose of its use of the power in section 2(1):

- lending money and charging interest
- jointly obtaining sponsorship for a partnership project
- receiving an indemnity from an organisation for costs which may be incurred
- receiving revenue income from a trust

89. Although the well-being power does not itself permit charging, the Government is of the view that eligible councils may still receive contributions on a voluntary basis from partner organisations; as such contributions or cost recovery would not be considered to be "raising money" per se.
90. The provisions in section 93 of the Local Government Act 2003 (the 2003 Act), which allows councils to charge for discretionary services, apply to local councils. Subsection (7)(c) of section 93 states that the prohibition on raising cash in the well-being power does not prohibit a council from charging for discretionary services. A local council has the power to charge (see section 93(9) as long as it has the power to provide those services. There are no prohibitions or restrictions on charging and the Secretary of State has not exercised her powers, to date, to restrict the use of the power. Further guidance is contained in the publication *General Guidance for Best Value Authorities to Charge for Discretionary Services—Guidance on the Power in the Local Government Act 2003* available on: <http://www.communities.gov.uk/documents/localgovernment/pdf/151291.pdf#>
91. Local councils should note however, that the guidance referred to above has not been updated in light of the amendments which were made to section 93 of the 2003 Act by the 2007 Act and so the section in the guidance entitled *Which authorities will be able to use the power to charge for discretionary services in the 2003 Act?* is now out of date. The power, under section 93, to charge for discretionary services is now exercisable by a "relevant authority" which, for the purposes of that section means:
  - a) a best value authority
  - b) a parish council
  - c) a parish meeting of a parish which does not have a separate parish council
  - d) a community council

92. The power to trade is different from the power to charge. Section 95 of the 2003 Act is the most recent provision which extends to some local authorities' powers to trade commercially. Although parish councils are included in the list of "relevant authorities" in section 95, the power to trade is granted through orders made under that section. At present the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 (as amended) only authorises best value authorities with specified ratings to trade. The power is not extended to local councils.

## Creation of Regulations and Bye-Laws

93. The well-being power is an enabling, rather than a regulatory, power. There are no legislative provisions in sections 2 or 3 which would enable eligible councils 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.
94. The Government does not consider that the well-being power can be used to create bye-laws for the regulation of conduct, since it is usual to require specific provision for such regulatory rules.

## Reserve power for the Secretary of State to prevent specific actions

95. The Secretary of State has reserve powers under section 3(3) to make an order to prevent eligible councils from using the well-being power to carry out particular actions. There are no plans at present to make such orders.

## Repeal of section 137 of the Local Government Act 1972

96. The power for eligible councils to incur expenditure under section 137 of the Local Government Act 1972 has been repealed by paragraph 7 of schedule 5 to the 2007 Act.
97. Local councils who are not eligible councils retain their existing power to incur expenditure for the benefit of their area under section 137.
98. The existing power under section 137(3) to contribute to the funds of charities operating in the UK, not for profit bodies providing public services in the UK, and mayoral appeals will be retained for all councils, including eligible councils.

# Chapter 6: Removal of barriers

## Removal of legislative barriers to the promotion of well-being

99. Although the well-being power is very broad and should go a long way in freeing up eligible councils to enable them to address the needs of their communities, it does not permit them to circumvent restrictions contained in legislation.
100. Section 5 of the Local Government Act 2000 (the 2000 Act) allows the Secretary of State, subject to an affirmative resolution of both Houses of Parliament, to remove or amend legislation that prevents eligible councils from exercising their power to promote well-being. This can be applied to individual councils or all councils, as the Secretary of State (through Parliament) sees fit. Section 5 can also be used to amend or disapply an enactment for a particular period of time.

## Application process to the Secretary of State under section 5

101. To date no orders have been made under section 5. Local councils who wish to put forward suggestions for orders under section 5 can do so at any time by writing directly to the Secretary of State.
102. In order to consider any requests or suggestions regarding possible uses of the section 5 power, the Government will need to know:
  - details of the specific legislation containing the restriction which the council wishes to amend or repeal
  - details of the proposed changes to the legislation
  - a brief explanation of the problems that the local council perceives with the restriction, including how it currently prevents the council from promoting well-being
  - evidence of local people's and/or partners' support for the proposed changes
  - where known, whether any other action would have to be taken to replace or supplement the amendment or repeal (eg changes to the accompanying statutory guidance)

## Procedure for section 5 orders

103. The Government wishes to remove unnecessary statutory constraints on the exercise of the well-being power. The value of the section 5 power is that the Government will not have to wait for primary legislation in order to put proposals to remove such constraints before Parliament. Nevertheless, because of the breadth of the section 5 power, the process of making orders under this section is a thorough one. Broadly, this requires the Secretary of State:
  - before making the order, to consult such local councils, representatives of local government and such other persons as appear likely to be affected by the proposals
  - to lay before each House of Parliament a document explaining the proposals, setting out the draft order and giving details of any consultation carried out
  - to allow 60 days for Parliament to scrutinise the document before a draft order is laid
104. The draft order will then be subject to affirmative resolution by both Houses.

# Annex A: Example of a statement of intent as to community engagement

This annex provides examples of the type of information that a council may wish to include in its statement of intent. The breadth and type of information that a council includes in its statement will, to a large extent, depend on the size of the council, therefore some of the examples listed below may not be appropriate to all councils. However, it is recommended that, when preparing its statement, the council considers all of the suggestions carefully. The examples listed below are not exhaustive. Quality councils who have prepared community engagement strategies will be able to draw on these.

## Types of information that could be included

### **Aims and Objectives**

A statement setting out the council's aims and its objectives for seeking community engagement and the outcomes it hopes to achieve.

### **Defining the Community**

A statement describing the individuals, groups and organisations the council intends to proactively engage with. Eg the elderly, the young, Third Sector partner organisations.

### **Provision of Information to the Community**

A statement setting out the types of information the council will make available to the community and the methods it will utilise in order to make such information accessible. Eg how and when the annual report will be published and what level of detail it will include on spending.

### **Opportunities for Community Involvement**

A statement setting out the opportunities the council will make available to the community to facilitate and encourage their involvement. Eg councillors' surgeries, surveys, open days, web discussion forums; allocation of a 'Public Representation' session at council meetings.

### **Opportunities for Formal Representations to the Council**

A statement setting out the processes in place to facilitate formal representations from individuals/groups/partner organisations. Eg details of the timetable for receiving and responding to representations; process for evaluating consultation.

### **Involve ment in Partnerships**

A statement setting out the council's participation in partnerships/networks.  
Eg council representation on Chamber of Commerce.

### **Role of Council Members and Officers**

A statement setting out how council members and officers will engage with the community.

### **Specific Areas for Community Involvement**

A statement setting out specific issues that the council intends to consult the community on. Eg development of a community centre, preparation of community-led plans.

## Annex B: Useful websites

Department for Communities and Local Government  
[www.communities.gov.uk](http://www.communities.gov.uk)

National Association of Local Councils  
[www.nalc.gov.uk](http://www.nalc.gov.uk)

The Society of Local Council Clerks  
[www.slcc.co.uk](http://www.slcc.co.uk)

Department for Environment, Food and Rural Affairs  
[www.defra.gov.uk](http://www.defra.gov.uk)

Local Government Association  
[www.lga.gov.uk](http://www.lga.gov.uk)

The Commission for Rural Communities  
[www.ruralcommunities.gov.uk](http://www.ruralcommunities.gov.uk)

ISBN 9781409811619

A standard linear barcode representing the ISBN number 9781409811619.

9 781409 811619