

REPORT TO: FINANCE COMMITTEE - 12 JANUARY 2004

REPORT BY: DEPUTE CHIEF EXECUTIVE (FINANCE)

**REPORT ON: LOCAL GOVERNMENT IN SCOTLAND ACT 2003
- STATUTORY TRADING ACCOUNTS**

REPORT NO: 786-2003

1 INTRODUCTION

- 1.1 The legislation governing Compulsory Competitive Tendering (CCT) has been repealed with effect from 1 April 2003 by the Local Government in Scotland Act 2003.
- 1.2 Previously Direct Labour Organisations (DLO's) and Direct Service Organisations (DSO's) had a statutory annual financial target of breakeven which meant that separate Trading Accounts had to be maintained and that authorities had to include a summary DLO/DSO statement in their annual accounts. The legislation also required local authorities to publish separate annual reports for its DLO's and DSO's. Now that the CCT legislation has been repealed these requirements are no longer relevant but are replaced with new requirements contained in the Local Government in Scotland Act 2003. These extend beyond the narrow range of services affected by CCT to a consideration of all services provided by the authority.

2 RECOMMENDATIONS

- 2.1 It is recommended that the Committee agree that this Council will publish Statutory Trading Accounts as required by the Local Government in Scotland Act 2003 for those services currently provided by Dundee Contract Services.
- 2.2 The Head of Waste Management be instructed to investigate and implement new billing arrangements to replace the current CCT Schedule of Rates contract rates which will eliminate the Cleansing DSO's contribution to the General Fund which will subsequently be subsumed within the Waste Management Department's Revenue Budget.
- 2.3 The Depute Chief Executive (Finance) be instructed to carry out an annual evaluation beyond financial year 2003/04 to demonstrate the Council's assessment of the need to prepare Statutory Trading Accounts against CIPFA guidance reflecting any new operational and service delivery arrangements.

3 LOCAL GOVERNMENT IN SCOTLAND ACT 2003

- 3.1 Section 10 of the Act sets out the requirement for Statutory Trading Accounts which in summary is that:
 - Trading Accounts should be maintained and disclosed for significant trading operations; and
 - Significant trading operations must achieve 'breakeven' in financial terms over a three year rolling period.
- 3.2 Section 12 of the Act sets out, for the first time, the statutory requirement that local authorities now require to adhere to proper accounting practice. The CIPFA/LASAAC Code of Practice on Local Authority Accounting - A Statement of Recommended Practice and the Best Value Accounting Code of Practice, taken together with other relevant guidance is recognised for this purpose.

- 3.3 Section 13 of the Act addresses the publication by local authorities of information on finance and performance. A statutory duty to publish Performance Reports is now placed upon local authorities. The Act makes it clear that the form, content and timing of reports are a matter for the local authority to determine. Provision is made, however, for regulations to provide for the publication of Statutory Trading Accounts.

4 **GUIDANCE ON COMPLYING WITH THE REQUIREMENTS TO MAINTAIN TRADING ACCOUNTS UNDER THE ACT**

- 4.1 CIPFA Directors of Finance Section and LASAAC have jointly produced a document 'A Best Value Approach to Trading - A Guidance Note for Local Authority Practitioners' which was published in June 2003 and provides guidance on complying with the requirements to maintain Trading Accounts.

Under the Act compliance with this Guidance should ensure compliance with the Act. The Guidance, however, is more of a framework rather than a set of prescriptive rules.

- 4.2 The CIPFA Guidance identifies the need to determine local trading operations and then to consider which of these trading operations is significant.
- 4.3 The test of whether Trading Accounts are required will be whether the service meets both of the following criteria, in addition to passing the test of significance (see paragraph 4.4 below):

- The service is provided in a 'competitive environment' - ie the user has discretion to use an alternative provider; and
- The service is charged on a basis other than a straightforward recharge of cost - ie users take the service on the basis of quoted lump sums, fixed periodical charges or rates, or a combination of these.

Amongst the criteria to be considered are

- Service continues to be provided under existing CCT contract
- Service subject to competitive tender
- Service competes in the open/external market
- Service subject to market testing
- Service subject to benchmarking
- Service provided in partnership
- Service is part of the democratic process
- Service is subject to any of the above

In terms of the CIPFA Guidance a 'competitive environment' is deemed to exist where users have discretion to procure services from an in-house provider or externally. Where users can only exercise discretion over the volume and/or quality of service but not the source, the service is not operating in a competitive environment. 'Users' may encompass either the general public (eg car parking), the Council as a corporate body, or its service departments.

- 4.4 Following the determination of which services in the Council are provided in a competitive environment it is then necessary to apply the test of significance as this determines which trading operations are Statutory Trading Accounts subject to the new legislative requirement to breakeven over a three year period.

In applying the test of significance CIPFA have identified various criteria which could be considered but emphasise that each criterion should not be considered in isolation but viewed in totality against criteria overall.

The proposed tests and how they have been interpreted in this Council are detailed below:-

<u>Financial</u>	<u>Tests</u>	<u>Determination</u> <u>Yes or No</u>
1	Does the size of turnover of the trading operation relative to the net Revenue Budget warrant separate accountability?	Apply a de minimis of £2 million equivalent to 0.77% of the Council's Net Revenue Budget.
2	The risk of financial loss to which the authority is exposed in carrying out the operation.	Issues considered include value of assets used and staffing resources utilised in providing the service.
<u>Non-Financial</u>		
1	The importance of a Trading Account to demonstrate service improvement and achievement of targets.	Consider the service in terms of KPI's included in the Council Plan and/or Departmental Service Plans.
2	The authority is exposed to the risk of service or reputational loss in carrying out the operation.	Sensitivity issues likely to lead to adverse press reporting.
3	The service areas likely to be of interest to its key stakeholders and their needs.	Feedback available from Best Value Review surveys complaints statistics, consumer panel surveys etc.
4.5	However, where the Council believes that Best Value can be demonstrated without formal market testing or tendering and where users are not permitted to purchase services externally it is not a trading operation and therefore Trading Accounts are not compulsory under the requirements of the Act. In this case authorities will have to be able to clearly demonstrate that Best Value is being achieved in the absence of the use of any of these tools of competition.	
5	<u>STATUTORY TRADING ACCOUNT SERVICES IN DUNDEE CITY COUNCIL</u>	
5.1	The Council's Best Value Officers Group have considered the new legislation together with the guidance available from CIPFA in the context of the Council's Final Revenue Budget 2003/04 including existing DLO/DSO services and the results of the Group's evaluation exercise is detailed below:	
i	<u>Dundee Contract Services - DLO Services</u>	
	Prior to 1 April 2003 DLO's operated under the Local Government Planning and Land Act 1980 to ensure these organisations operated profitably in competition with private contractors for construction and maintenance work carried out by local authorities. In this Council DLO services continue to be provided under schedule of rates contract for maintenance work and contract tendering for construction work above certain de minimis levels as well as other works exempt from competition. The DLO continues to budget for	

a trading surplus and in 2003/04 it is that estimated £565,000 that will be contributed to the General Fund.

In reviewing the CIPFA guidance it is clear that the DLO meets the criteria in respect of 'competitive environment' and 'tests of significance' and consequently a Statutory Trading Account will be required to be reported for 2003/04.

There will, however, be no requirement to report separately maintenance and construction work above and below £50k as was previously required under CCT legislation.

ii Dundee Contract Services - Ground Maintenance DSO

The Council's Direct Service Organisation (DSO) - Ground Maintenance Service was set up in terms of CCT legislation contained in the Local Government Act 1988.

The DSO provides a workforce to service and carry out new landscaping works and maintenance to existing landscaped areas and outdoor recreation facilities for the Council and other organisations. This DSO continues to operate under the previous CCT SOR contract and is budgeting this financial year to contribute an operating surplus of £100k to the Council's General Fund.

In reviewing the CIPFA guidance it has been concluded this services also meets the criteria in respect of 'competitive environment' and 'tests of significance' and consequently a Statutory Trading Account will be required to be reported for 2003/04.

There will, however, be no requirement to report separately defined and non-defined work as was previously required under CCT legislation, and indeed the trading information for this service can be combined with the construction and maintenance works above to form a single statutory trading account.

iii Waste Management - Refuse Collection and Other Cleansing DSO

The Council's DSO - Refuse Collection and Other Cleansing was set up in terms of CCT legislation contained in the Local Government Act 1998.

The Head of Waste Management is of the view the current costing system which provides extensive management information would have to be retained under any post CCT review. It would be possible, however, to move away from the current billing system based on CCT Schedule of Rates contract rates to a more streamlined billing system. The current Cleansing DSO contribution to the General Fund would then be subsumed within the Waste Management Revenue Budget.

In implementing the foregoing proposal these services would fail both tests of 'competitive environment' and consequently a Statutory Trading Account would not be required.

iv Cleaning of Building DSO

The Cleaning of Buildings DSO for the Council represents the ex-Dundee District Council contractual arrangements for this defined activity under the Local Government Act 1988 carried forward to the City Council at local government reorganisation in 1996. The City Council at that time also inherited contractual arrangements for ex-Tayside Regional Council Properties Cleaning of Buildings which is carried out by Tayside Contracts. This service was subject to a Best Value Review in 2000/01 and since then has operated on a partnership basis with Tayside Contracts.

Since the Cleaning of Buildings DSO represents a relatively small value contract it does not meet the 'competitive environment' tests criteria and accordingly a Statutory Trading Account will not be required.

v Non CCT Trading Account Services

The Best Value Officers Group have completed a detailed review of the Council's Revenue Budget Volume to determine whether any additional Statutory Trading Accounts are required taking account of specific services the CIPFA guidance suggested may have to be considered including:

- Letting of Industrial Estates
- Provision of Car Parking Facilities
- Printing Services
- Professional and Support Services
- Civic Halls
- Theatres and Museums
- Care Services/Residential Care
- Housing Management

This review has concluded that no additional services to those provided under previous CCT legislation meet in full the criteria for 'competitive environment' and 'tests of significance' and consequently Statutory Trading Accounts are not required.

- 5.2 Following on from the above it has been concluded that a Statutory Trading Account should be prepared in 2003/04 for the services currently provided by Dundee Contract Services.

6 **REPORTING PERFORMANCE OF SIGNIFICANT TRADING OPERATIONS**

- 6.1 Summary disclosure of the financial performance of significant trading operations in the Statement of Accounts will continue whilst further regulations over the form, content and frequency of public performance reports may become available. The Act clearly identifies that significant trading operations performance, or a summary, is to be included.

- 6.2 Having judged which trading operations are 'significant' Councils are free to choose how best to present the trading information, but are likely to be expected to report with the spirit of the overall aims of Best Value in mind. Disclosure of the surplus/deficit for the year should be regarded as a minimum. The overall financial position of the trading operation in relation to its three year target would be more helpful along with commentary to put the financial performance in a context useful to readers.

7 **CONSULTATIONS**

All Chief Officers have been consulted in the preparation of this report.

8 **BACKGROUND PAPERS**

Local Government in Scotland Act 2003. CIPFA document 'A Best Value Approach to Trading Accounts - A Guidance Note for Local Authority Practitioners'.