



Department for
Communities and
Local Government

Revised Best Value Statutory Guidance Consultation Paper (for England)



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Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

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1. The 2013 review of the Public Sector Equality Duty¹, found too many public bodies adopting a formulaic, ‘tick-box’ approach to equality considerations regardless of the size or nature of the contracts they tender. It recommended a more proportionate approach to compliance with the Duty².
2. The Best Value Statutory Guidance³ has been revised in view of that recommendation and updated to take into account the Public Services (Social Value) Act 2012. It also makes it clear that authorities should not give grants to organisations that promote extremism or division in society.
3. The updated paragraph (paragraph 2) and new paragraphs (paragraphs 4 and 6) are highlighted in attached draft revised guidance.
4. **This consultation paper invites comments on whether the updated and additional paragraphs in the Secretary of State’s draft revised guidance are:**
 - a. clear;
 - b. specific;
 - c. proportionate; and
 - d. **Is there further detail that would help best value authorities know what processes would help them to decide whether organisations are extreme before making funding decisions?**
5. The Government is seeking views from:
 - All English local authorities
 - The Local Government Association

It also welcomes comments from members of the public, businesses and the voluntary and community sector who are likely to be affected by the proposal. It is grateful for views on whether there are any likely impacts on those who may have protected characteristics under the Equality Act 2010.

6. There will be a three week consultation, commencing on 27 February 2015. We intend to publish the responses and the revised guidance within one week of the consultation ending.

¹ <https://www.gov.uk/government/publications/the-independent-steering-groups-report-of-the-public-sector-equality-duty-psed-review-and-government-response>

² <http://www.legislation.gov.uk/ukpga/2010/15/part/11/chapter/1>

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5945/1976926.pdf

7. Comments should be sent by email to: bestvalue@communities.gsi.gov.uk by **20 March 2015**. Alternatively, please contact John Flett on Tel: 030 3444 2263.

Confidentiality and data protection

8. This consultation has been planned to adhere to the Cabinet Office's Consultation Principles. Information provided in response to it may be published or disclosed in accordance with access to information regimes (primarily the Freedom of Information Act 2000, the Data Protection Act 1998, and Environmental Information Regulations 2004). Under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and we cannot give an assurance of confidentiality in all circumstances. The Department for Communities and Local Government will process personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean it will not be disclosed to third parties.

Introduction

Scope of the guidance

1. This Government is acting to remove barriers to more open and efficient local public services by freeing local authorities from targets, prescription and duties. We want to encourage public agencies and civil society to collaborate more, including greater involvement for voluntary and community organisations¹ as well as small businesses in the running of public services.
2. To this end, we have already revoked guidance on workforce matters which formed part of the Best Value regime, namely the handling of workforce matters in contracting and the code of practice on workforce matters in local authority service contracts ('the two tier code'). We have also revoked the whole statutory guidance Creating Strong, Safe and Prosperous Communities, which included general Best Value guidance on commissioning. Further to our announced intention to repeal the two main remaining statutory duties covered in that guidance (the Duty to Involve and the Duty to Prepare a Sustainable Community Strategy), the necessary primary legislation is now before Parliament in the Deregulation Bill.
3. In this context, this short statutory guidance on the Best Value Duty sets out some reasonable expectations of the way authorities should work with voluntary and community groups and small businesses when facing difficult funding decisions. It allows them the flexibility to exercise appropriate discretion in considering the circumstances of individual cases, without the Government trying to predict every possible variable. It gives a new, clear prominence to requirements on dealing with the voluntary and community sector and small businesses, helps build the confidence of these organisations in holding public agencies to account, and is explicit about the scope for Best Value authorities to consider social value in their functions, as required by the Public Services (Social Value) Act 2012. It does not replace Local Compacts between local authorities and the voluntary and community sector.
4. This guidance, taken together with measures such as Community Right to Challenge in the Localism Act, reduces the barriers that often prevent voluntary organisations competing for local authority contracts. These measures aim to promote local authority leadership in providing a level playing field for all, including local voluntary and community organisations.
5. The Government is committed to the principles in the renewed National Compact - the agreement which aims to ensure that government and civil society organisations work effectively to achieve common goals and outcomes for the benefit of communities and citizens in England. This guidance does not supersede any part of the Compact but sets out expectations of Best Value authorities making difficult funding decisions under the Best Value Duty. All central government departments and non Best Value agencies of departments are also signed up to the fair standards set out at paragraph 7 of the guidance.

¹ The reference in this document to voluntary and community sector also includes social enterprises.

Revised Best Value Statutory Guidance

1. Best Value authorities² are under a general Duty of Best Value to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”³
2. Authorities have a statutory duty⁴ to consider social value for services above the Official Journal of the European Union (OJEU) threshold at the pre-procurement stage. Authorities can of course apply the concept of social value to all their procurements, and this Guidance recommends that social value is considered wherever relevant.
3. To achieve the right balance – and before deciding how to fulfil their Best Value Duty – authorities are under a Duty to Consult⁵ representatives of a wide range of local persons; this is not optional. Authorities must consult representatives of council tax payers, those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions. Authorities should include local voluntary and community organisations and small businesses in such consultation. This should apply at all stages of the commissioning cycle, including when considering the decommissioning of services. In the interests of economy and efficiency, it is not necessary for authorities to undertake lifestyle or diversity questionnaires of suppliers or residents.
4. Authorities should avoid gold-plating the Equality Act 2010 and should not impose contractual requirements on private and voluntary sector contractors, over and above the obligations in that Act. Local authorities should seek to minimise unnecessary paperwork and obstacles to contract compliance, thereby making it easier for small and medium firms and the voluntary sector to apply and bid for contracts, and lowering costs to taxpayers.
5. Authorities should be responsive to the benefits and needs of voluntary and community sector organisations of all sizes (honouring the commitments set out in Local Compacts) and small businesses.

² local authority; a National Parks authority; the Broads Authority; the Common Council of the City of London in its capacity as a police authority, the London Fire and Emergency Planning Authority; a Waste Disposal Authority, Joint Waste Authority, an Integrated Transport Authority; Transport for London. See Section 1 of the Local Government Act 1999, economic prosperity boards established under section 88 and combined authorities established under section 103 of the Local Democracy, Economic Development and Construction Act 2009.

³ Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007).

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79273/Public_Services_Social_Value_Act_2012_PPN.pdf

⁵ Section 3(2) of the Local Government Act 1999.

6. Councils should not give grants to organisations which promote extremism⁶ or division in society.
7. Authorities should seek to avoid passing on disproportionate reductions - by not passing on larger reductions to the voluntary and community sector and small businesses as a whole, than they take on themselves and in particular:
 - An authority intending to reduce or end funding (where 'funding' means both grant funding and any fixed term contract) or other support to a voluntary and community organisation or small business should give at least three months' notice of the actual reduction⁷ to both the organisation involved and the public/service users.
 - An authority should actively engage the organisation and service users as early as possible before making a decision on: the future of the service; any knock-on effect on assets used to provide this service; and the wider impact on the local community.
 - Authorities should make provision for the organisation, service users, and wider community to put forward options on how to reshape the service or project. Local authorities should assist this by making available all appropriate information, in line with the Government's transparency agenda.

⁶ Extremism is vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas.

⁷ Where on the basis of past practice the organisation might have some basis for expecting the funding or contract to be continued.