

LOCAL GOVERNMENT ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I: Best Value

Sections 1 and 2: Best value authorities

14. *Section 1* sets out those authorities which will be subject to the duty of best value (“best value authorities”). They include local and other authorities in England and Wales, as well as the soon-to-be-created Greater London Authority (subject to the passage of the Greater London Authority Bill which was introduced to Parliament in December 1998) and its main constituent elements. All of the authorities described in this section are within the scope of the local government finance system as billing, precepting or levying bodies.
15. *Section 2* provides the Secretary of State with a power to extend the duty of best value to other named bodies within the local government finance system who are not included in section 1, and to modify the nature of the duty as it applies to them if it seems appropriate. It also provides the Secretary of State with a discretionary power to disapply, by order, best value duties in respect of specified functions of any best value authority or categories of authority where they would otherwise be subject to them. This power might, for instance, be used to exempt the smaller town and parish councils (community councils in Wales) from all best value duties where the costs of complying with those duties are considered to be excessive.
16. *Section 2* makes further specific provisions in respect of the Greater London Authority (GLA), subject as above to the passage of the GLA Bill. Subsection 2(4) provides the Secretary of State with an order-making power which would allow him to extend the application of the duty of best value, as set out in section 1, in one of two ways, namely:
 - in relation to specified functions of the GLA which it carries out other than through the Mayor; and
 - in relation to functions which are not functions of the GLA but are functions of another best value authority.
17. The former power could be used, for example, to apply the duty of best value to functions which are exercised through the GLA’s Assembly, should the Secretary of State wish to do so. An example of the use of the latter power could be in respect of functions where the GLA, through the Mayor, carries out a strategic rôle in relation to an operational function of another body. This might, for instance, be the case where the Mayor undertakes a strategic rôle in respect of the transport function, where the operational rôle is carried out by Transport for London.

Sections 3-6 : Duties

18. *Section 3* describes the general duty of best value. The duty is not described exhaustively, but requires best value authorities to make arrangements to secure

continuous improvements in the exercise of their functions, judged against named criteria and with regard to a combination of economy, efficiency and effectiveness.

19. For the purposes of fulfilling the general duty, the section also imposes upon best value authorities a mandatory duty to consult with representative groups of people falling within specified categories, and in doing so, to have regard to any relevant guidance issued by the Secretary of State.
20. *Section 4* provides for the creation of the performance measurement framework which will be applicable in respect of the duty of best value. It provides the Secretary of State with a discretionary power to prescribe by order factors of performance (performance indicators) against which best value authorities will be measured. In addition, the Secretary of State may set national standards in respect of any such performance indicators which he prescribes, and where he does so, best value authorities must meet the relevant standard in order to satisfactorily discharge the duty of best value. Section 4 also gives the Secretary of State discretion to specify different performance indicators and standards.
21. As a matter of general principle section 4 also provides that, in setting indicators and standards, and in deciding to do so, the Secretary of State must have regard to the general nature of the duty of best value described within section 3, and also to any relevant recommendations which the Audit Commission make to him in respect of performance measurement. In addition, before specifying performance indicators and standards, the Secretary of State will be obliged to consult with persons appearing to him to represent best value authorities and such other persons as he sees fit. The Audit Commission, which has responsibility (under section 44 of the Audit Commission Act 1998) for the prescribing of performance indicators, is expected to continue to analyse performance data under best value and make recommendations based upon its findings to the Secretary of State as to how the indicators and standards might be amended or adjusted in the future.
22. *Section 5* is concerned with the manner in which best value authorities conduct reviews of their functions, reviews being one of the key procedural components of best value.
 - *Review* is used here in the sense of requiring best value authorities to carry out an initial assessment of whether functions are to be performed, how, by whom and to what standard.

Thus an authority which was considering how education might be provided to excluded children would begin, initially, by considering whether it ought to provide the service at all. In this case, there are certain statutory standards that the authority needs to observe in terms of the minimum level of education provided, and its further consideration under the review might result in the authority only providing the statutory minimum level of education, or something higher; and giving an indication of how the function is to be performed—e.g. by home visits or through education centres.

23. The section provides that best value authorities must review all of their functions within a time period which is specified by the Secretary of State. The Government expects that, initially, this period will be set at five years. In conducting reviews authorities must also have due regard to the general nature of the duty as described within section 3, and to any relevant guidance issued by the Secretary of State. The section also describes a number of key stages in any review which authorities will be expected to complete. These include not only a consideration of the level at and the way in which a function should be performed, as is described above, but the best value authority's objectives with regard to the function and the extent to which it is meeting any standards and targets which have already been set. The Secretary of State will have a power to make orders setting out what elements will comprise a review, and to issue guidance on them.
24. The section provides the Secretary of State with a power to issue guidance to best value authorities on the form, content and timing of reviews, and may include specific

guidance on the way in which the performance indicators and targets should be used in attaining best value. As will be seen under [section 6](#) below, action plans and targets emerging from the conduct of reviews are expected to form a key part of the content of Local Performance Plans.

25. As is provided for at paragraph 7.18 of the White Paper *Modern Local Government: In Touch With the People* (paragraph 7.26 of the White Paper *Local Voices: Modernising Local Government in Wales*), section 5 provides the Secretary of State with a power to issue guidance in respect of the main component elements of the review process.
26. [Section 6](#) requires best value authorities to prepare and publish Local Performance Plans (LPPs) on an annual basis. These plans are the main instruments by which best value authorities will be held accountable for delivering best value by their local communities.
27. The section requires best value authorities to produce their plan for the financial year ahead by 31 March, and annually thereafter; and will allow the Secretary of State to alter the date by which plans must be published. The section provides for LPPs to achieve three main functions:
 - first of all, to provide local people with a summary of how far the authority was successful in meeting its previous year's objectives and performance targets, and the results of its performance as compared with that of other best value authorities;
 - secondly, to inform local people of the performance targets it has set itself for the following year and future years, where necessary, and the extent to which it is on the way to meeting any longer term targets. Where it is not on course, this may include an outline of what action(s) it is taking to remedy the situation;
 - thirdly, to summarise the outcome of the reviews carried out under section 5 above, which will usually be expressed in the form of revised targets, and the future programme for achieving them.
28. The Secretary of State will have a power to make orders in respect of best value authorities setting out the elements which must be included within a Local Performance Plan. He will also have a power to issue guidance in respect of those orders to which best value authorities must have regard.

Sections 7-9: Audit of best value performance plans

29. The Government's approach to scrutiny of best value was set out in both its English and Welsh Green Papers, which included the following principles:
 - "Audit processes should confirm the integrity and comparability of performance information." (Key Principle 9)
 - "Auditors will report publicly on whether best value has been achieved, and should contribute constructively to plans for remedial action. This will include ... reporting on progress on an agreed plan." (Key Principle 10)
30. [Section 7](#) sets out how Local Performance Plans are to be scrutinised and reported upon. The assessment of a Plan for any given year will be carried out by the auditor who audited the accounts of the authority concerned in the previous year, and, in the light of this, the auditor's rights of access to documents and information under the best value process will closely follow those provided to an auditor in respect of accounts under section 6 of the Audit Commission Act 1998.
31. Under section 7, auditors will be expected to perform the following functions:
 - certify that the plan has been audited;
 - consider the extent to which the Plan accords with statutory requirements;

*These notes refer to the Local Government Act 1999
(c.27) which received Royal Assent on 27 July 1999*

- recommend any remedial action that the auditor judges necessary for the local authority to take where the Plan does not comply with the appropriate legal provisions, in circumstances where any failures which the auditor has identified are not considered to be serious enough to warrant recommending that an inspection takes place; and
- where deficiencies and failures in the Plan are identified which in the auditor's opinion are considered to be serious, to recommend follow up action either by the best value inspector (*section 10*) or, in the most serious cases, directly by the Secretary of State under his powers of intervention (*section 15*).

Section 7 also provides how and when the auditor will be expected to report publicly on the results of his assessment.

32. In conducting the scrutiny process, auditors will be expected to follow any Code of Practice which the Audit Commission may produce in respect of best value under *section 8*.
33. *Section 9* sets out a best value authority's obligation when it is in receipt of an auditor's report on its local performance plan. In all cases, it will be required to publish the auditor's report. Where the report contains recommendations under subparagraphs 7(4)(c) to (f) in respect of amendments or follow up action needed by the authority, or inspection or intervention by the Audit Commission or Secretary of State, *section 9* sets out the further obligations which will apply to the best value authority in question.
34. In such cases, the authority will be required, within 30 working days of the production of the report (or such other period as the auditor may specify), to publish a statement of the action it proposes to take in respect of it, and its timetable for doing so. The statement must also be incorporated into the authority's next local performance plan. In those cases where the auditor has recommended that the Secretary of State use powers of intervention under *section 15*, the authority will additionally need to send its statement of action to the Secretary of State, again within 30 working days of the production of the report.

Sections 10-15: Best value inspections and intervention

35. At paragraph 7.39 of the English White Paper (paragraph 7.53 in Wales), the Government states its belief that, whilst annual audit arrangements of the type described above will be an important form of scrutiny, in themselves they will not always deliver the degree of rigour which the policy requires. It has therefore, within *section 10*, provided the Audit Commission with a power to carry out inspections aimed at assessing the degree to which authorities comply with the requirements of the best value legal framework.
36. In many cases, these inspections will be programmed so as to allow the inspectors to assess the outcome of reviews under *section 5* which are considered above. Paragraph 7.42 of the English White Paper (7.60 in Wales) describes some of the purposes of inspections, which include:
 - checking that reviews have been carried out in accordance with legislation and statutory guidance;
 - assessing whether the performance targets set for future years are sufficiently challenging to obtain best value.
37. In some cases, however, the Government will wish to provide for *ad hoc* unprogrammed inspections to take place. This might, for instance, be the case where the standard of performance of a function within a best value authority is considered to be well below that required, and there are no immediate plans within the authority to review the function in question. *Section 10* provides the Secretary of State with a power to

direct the Audit Commission to carry out an inspection of the authority concerned in respect of those functions.

38. The Government intends that the Commission's powers of access to documents and information should be broadly similar to those enjoyed by auditors of accounts, and which are provided under section 6 of the Audit Commission Act 1998. *Section 11* provides for this, and also for inspectors to have reasonable rights of access to premises. This latter provision goes beyond the powers of auditors in the 1998 Act, but it is included to take account of the fact that the ability to conduct an inspection of a function such as housing might be seriously inhibited if the inspector were not able to inspect, for example, the manner in which housing repairs were managed and carried out in the authority in question.
39. *Section 12* sets out the new powers which the Audit Commission will have to set a scale of fees for best value *inspections*. This power complements the powers it has to set scales of fees for best value *audits*, which are set out at section 8. In addition, the Commission will have discretion to charge a fee which departs from any such scale where it judges the amount of work involved in an inspection to be substantially more or less than normal. Before setting a scale of fees, the Commission is required to consult both the Secretary of State and persons which it judges to be representative of best value authorities.
40. As with the audit of plans, whenever inspectors scrutinise reviews the Audit Commission will be expected to publish a report outlining their findings. The sequence of events which follows, and which is provided for at *section 13*, will vary according to the nature of the findings.
41. In all cases, the Commission will send a copy of its report to the relevant best value authority. Where the report identifies matters in respect of which the Commission believes the authority is failing to comply with duty of best value but which are not considered to be serious enough to be referred to the Secretary of State, then, as is provided for in respect of the audit of Local Performance Plans, the authority will be required to record the failure and the action taken in respect of it within the following Local Performance Plan.
42. Conversely, where an inspection discloses serious failure to comply with the duty which leads to the Commission recommending action by the Secretary of State, then the report will also be sent to the Secretary of State as well as to the authority, and will constitute one of the objective triggers upon which enforcement action, dealt with by section 15, might be based. It will be open to the Commission, in deciding upon whether to recommend intervention, to further recommend to the Secretary of State what the appropriate form of intervention might be.
43. The Government stated at paragraph 7.48 of the English White Paper that it intended that any intervention by Ministers would be based upon objective triggers. These will include not only reports by auditor and inspectors appointed by Commission, but also other forms of inspection activity, including those undertaken by the Social Services Inspectorate, OFSTED (OHMCI in Wales), Her Majesty's Inspectorate of Constabulary, the Benefit and Fraud Inspectorate, and the Fire Inspectorate. They will also include information from other sources which give the Secretary of State concern about whether an authority is meeting the duty of best value. A very serious example of this might be where a child is harmed or put at risk whilst in local authority care; this might give the Secretary of State legitimate concern about the effectiveness of the Social Services Department of the authority in question, such that he may wish to order the authority to immediately review its operation of the function pursuant to section 5—or perhaps, as is provided for by section 15, to order an immediate inquiry.
44. *Section 14* amends sections 139A(1), 139A(2) and 139C(1) of the Social Security Administration Act 1992. These provisions set out the powers of authorised inspectors to inspect and report upon authorities' performance in the administration of housing

benefit and council tax benefit, and their performance in the prevention and detection of fraud. Section 14 adds a further provision which allows such inspectors to also inspect and report upon such authorities' compliance with the requirements of best value, as set out in Part I of this Act.

45. **Section 15** offers the Secretary of State a wide range of intervention powers in response to failures. These include some which are of a procedural nature, and others which involve more substantive action either on the part of the authority (where, for example, it might be required to externalise a function), or on the part of the Secretary of State (who might, in extreme cases of failure, intervene to exercise a function of the authority himself or through a nominee). In any case, where the Secretary of State intends to take action against an authority based upon recommendations of inspectors, he will normally be required to allow the relevant authority to make representations both about the recommendation itself, and the action which is proposed in respect of it.
46. In some cases, however, the Secretary of State may judge the failure so serious, or the immediate risk to sections of the community so great, that he may wish to intervene directly without waiting to consider any representations which the best value authority concerned might wish to make. In such exceptional circumstances, a possible example of which is set out at paragraph 43 above, subsection 15(11) allows the Secretary of State to give a direction to the best value authority without allowing an interval for representations such as is set out at subsections 15(9) and 15(10). However, if the Secretary of State chooses to use his powers under subsection 15(11), he will be obliged to inform both the authority concerned and any appropriate representative body of both the direction, and the reason why it was given, without recourse to the normal procedure allowed for by subsections 15(9) and (10).
47. In cases where the Secretary of State intervenes directly in a best value authority, and in doing so assumes responsibility for delivering a function, subsection 15(7) provides him with a regulatory power which can be used to make alternative provision to address circumstances where he intervenes in a function which already provides recourse to him, either through appeal or otherwise. This regulatory power could also be used where the Secretary of State has an existing role or power in relation to a best value authority. The power could be used, for instance, in situations where the Secretary of State intervened to take over a planning function where there was a pre-existing right of appeal to him. In such a case, subsection 15(7) would allow the Secretary of State to make alternative provision to ensure that individual's rights were properly protected, and to prevent situations arising where the Secretary of State was involved not only in the taking of decisions but also the hearing of appeals against them

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.

Sections 21-29: General provisions

55. *Section 21* repeals the legislation requiring some best value authorities to subject certain functions to CCT, this repeal taking effect from 2 January 2000. It also provides powers for the Secretary of State to issue guidance to best value authorities with regard to the interim period between 2 January 2000 and the date when the general duty of best value will be applied. This guidance will cover the way in which they exercise their functions and might include, for example, a consideration of how procurement and contractual arrangements should be approached in the light of the imminent application of the duty of best value.

56. *Section 22* makes amendments to certain provisions in Parts III and IV of the Audit Commission Act 1998, in the light of the Commission's new functions under best value. It widens the application of section 33 of the 1998 Act by amending it to refer to the exercise of local authority *functions*, rather than merely the provision of local authority *services*. It also amends the provisions at section 49 of that Act to allow the Commission to disclose information relating to best value authorities for the purposes of discharging its functions in relation to best value as provided for by the Local Government Act 1999, particularly with regard to best value inspections as set out for sections 10-13 above.
57. *Section 22* also makes provision for the Housing Corporation in England (in Wales the functions are exercised by the Secretary of State, and in due course the National Assembly) to provide advice and assistance to the Audit Commission in relation to the exercise of the Commission's best value functions, where the Audit Commission requests it. It also makes provision for the Corporation to be paid by the Commission for any such advice or assistance it provides.
58. *Section 23* provides the Secretary of State with a power to create a statutory accounting framework which will apply to best value authorities. In doing so, it closely, though not exactly, follows the model laid out at section 27 of the Audit Commission Act 1998. Section 23 provides the Secretary of State with powers
- to regulate how best value authorities prepare, keep and certify accounts;
 - to specify how accounts should be deposited, published and made available for public inspection.
59. It complements the rather wider powers relating to publication of information contained in section 20. Before using section 23 powers, the Secretary of State is obliged to consult with the Audit Commission, best value authorities or persons appearing to him to represent them, and such bodies of accountants as he deems appropriate.
60. *Section 24* makes changes to the Police Act 1996 which are designed to strengthen collaboration between police forces and police authorities, and place the rôle of Her Majesty's Inspectorate of Constabulary (HMIC) in best value on a clear statutory footing. *Subsection 24(1)* adds to the provisions at section 8(2) of the 1996 Act a specific requirement that Chief Constables, in preparing the first draft of a police authority's local policing plan, shall include particulars of any action proposed for the purpose of complying with the police authority's duty to achieve best value.
61. *Subsections 24(2) and 24(3)* extend HMIC's powers of inspection for the purposes of best value by amending section 54 and 55 of the Police Act 1996. Section 54 of the 1996 Act, in its current form, provides HMIC with a power to inspect police forces only. Police *forces* are not best value authorities, whereas police *authorities* are. Section 24 therefore provides that HMIC may inspect police authorities, but this power of inspection extends only to a consideration of the extent to which police authorities are complying with the duty of best value.
62. The Government made it clear in its Local Government White Papers that it would ensure that different inspectorates worked together to develop a consistent approach to best value inspections. Paragraph 7.44 of the English White Paper (7.58 in Wales) stated that the Government "will take a power to enable the Secretary of State to make such arrangements as necessary in consultation with the inspectorates to ensure the smooth and efficient operation of the inspection process".
63. *Section 25* provides that the persons and bodies it describes are, when arranging and carrying out best value inspections, to have regard to any guidance which the Secretary of State issues for the purposes of securing their co-ordination. The bodies in question include the Audit Commission, inspectors of fire brigades and constabulary, the Chief Inspectors of Schools in England and Wales, and inspectors appointed under the Local Authority Social Services Act 1970, National Health Service and Community Care Act 1990, Children Act 1989 and Social Security Administration Act 1992 respectively.

Section 25 also provides the Secretary of State with a power to amend this list of persons and bodies in future.

64. *Section 26* provides the Secretary of State with a general power of guidance in respect of all the provisions in Part I of the Act. It allows the Secretary of State, in issuing guidance to best value authorities about the manner in which they comply with best value, to issue both general guidance, capable of widespread application, as well as guidance aimed specifically at one or more authorities (which could, for instance, be targeted at bodies with a particular range of functions, such as the GLA).
65. It also allows the Secretary of State to issue different guidance to different authorities, thus allowing flexibility, for instance, to issue guidance aimed at police authorities which differed in some respects from that issued to local authorities generally. Section 26 also provides that the Secretary of State, before issuing any relevant statutory guidance, must consult the authorities concerned or those persons who appear to him to represent them.
66. This general guidance power is designed to complement the more specific powers of guidance which are set out elsewhere in Part I, e.g. in respect of the setting of performance targets and the conduct of best value reviews. The possible issues which it might be used to address will include, for instance, how best value authorities tackle cross-cutting issues such as social exclusion, equality and sustainable development.
67. *Section 27* makes arrangements for the commencement of the provisions in Part I of the Act. As a general rule, the Act provides that provisions will commence automatically 12 months after Royal Assent, unless either the Secretary of State or National Assembly for Wales choose to commence them earlier. However, not all provisions in the Act are exercisable by the National Assembly, so section 27 provides specifically that:
 - the Secretary of State may make provision for early commencement in Wales in respect of the best value authorities mentioned at subparagraphs 1(1)(d) and subparagraphs 1(1)(e) (i.e. police and fire authorities). The locus to act in respect of these bodies is reserved to the Secretary of State (in this case to the Home Secretary), rather than the National Assembly;
 - the Secretary of State may provide for sections 14, 16 to 18 and 24 to be brought into force earlier than the automatic commencement date. Again, the powers set out in these clauses are reserved to the relevant Secretary of State, and not exercisable by the National Assembly.
68. *Section 29* provides that, in relation to the application of Part I to Wales, the Parliamentary procedures in that Part are to be omitted, and references to the National Assembly for Wales are to be substituted for references to the Secretary of State. These changes do not apply in relation to police and fire authorities. Nor do they apply in relation to the Secretary of State powers in sections 14 (inspections of housing benefit and council tax benefit), 16 and 17 (powers to modify enactments and confer new powers), 18 (contracting out of best value authority functions), 24 (amendments to the Police Act 1996) and 27 (commencement).