

LOCAL GOVERNMENT ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I: Best Value

Sections 16-20: Exercise of functions by best value authorities

48. *Section 16* creates ancillary powers for best value authorities to act in pursuance of best value. It does so:
- by creating, at *subsection 16(1)*, a power in similar terms to the current provisions of section 1 of the Deregulation and Contracting Out Act 1994, which allows the Secretary of State to modify or exclude the application of enactments which apply to best value authorities. He may do so only if he is satisfied that such an action would either modify or exclude the application of a provision which restricts a best value authority's ability to achieve its statutory duties under best value, or would serve to facilitate the achievement of them. Such a power could be used, for example, to exclude the application of existing statutory provisions which require best value authorities to divest themselves of certain functions;
 - by creating, at *subsection 16(2)*, a power which allows the Secretary of State to confer upon best value authorities a power to do anything which is designed to facilitate the achievement of best value. Such a power would be subject to any conditions or limitations which the Secretary of State judges necessary. A practical example of how this might be used is to confer on best value authorities a general power to form companies through which to exercise their functions, which goes beyond their current powers to form companies only for specific purposes. Such a power might be subject to limits and safeguards imposed by the Secretary of State, and in exercising it, best value authorities would be required to have regard to any guidance issued by the Secretary of State.
49. This power will not be exercised by the National Assembly for Wales. However, the relevant Secretary of State will need to consult the Assembly before exercising this power in respect of Wales.
50. *Section 17* describes the procedure the Secretary of State shall follow in making an order under subsections 16(1) and (2). He is required to consult such authorities or persons as appear to him to be representative of interests affected by his proposals, and to lay before each House of Parliament a document explaining his proposals. Section 16 already sets out that orders made under subsections 16(1) and (2) are subject to the affirmative resolution procedure in both Houses.
51. *Section 18* provides a power in similar terms to that under section 70 of the Deregulation and Contracting Out Act 1994, which enables the Secretary of State to provide by order for best value authorities to contract out functions (subject to certain restrictions similar in terms to those under section 71 of the 1994 Act). An example of an order which might be made under this provision would be one which, for example, allowed relevant best value authorities to contract out housing benefits determination work. The procedure

under and circumstances in which this power can be used are set out at *subsection 18(2)*. This power cannot be exercised by the National Assembly for Wales.

52. Regarding good procurement practice, paragraph 7.26 of the English White Paper (7.35 in Wales) says that the Government will look for an early legislative opportunity to amend the list of factors which authorities can take into account in inviting tenders and awarding contracts, consistent with European obligations and with the principle of the achievement of value for money. *Section 19* therefore provides for the Secretary of State to specify by order, in relation to best value authorities, matters which will cease to be “non-commercial matters” for the purposes of section 17 of the Local Government Act 1988. (The 1988 Act already provides for the Secretary of State to specify additional non-commercial matters.) This provision might be used to enable best value authorities to have regard to certain work force matters in the contractual process.
53. Where a matter ceases, by virtue of an order under section 19, to be a non-commercial one, then in the future exercise of the function concerned, best value authorities will be required to have regard to any guidance issued by the Secretary of State.
54. *Section 20* of the Act extends the application of section 2(1) of the Local Government, Planning and Land Act 1980 to cover all best value authorities. As presently drafted, it applies to only some of them and does not, for instance, capture the Greater London Authority or any of its constituent bodies. This section of the 1980 Act provides the Secretary of State with a power to issue a Code of recommended practice as to the publication of information by relevant authorities regarding how they discharge their functions. It should be read in conjunction with *section 23* (see paragraphs 58 & 59 below), which is concerned with the preparation, keeping and certification of accounts.