

REPORT TO: POLICY AND RESOURCES COMMITTEE - 25 SEPTEMBER 2000
REPORT ON: BEST VALUE NEXT STEPS
REPORT BY: DIRECTOR OF CORPORATE PLANNING
REPORT NO 609-2000

1 **PURPOSE OF REPORT**

This report recommends a response to the Scottish Executive's consultation paper 'Best Value in Local Government : Next Steps'.

2 **RECOMMENDATIONS**

The responses to the questions in the consultation paper provided in Section 7 of this report be forwarded as this Council's submission.

3 **FINANCIAL IMPLICATIONS**

None.

4 **LOCAL AGENDA 21 IMPLICATIONS**

The Council's policies on sustainability are considered in all Best Value policy matters.

5 **EQUAL OPPORTUNITIES IMPLICATION**

The Council's policies on equality matters are fully considered in all Best Value matters. Post CCT contracts should enable equality matters to be taken into account and this is dealt with in the response to paragraph 53 of the consultation paper.

6 **BACKGROUND**

The consultation paper 'Best Value in Local Government : Next Steps' is the Scottish Executive's response to the Best Value Task Force's final paper on the long term arrangements for Best Value. It deals with matters such as:

- a statutory duty for Best Value;
- the institutional framework;
- scrutiny and performance information;
- repeal of CCT legislation; and
- local authorities' powers to trade

It also sets Best Value in the wider context of Modernising Government that also includes:

- Democratic Renewal (McIntosh Report)
- Community Planning
- Modernising the Finance System

The full consultation paper is attached as Appendix 1. Also attached is a protocol on intervention powers that sets out how, in England and Wales, Ministers will use the power to intervene if local authorities fail to deliver Best Value. This is Appendix II and is referred to in the response to paragraphs 44-46 of the consultation paper.

Best Value has evolved since 1997 and the Council has made a number of contributions to its development. This response takes account of previous reports agreed by the Committee on Best Value.

As a reminder the essential elements of Best Value are:

Performance Management and Planning
Continuous Improvement
Customer Focus
Competition

Below is a response to the specific questions included in the consultation paper.

7 ISSUES FOR CONSULTATION

Issues for Consultation are quoted direct from the consultation paper in the appendix at the paragraph number stated.

Duty of Best Value

Para 28 **We invite views on the proposal to revise s122A of the Local Government (Scotland) Act 1973 to read:**

“It shall be the duty of all local authorities to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to economy, effectiveness and efficiency.”

The wording of the duty is welcome as it is permissive of a range of approaches to achieve continuous improvement. However, it is vital that it explicitly states that the duty applies to all public sector bodies if community planning and collaboration are to be strengthened. It may also be more appropriate to frame a new act and repeal SI22A of 1973 Act.

Para 31 **We would welcome views on the proposal that guidance should be developed through the same procedures that successfully delivered the first stage of Best Value.**

The introduction in paragraphs 4/5 of the consultation paper states that ‘it is vital that councils feel ownership of the process’ and ‘Local Government is our democratic partner’. The joint Task Force was a refreshing indicator of this approach. It would therefore be congruent to continue with an advisory body on a similar basis to the Task Force. In the same vein the final forum for agreement or guidance should be the Community Leadership Forum (Scottish Executive Ministers and Council Leaders).

Para 35 **We would welcome views on the desirability of a common framework underpinning Best Value across the public sector in Scotland and whether that might require a statutory base.**

A common framework and language of Best Value across the entire public sector is desirable. This will encourage collaboration and community planning. To foster this, inclusion in the Best Value Advisory body of the whole public sector would make sense. Legislation should explicitly apply to the whole public sector in Scotland.

Scrutiny and Performance Information

Para 37 **We invite views on our proposition to amend the existing duties of the Accounts Commission to have regard to the new duty of Best Value.**

The Accounts Commission's existing duty to audit council's arrangements for securing Value for Money should be amended to reflect the change referred to in Paragraph 28 regarding continuous improvement. The requirement to produce a core set of robust, valid and reliable performance information is an important element of the overall public performance reporting arrangements. The joint approach to developing and rationalising this is welcome. The prescriptive requirement to publish statutory performance indicators in a newspaper should be removed. This is just one approach to public performance reporting. Councils are committed under Best Value to developing their own public performance reporting frameworks and these arrangements are subject to external audit (Performance Management and Planning Audit).

Para 40 **We invite views on whether the informal and flexible way of co-ordinating scrutiny through the Joint Scrutiny Forum should continue, or whether a more formalised approach would be better**

The remit of the Joint Scrutiny Forum is an important contribution to achieving Best Value. Without blunting important differences in emphasis and perspective a common language and framework for inspecting Best Value principles would be helpful in avoiding duplication in scrutiny processes and unnecessary debates on the semantics of the various guidelines and inspection manuals.

Para 41 **We would welcome views on what aspects of the existing legislation that regulates scrutiny and inspection requires modification and updating to take into account Best Value.**

A useful contribution to 'Modernising Government' would be a universal application of non-prescriptive legislation in relation to Best Value related processes. A careful audit of primary and secondary legislation that require Councils to submit specific plans, follow set procedures and in other ways

prescribe means rather than outcomes should be undertaken with a view to reducing over prescription.

Powers of Intervention

Para 43 **We invite views on how to formulate suitable intervention powers**

This Council accepts the need for a mechanism for intervention by the Scottish Executive as part of a Best Value framework of governance in the public sector. A balance requires to be struck between on the one hand protecting the public from failure and evident poor performance in the management of their public services and on the other hand protecting the legitimacy of local democracy and the right to take a different approach. Intervention should therefore be graduated and leave the power to act in local hands. Where a Minister takes the power of decision from another elected body and directs this should be subject to a vote in the Scottish Parliament.

Paras 44-46 **We would welcome views on whether we should adopt the code of practice or protocol similar to that developed by DETR and the LGA for intervention, including views on what might trigger intervention and what might be appropriate sanctions for dealing with poorly performing authorities.**

A jointly agreed protocol for initiating and governing intervention prepared by the Best Value Advisory body would be a suitable way forward. The protocol developed by the DETR and the LGA will serve as a useful starting point for debate. This sets out failures in process, substance and emergency or obvious crisis as triggers for intervention. The audit and inspection process should cope with the first two but the latter will obviously depend on the situation. The protocol should be flexible so that a standardisation of process across Scotland doesn't stifle the management of innovation and people. The level of intervention would depend on severity of risk to the public. The focus of intervention must be to resolve the problem rather than punish the public body. However, any enforced change in strategy or approach would undoubtedly result in negative consequences to those responsible for the failure to act in accordance with Best Value whether loss of reputation, position, power or finance.

Role of competition within Best Value and Freedoms for local authorities to trade

Para 53 **We would welcome views on how to handle these sensitive issues. For example, should this be part of the remit of the body identified to develop guidance on Best Value (paragraph 30), or is an alternative body required?**

The commitment to remove CCT from the statute book is to be welcomed. However, competitive tendering is still a valid

method for a corporate body to use to ensure efficiency, economy and effectiveness. Its use will be the result of an option appraisal by the corporate body where it proves to be the best approach. When it is used high standards of ethics should govern the process. It is this Council's view that there is no need for a separate body to develop guidance. There already exists a range of institutions to get guidance from as well as advice on a range of other procurement options or for that matter other organisation design concepts.

In a similar vein Part II of the Local Government Act placed extra-ordinary restrictions on councils on workforce and equality matters in awarding contracts. These should be removed. In order to promote Social Inclusion, Councils need to be able to specify that all tenderers are able to demonstrate acceptable standards in terms of remuneration and conditions of employment. Councils should also be able to satisfy themselves that tenderers have acceptable environmental standards and policies that are in line with sustainable development.

Para 54 **We would welcome views on whether any parts of the existing CCT legislation should be retained. For example should Scottish legislation follow the Local Government Act 1999 for England and Wales, which repealed Part III of the 1980 Act and Part I of the 1988 Act?**

All parts of the existing CCT legislation should be repealed. The direct effect of this legislation was to prescribe that certain activities undertaken by a Council should be treated in a defined way including how it should be documented and accounted for. The indirect effect may have stifled innovation in ways of organising services and that may result in greater collaboration, economy, efficiency and effectiveness. Repeal of all parts will best ensure alternative models of organisation emerge allowing an effective comparison of ways that can provide better outcomes

Para 56 **We would welcome views on the options for improving the freedom to trade of local authorities, such as:**

- **make further Orders designating public bodies as and when required; or**
- **move from a specified list to a more generic approach as recommended by the Task Force, and to redefine permitted bodies by a set of broad descriptors; or**
- **to move towards an approach which took more account of the objectives of the intended trading than of the characteristics of the trading partner.**

The Local Authorities (Goods & Services) Act 1970 requires at the very least to be updated regarding the list of designated Public Bodies. As Councils are increasingly looking to work in partnership with the private sector to modernise provision and

achieve Best Value then the wider ability of local authorities to trade with the private sector will help facilitate this.

Para 57

We invite views and comments on any additional legislative barriers to greater flexibility that councils have encountered.

The use of joint ventures and partnerships between the public and private sector should be encouraged and legislative barriers to this removed.

One obstacle to the formation of joint ventures and partnerships is the problem of potential parties being deterred by the possibility that the Council does not have full legal powers to enter into the relevant arrangement. If the arrangement is subsequently held by the Courts to be ultra vires those contracting with the authority may find that the contract is void and unenforceable. Whilst this issue was addressed in the Local Government Contracts Act 1997 this Act may not apply in all situations where it is desirable to enter into a joint venture or partnership. Another obstacle is the uncertainty over whether insurance cover will be available for officers/members involved in such arrangements.

These difficulties can be overcome by amending current legislation to expressly empower authorities to enter into relevant partnerships and joint venture arrangements where they consider it to be best value, eg by giving Councils power of general competency in deciding to implement a best value regime where they consider it appropriate. This would minimise any fears any party may have that the joint venture or partnership will be held to be illegal and void and leave them with no legal redress.

As far as insurance is concerned, the current legislation which allows the Council to hold and maintain an insurance fund for certain purposes should be amended to include insurance for officers and members acting in the course of "best value" partnerships or joint ventures.

Financial Aspects of Best Value

Para 59

We would welcome views on whether the Ad-hoc Joint Working Group should be asked to consider if councils need either incentives or imposed targets to encourage the generation of recyclable savings

The issue of the need for and type of incentives should be a matter for the Best Value Advisory Body referred to in paragraph 31. Incentivising the identification of savings is a real issue and there would be value in exploring it. However, evidence of operating in a Best Value post CCT environment should be gathered before considering any statutory imposed target to achieving savings as suggested in the consultation. This Council has required savings of up to 5% each year to

balance its budget and prevent excessive increases in Council Tax.

To create a climate that encourages more recyclable savings it may be best to focus on the arrangements for 3 year budgeting and more flexible ways for Councils to be able to invest in change projects that deliver savings over a longer period. Highlighting in audit reports Best Value Reviews or modernisation projects that achieve tangible savings/productivity gains for their organisation will give recognition as well as help spread best practice.

Other Issues

Para 60 **We would welcome views on how best to deliver a continuous improvement service that was accessible by all public authorities.**

This Council has contributed to and supports the Improvement Network approach through COSLA. Its focus is on sharing knowledge and developing skills in pursuing continuous improvement. To achieve this a plan is underway to build networking, a web-site, skills development and consultancy. Through COSLA accountability and ownership by local government is already in place. It already works in partnership with Audit Scotland and the inspectorates.

To achieve impact quickly and effectively any improvement network activities will have to be well resourced. Councils and some other authorities (Fire, Police, Water) have contributed extra monies. The Scottish Executive could signal its commitment by continuing to support the development of the Improvement Network with financial and other resources.

The same principles apply to all the public sector. The Best Value Advisory body should carry out a consultation exercise on sharing knowledge, skills and resources for an improvement network across the whole public sector. A common meeting point for such continuous improvement networking is the Quality Scotland Foundation and this may offer a model for the whole public sector.

8 CONSULTATION

All Directors have been consulted on the contents of this report.

9 BACKGROUND PAPERS

Reports to previous Policy and Resources Committees.

Submission to the Secretary of State - December 1997 - No 901/97

Submission to the Best Value Task Force on long term arrangements for Best Value - June 1999 - No 356/1999

Submission to the First Minister on Public Performance Reporting -
October 1999

Chris Ward

Date

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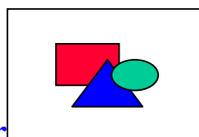
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SCOTTISH EXECUTIVE

Best Value in Local Government: Next Steps

Introduction

1. The Programme for Government (p.12) includes the pledge that "we will deliver Best Value in Local Government". This consultation paper takes forward our programme to deliver that pledge. It explains the wider agenda for modernising local government, summarises our views on progress so far and the challenges ahead, and invites views on a range of issues and questions.
2. We recognise that much has been done in Scotland through partnership with CoSLA, councils and others to make Best Value a reality. Now we wish to address the questions posed by the Best Value Task Force (BVTF) which submitted its final report on 10 December 1999. It dealt with the long-term arrangements for Best Value, including possible legislation.
3. Best Value is a core element in our agenda to modernise government and to improve **all** public services. This means local government and its partners must focus on outcomes to find the optimal balance between cost and quality in delivering them. For councils, and those who help them deliver services, this requires a clear identification of desired outcomes and a willingness to address radical options to achieve them effectively. We see Best Value as a way to allow councils to manage change, re-order spending priorities and achieve continuous improvement in services (ie to develop an organisational culture that seeks constantly to improve its dealings with its stakeholders). Elected members are critical to achieving that improvement by focusing on outcomes, rather than the mechanics of service delivery.
4. It is vital that councils feel ownership of this process. That is why we have worked in partnership to develop and implement the key characteristics of Best Value informally, through the Task Force and through liaison groups with the Scottish Trades Union Congress and Scottish Construction Industry Group. The framework and guidance issued by the Task Force also emphasised the need for Best Value to be developed in the same way at council level — by involving customers/citizens, staff and trade unions. That process has developed a broad consensus on the nature and format of Best Value illustrated by the final report of the Task Force. **We have therefore decided to accept, in principle, all their recommendations.** This paper invites views on how the recommendations should be implemented. The questions it poses range from very detailed, e.g. on possible legislation where consensus exists, to very broad, e.g. where several options are available.

Best Value: The Wider Local Government Context

5. Local government is our democratic partner. Within our new, devolved system councils are critical to delivering our key pledges and objectives such as strong and secure communities, an enterprising workforce, and sustainable development. They have statutory duties and responsibilities relating to many of our key public services, notably education, housing, transport, social and protective services. And in 1998 they agreed with central government that Education, Social Work, Police and Fire were the priority services. For the future a joint Working Group has been set up with COSLA to identify joint

priorities between the Executive and local government which reflect the priorities in "Programme for Government" and the Social Justice Agenda as well as local priorities.

6. These are large agendas. It means our getting the process of governance right, as well as identifying the right priorities. We believe that Best Value is also crucial to our success, and that councils will need to work with other public bodies, staff and trade unions to deliver it. Best Value is therefore closely linked to the Modernising Government initiatives involving: Democratic Renewal [the McIntosh Commission]; Community Planning; and Modernising the finance system. Best Value interacts with and reinforces **each** of these.
Democratic Renewal
7. The McIntosh Report has sparked intense interest and activity in reviewing and revitalising our local democracy. The Renewing Local Democracy Working Group will report soon on matters such as making the role of councillor more attractive; councillors' remuneration; electoral reform and the size of membership of councils. Every council is reviewing its structures and procedures, assisted by the Leadership Advisory Panel.
8. Best Value offers councils and councillors a vital tool to manage the changes that are in train. It encourages strategic thinking, creativity and innovation. It offers councillors the means to set out clear aims and desired outcomes, and review and improve the effectiveness of services and delivery processes in a rigorous, objective way with the full involvement of **all** stakeholders. As most council services are labour intensive, there is a clear need to recognise employment issues by engaging staff and trade unions fully, and to pay due regard to equal opportunities. Through Public Performance Reporting, Best Value will also improve the transparency and accessibility of local government and by doing so, encourage accountability. And in the context of any moves to cabinet or executive structures, it offers a clear scrutiny role for non-executive councillors - especially in terms of service reviews.
Community Planning
9. The new Scotland we see emerging as Devolution settles recognises that social problems are complex. They are not easily resolved in handy compartments marked education, crime, roads, or housing. Our policies recognise that complexity. We aim to achieve social inclusion — not just decent housing. We aim to produce an enterprising workforce — not just more children with qualifications. We aim to achieve sustainable development — not just protect a few endangered species or habitats. That means new approaches.
10. Community planning offers a way to assist public services to work together at local level. With councils at the centre, community planning offers the chance to co-ordinate policies, activities, and, more important, resources to achieved shared goals. Best Value assists that process by asking councils (and others) to state clear aims and outcomes, and develop strategies to achieve them. It encourages **all** options to be considered, including some that might seem initially unpalatable, because 'thinking outside the box' can identify real and lasting solutions to previously intractable problems. Best Value requires clear justification for all decisions and actions (so increasing transparency). It requires balanced consideration of all relevant views; customers, citizens, staff and trades unions. All have interests in and contributions to make to the process.
Modernising the Finance System
11. Every council faces hard political choices as the public demand more and more of public services within existing resources. We are participating in a

Joint Working Group with CoSLA to examine ways of securing better outcomes in terms of service delivery from existing budgets, with less emphasis on targeting resources at specific services according to priorities jointly agreed with the Executive.

12. Best Value offers another means of managing these pressures. First, through the savings and/or quality improvements that can be achieved through rigorous reviews. Some councils have already saved millions of pounds by revising, re-configuring, or adapting services and have put such savings to better use or towards priority services. Others have improved the quality of service without additional costs. Second, Best Value demands new attitudes, especially towards partnership with others like the private and voluntary sectors. Some councils have identified significant savings this way. Third, Best Value encourages long term financial planning. That is a shared aim of the Executive **and** councils. Fourth, Best Value demands modern working practices. We expect to see the bids for the Modernising Government Fund to be based firmly on Best Value.
13. We are also discussing with CoSLA the scope for introducing 3 year budgeting. It has been argued that this is crucial to delivery of Best Value. It would allow councils to fix and flex budgets, and to plan ahead. We are sympathetic to this argument.

Best Value: The Scottish Experience

14. The practical experience of Best Value in Scotland is varied. But key lessons and challenges for the future are emerging. Councils have now demonstrated their commitment and are largely following the deliberately broad-brush guidance issued by the Task Force. The consensus was and remains against a prescriptive approach.
15. An early innovation was the undertaking by councils to review all services within 5 years. It is now clear that for some this has been an onerous and unrewarding task. The emerging evidence is that the most effective have been those that involved councillors, took a long term look across a range of services, involved or consulted stakeholders, staff and trade unions, and identified service objectives at an early stage. Reviews that are very specific or confined to a single defined service are often a vital part of the process but are second order, more concerned with efficiency and/or effectiveness.
16. Many councils are now adopting a staged approach to the review process which allows councillors to concentrate on outcomes and avoid becoming embroiled in detail. The challenge will be to ensure that changes agreed as part of the outcome of the review process are managed appropriately.
17. Councils also undertook to expose their management processes to their auditors through the PMP audit process. Reports from the first year of this process have been promising. However, on some occasions, auditors and service managers appear to have taken a compliance approach to the audit process, to its detriment. We encourage councils to recognise that the purpose of the audit is to justify an opinion on whether a PMP framework is in place, which is fit for purpose. While maintaining stability in the overall approach. Audit Scotland is currently refining the PMP Audit detail to address the issues raised by councils and auditors this year. This draws heavily on the detailed feedback received from the post-audit questionnaires and follow-up sessions with auditors and councils. We hope that as experience of the new audit process grows, initial uncertainties will disappear.
18. In the long term, the most vital element of Best Value will be the reporting framework to show stakeholders what information was available, and where, about council performance in the delivery of services. This public performance reporting (PPR) framework might also include information about

consultation exercises used to justify changes to services or service reconfiguration. Ultimately the PPR framework will allow judgements on performance of public bodies to be formed by those who matter most: the stakeholders. That represents the greatest challenge of Best Value.

An Integrated Approach — Legislation

19. Best Value is integral to our agenda to modernise local government and we propose to take forward any legislative changes needed to deliver it - both to ensure its success and to enable it to make the greatest possible contribution. We intend further consultation in the course of 2000 **with a view to introducing legislation at the earliest opportunity.**
20. This does not mean introducing Best Value. It already exists in Scotland. The investment has largely been made and the initial costs and burdens are over. We want to avoid any new costs or burdens and therefore intend to formalise the system by building on what works. We see no need to hold back on either consulting about the necessary legislation **nor** continuing to develop Best Value. This paper covers **both** issues.
21. Best Value is also comprehensive: it covers all council services from housing to education to roads, and all policies from social justice to the environment. It is integral to achieving **all** of our policy goals where councils are involved. We want to see councils do more to develop policies and strategies which are consistent with Best Value. For example on **social justice** Best Value offers councils the chance to integrate key policy aims like **equality** in their corporate processes and drive them to reality through effective consultation, rigorous reviews, challenging targets and quality reporting. Best Value offers the chance to address procurement issues where there are potential environmental options to explore. In turn, we will need to have regard to Best Value principles and practices in developing our policies and legislation. **We will therefore consider the relevance of views conveyed in this consultation for our other legislative proposals, such as housing and education.**

Consultation Framework

22. There are several key areas that require existing legislation to be amended to create a Best Value framework. We have grouped them as follow:
 - Duty of Best Value
 - Scrutiny and Performance Information
 - Powers of Intervention
 - Competition/Freedoms for Local Authorities to Trade
 - Financial aspects of Best Value
 - Other Issues
23. We have listed the recommendations of the Best Value Task Force (BVTF) for each area.
Duty of Best Value
BVTF recommendations

A legislative base be created for Best Value. It should be permissive.

There should also be legislative provision for statutory guidance.

*Any duty of Best Value should apply across the public sector.
This might be defined by reference to bodies funded through the Scottish Block.*

A generalised duty of Best Value in legislation that should build on section 122A of the Local Government (Scotland) Act 1973, but it should have regard to the key elements of quality, continuous improvement, customer/citizen focus, equality and public performance reporting.

24. We welcome, and recognise the significance of, the fact that Best Value has developed on a partnership basis in Scotland without legislation. Partly this was due to the wide acknowledgement that no two Scottish councils are alike. The Task Force found a strong consensus that Best Value should be permissive rather than prescriptive, but that it needs a legislative base to underline its importance and to remove barriers to development.
25. **We agree there should be legislation to underpin Best Value, that it should be permissive and that it should leave much of the detail to secondary legislation or guidance. We also accept the Task Force recommendation that the statutory description of the duty of Best Value should build on the wording in section 122A of the Local Government (Scotland) Act 1973.**
26. The Task Force suggested that any duty should refer to the key elements of quality, continuous improvement, customer/citizen focus, equality and public performance reporting identified by the BVTF. We are sympathetic to this view, but think that to include so many elements within the duty would be complex, and risks confusion. Many of the elements favoured by the Task Force could be dealt with in guidance (paragraph 29). Equally we recognise that there are strong arguments for including each of these elements.
27. We see a strong case to include, at the very least, 'continuous improvement' as it is common to a variety of methodologies and standards used in the public and private sectors. It has also been used in the definition already in statute in England and Wales which is to:
"make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to economy, efficiency and effectiveness."
A simple approach would be to amend the existing value for money duty in section 122A.
28. It should be possible to define "continuous improvement" in such a way as to encapsulate the other elements either in the new statute or in guidance. We are prepared to consider all options and **invite views on the nature and content of the Best Value duty to replace the existing section 122A VFM duty.**
Statutory Guidance
29. We agree with the Task Force that primary legislation should not specify the essential elements of Best Value as set out in their first report. We propose to develop guidance to cover these, and will work with all relevant bodies to do so jointly. But we believe that Scottish Ministers should have the power to issue guidance where no agreement can be reached. In such a circumstance the guidance would be backed by secondary legislation so allowing scrutiny by the Scottish Parliament.
30. We propose to develop guidance through a similar procedure to that which successfully delivered the first stage of Best Value. This means creating a Best Value advisory body similar to the Task Force. The process also needs to involve all other interest groups, and accordingly we would expect the advisory body to liaise with other interests such as the STUC and SCIG.
31. The final forum for agreeing any guidance must involve political leaders. To avoid creating new structures, this could be achieved by clearing the final draft within the Community Leadership Forum (SE Ministers and Council

Leaders) or the Local Government Forum (CoSLA, STUC and SE). **We invite views on this approach.**

Best Value Across the Public Sector.

32. The Task Force recommended that a duty of Best Value should apply across the whole public sector. We have already accepted this in principle. Our "Programme for Government" (p17 and 18) states that "we will deliver Best Value for the whole of the Scottish Budget". And we started that process with the Public Finance and Accountability (Scotland) Act. It sets out in the clearest terms the personal responsibility of senior officials for value for money and establishes strong audit arrangements. We are building on that base through our agenda for developing 21st century government for Scotland. The language may be slightly different: but the agenda is the same.
33. We recognise that local government in Scotland has been developing Best Value on a voluntary basis since May 1997, with police, fire and assessors joining subsequently. In some respects that process has seen authorities "catching up" on other public bodies who already have the essential elements of Best Value, for example in terms of governance arrangements or by making a commitment to performance management and continuous improvement. In other respects local government is developing new ideas and approaches; for example in customer/citizen focus and Public Performance Reporting.
34. Our aims and aspirations for all public bodies funded through the Scottish budget have been set out in "Investing in You", "The Programme for Government" and the documents published to inform the Budget Bill. These set out our objectives and specific targets for all our public expenditure. We are making good progress in applying Best Value across the public sector, although we want to do more. The next stage is to improve the consistency of approach and ensure that the key elements of Best Value relevant to each sector or body are properly identified and implemented.
35. For local authorities we accept the need to develop a statutory framework for Best Value. But that may not be as relevant for other public bodies, like Health Boards and NHS Trusts or NDPBs, because they are already subject to other, similar duties or constraints. In developing a Best Value statutory framework for local government, we will consider its relevance and applicability to other public sector bodies. In the interim, we expect all public bodies and agencies to have regard to the essential elements of Best Value as it is developing in local government, to learn lessons and apply good practice. At this stage **we would welcome views on the desirability of a common framework underpinning Best Value across the public sector in Scotland, and whether that might require a statutory base.**

Scrutiny and Performance Information

BVTF Recommendation

There should be a review of the best way to develop performance information to support Best Value. It should include review of the Local Government Act 1992.

36. The Task Force found a strong consensus on the need for external scrutiny of Best Value and its contribution to effective management. That, in turn, needs clear, reliable information about performance. The keys to this element of Best Value are the Public Performance Reporting Frameworks developed by councils. In addition, the Performance Management and Planning Audit being developed by Audit Scotland (on behalf of the Accounts Commission) will look for evidence of Best Value each year in a sample of council service areas.
37. We expect future developments in both areas to be covered by guidance. But some amendment to the Local Government (Scotland) Act 1973 and the Local Government Act 1992 would seem appropriate to ensure that Best

Value is taken into account with regard to the Accounts Commission's duties to collect and publish Statutory Indicators on councils' performance and to carry out VFM studies. **We therefore propose to amend their existing duties to have regard to the new duty of Best Value proposed at paragraph 27 and invite views.**

38. Performance information is vital to basing decisions upon fact, and to scrutiny of what councils are doing. Through Public Performance Reporting the many stakeholders in council services will be able to see and judge council performance. But we are concerned to avoid any unnecessary burdens falling on councils as a result of enshrining Best Value in statute, and to ensure that the collection of performance information in turn complies with Best Value principles. Accordingly we, Audit Scotland, SOLACE and CoSLA have recently established the Joint Performance Information Review Group to develop a framework for assessing and improving the information needed to inform judgements on the performance of Scottish councils in providing services and to make recommendations for implementing this framework.
39. Performance information is also vital to the formal scrutiny systems of audit and inspection. We recognise the imperative that all relevant audit and inspection bodies should have sufficient information about and access to councils to allow rigorous validation of performance. Equally, we recognise the need to avoid excessive burdens or duplication. To balance these tensions, we have set up a Joint Scrutiny Forum [remit and membership at [Annex A](#)] to co-ordinate the interests and activities of all the audit and inspection bodies. We see this as the best way of co-ordinating audit and inspection of Best Value in the short to medium term.
40. In the longer term, we recognise there may come a time when a more formal approach will be appropriate. The institutional landscape of Scotland is changing. Audit Scotland (now serving both the Accounts Commission and the Auditor General for Scotland) came into being on 1 April. We intend the nature of Scottish Homes to change and its regulatory functions are likely to be directly relevant to Best Value. And as Best Value itself develops across the public sector in Scotland, there may be further changes. For now, the Joint Scrutiny Forum offers an informal, flexible way of co-ordinating scrutiny interests. **We invite views on whether that approach should continue, or whether a more formalised approach would be better - and if so, what?**
41. **We also would welcome views on what aspects of the existing legislation governing scrutiny and inspection require modification and updating to take account of Best Value.**

Powers of Intervention
BVTf recommendation

A coherent and easily understood framework for intervention is needed to ensure that speedy action may be taken where an authority is consistently failing to meet Best Value, or where it is failing to take remedial action after failure has been identified.

42. Intervention powers are already available to Ministers, ranging from the general to specific. But the existing intervention powers have limitations. They can be slow. They are not suited to a graduated approach. And fulfilling our commitment to repeal CCT in the 1980, 1988 and 1992 Acts will remove powers to intervene in a restricted number of defined services.
43. The Task Force consultation on this issue produced mixed responses. Some preferred to continue with the existing powers whilst others saw the need for graduated powers across all services. That is appropriate, since Best Value is

relevant to all services. We think that the remaining general powers of intervention are not suited either to Best Value nor the kind of modern, efficient Scotland we envisage. **We therefore invite views on the formulation of suitable intervention powers.**

44. One option would be to use a code of practice or protocol similar to that developed by DETR and the LGA for intervention in England and Wales. This allows a range of interventions, from the Secretary of State asking an authority to prepare or amend a performance plan to a specified function of the authority being exercised by the Secretary of State or person nominated by him for a specific period. We could create similar flexibility for Scottish Ministers. Or we could "modernise" or codify the existing powers to achieve similar ends.
45. We recognise the natural discomfort that some feel in discussing intervention because it implies "poor performance" or worse, some form of failure. We also recognise that partnership and consensus are needed to deliver fundamental progress in Best Value. Where that is not there, Best Value soon becomes an ineffective concept.
46. Nonetheless, Best Value needs to be a comprehensive approach to the management of public funds, and we believe it is only prudent and good management practice to cater to every eventuality. That means facing up to the possibilities of obstacles or failures and developing a suitable intervention process, underpinned with statutory powers. **We would welcome views on these options, including views on what might trigger intervention and what might be appropriate sanctions for dealing with poor performance.**
Competition/Freedoms for Local Authorities to Trade.
47. Competition has proved to be one of the most sensitive areas of Best Value for several reasons. First, CCT has left an unhappy legacy. No one liked it, neither public nor private sector. Both complained that there was "no level playing field". Second, and partly due to the general dislike of CCT, the good practices that it encouraged have not been applied widely in non-defined activities. Third, there has been a natural reluctance in some councils to encourage competition - or more precisely, competitive principles - especially in those areas of council activity where social values and aims are of greatest significance, e.g. education and social work. Finally, there are still those who instinctively prefer or are more comfortable with direct delivery of services.
48. Although the vast majority of respondents to the consultation sought repeal of CCT - and we have already announced that we will do so - there was also recognition that CCT has brought benefits in terms of greater specification and a more business-like approach to local authorities. We do not wish to lose those benefits. In addition, we continue to believe that embracing a more rigorous, competitive approach will improve quality, generate efficiency savings and provide new opportunities for councils. This is dealt with in the section on finance (paragraphs 58-59).
49. Hand in hand with competition is the question of how to give local authorities more flexibility in their ability to contract with the outside world, without taking undue advantage of other competitors.
Role of Competition within Best Value
BVTf recommendation

CCT legislation should be repealed as part of Best Value legislative reform.
50. We will stand by our commitment to repeal CCT. But we believe there is no place for discrimination in Best Value, whether for direct delivery of services or against. Options appraisal and competition are a central element. Competition provides the most rigorous form of challenge. It also removes

mystery, demonstrates fairness, and encourages innovation. We therefore wish to see a much greater emphasis on competitive principles and approaches in the next stage of Best Value.

51. We continue to believe that "what matters is what works". Our views on the need for greater competition do not mean we expect to see every service being tendered, outsourced or privatised. But the very fact that, as an Executive, we feel it necessary to enter such a disclaimer serves to highlight the emotive and polarised nature of the debate about the role of competition. Our preference is for a "mixed economy" wherever possible; by which we mean services being obtained/delivered in various ways directly, in partnership, outsourced, or contracted. Each council must find, **and justify** the mix appropriate to its area for each service. But that requires honesty and transparency in conducting service reviews (where such choices are made), the identification of exacting benchmarks and the application of competitive principles.
52. **That means we need criteria to replace CCT.** We also agree with the Task Force view that open and transparent tendering should continue to be encouraged and developed through guidance. We propose to produce clearer guidance on the many ways of extending and applying competitive principles in council services. That will be the first priority of the new consultative arrangements outlined in paragraphs 30-31.
53. We are determined to ensure the openness and transparency of tendering and competition. We also recognise that many of the issues to be addressed are reserved, eg TUPE and other employment issues. **We would welcome views on how to handle these sensitive issues. For example, should this be part of the remit of the body identified in paragraph 30 to develop guidance on Best Value, or is an alternative body (specifically focused on procurement, competition and tendering issues) required?**
54. **We would welcome views on whether any parts of the existing CCT legislation should be retained. For example should Scottish legislation follow the Local Government Act 1999 for England and Wales, which repealed Part III of the 1980 Act and Part I of the 1988 Act?**

Freedoms for Local Authorities to Trade

BVTF recommendations

Authorities should have flexibility to pursue joint ventures and other delivery mechanisms consistent with Best Value and criteria including:

- *an explicit business case;*
- *minimisation of risk to public funds; and*
- *no restriction of competition either in the short or longer term.*

Restrictions on the trading powers of local authorities should be reviewed. There should be a move from specified lists of permitted trading partners to more generic descriptions of the key characteristics of suitable organisations, companies and bodies.

Part II of the Local Government Act 1988 should be amended to allow workforce matters and equality issues relevant to Best Value to be taken into account.

55. We recognise local authorities need more flexibility to explore alternative ways of working if Best Value is to fulfil its potential. We welcome the Task Force view that such freedoms should be given only if certain criteria can be met and we are prepared to consider some limited changes. First we agree that Part II of the Local Government Act 1988 should be amended to allow

workforce matters and equality issues relevant to Best Value to be taken into account. Second, considerable pressure has built up demanding change to the Local Authorities (Goods and Services) Act 1970, or at least the list of designated public bodies described in the 1978 Order made under the authority of the Act. We are prepared to consider such changes. Third, there is also considerable pressure for councils to be allowed a power of general competence (or similar). We are consulting separately on that. We need to consider the implications, if any, that would have on the interpretation of the existing legislative framework. One of the arguments used for asking for such a power is that it would help where there is uncertainty about whether a council has the legal ability to trade.

56. We accept that current arrangements are now in need of review. **We would welcome views on the options for improving the freedom to trade of local authorities, such as:**

- to make further Orders designating public bodies as and when required; or
- to move from a specified list to a more generic approach as recommended by the Task Force, and to redefine permitted bodies by a set of broad descriptors; or
- to move towards an approach which took more account of the objective of the intended trading than of the characteristics of the trading partner

57. **We would also welcome views and comments on any additional legislative barriers to greater flexibility that councils have encountered.**

Financial Aspects of Best Value

BVTF recommendation

The Scottish Executive should not pursue the Beacon Scheme in Scotland.

58. The Task Force consultation revealed a firm rejection by councils to the introduction of a Beacon Style Scheme (as in England) to acknowledge good performance. This scheme rewards councils by assigning additional grant or greater flexibility on the basis of performance. But there are other ways to provide incentives to improve services or to reward authorities that are delivering improvements. A major element of Best Value is that if it is employed properly, it creates the potential to improve quality and or generate significant efficiency savings. These are available for councils to spend as they see fit to deliver improved services.

59. We think that if councils are not set an incentive to deliver improvements, they would benefit from a requirement to generate recyclable savings. For this reason, in the absence of a Beacon scheme, and in the expectation of 3 year budgeting, we think it reasonable that planning by each council should include an expectation to show what resources they have been able to redistribute through implementation of Best Value and to set an annual target for this at say 2%. **We would welcome views on whether these issues should be considered by the Ad-hoc Joint Working Group established with COSLA (paragraph 11).**

Other Issues

The Scottish Executive and CoSLA should further consider the ways of supporting a continuous improvement service across the public sector in Scotland.

The Scottish Executive with CoSLA should consider and rationalise existing requirements for statutory and non-statutory plans and information, and take note of other policy initiatives that are producing similar recommendations.

60. We agree and accept these recommendations. Continuous improvement in the public sector as a whole is being promoted under the banner of Modernising Government, and this is driving a number of change agendas. We hope that the Modernising Government Fund will provide real assistance across the public sector in improving working methods and practices. CoSLA are exploring ways to create an improvement service for councils and we have given initial support to the development of a website which will allow the exchange of experience and ideas. **We would welcome views on how best to deliver a continuous improvement service that was accessible by all public authorities.**
61. The Performance Information Review Group (paragraph 38) and the new Best Value advisory body (paragraph 30) will address the second issue.

Conclusion and Timetable

62. We welcome the progress made and commitment given to Best Value in Scotland and are therefore willing to accept in principle all of the recommendations of the Best Value Task Force. This paper re-affirms our commitment to Best Value, reconfirms its importance and role in our wider agenda for modernising local government, and invites views on the next stage. [Annex B](#) lists the issues and questions on which we would welcome views.
63. This consultation is about more than legislation. We do not want Best Value to go into limbo until an Act has been passed. We want councils to press ahead so that the debate on legislation is fully informed. We intend to set up the new arrangements suggested in this paper very soon after the consultation period ends. We want to see guidance agreed before new legislation is implemented. We want to agree ways forward on competition, local authority trading powers and other related matters as soon as possible. We see no need to await legislation to continue progress and will consult with relevant bodies to agree terms of reference and membership of any new bodies immediately.
64. We invite views on the issues raised in this paper by 30 September. We will publish the response to the consultation and our final views on how to proceed (including a detailed timetable) not later than 31 October. If there is broad consensus on the need for revised consultation procedures as outlined here, we will set them in train ahead of 31 October to enable any new body to inform our decisions.
65. Best Value is becoming a reality in Scotland. We intend to work with all interested parties to build on what we have, given it the legislative base needed to achieve maximum benefit, and "deliver Best Value across the whole Scottish budget."
66. Responses to or enquiries about the consultation should be sent to:
Mr Billy McKenzie
Scottish Executive
Development Department
Area 3-J
Victoria Quay
Edinburgh
EH6 6QQ
Tel: 0131 244 7049
Fax: 0131 244 7020
e- mail: billy.mckenzie@scotland.gov.uk
All responses should be sent to the above address by 30 September. We will deposit the responses in the Scottish Executive library and may wish to publish some in part. Should respondents wish their comments to be treated

in confidence, they should make it clear in any papers they submit. All responses will be included in analysis and statistical summaries of comments received and views expressed.

Further Information

67. Copies of this document can be accessed on the Internet at <http://www.scotland.gov.uk/bestvalue/>

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SCOTTISH EXECUTIVE

Best Value in Local Government: Next Steps

Annex A: REMIT FOR JOINT SCRUTINY FORUM

The Joint Scrutiny Forum (JSF) will meet at least on a quarterly basis to consider the organisation and implementation of the scrutiny of Best Value in councils, police, fire and valuation joint boards (referred to as local authorities) in Scotland.

The JSF will operate until existing legislation is replaced and the role of the JSF is superseded.

The lines of accountability and responsibility for the members of the JSF will remain the same.

The aims of the forum are:

- to assist local authorities in delivering Best Value by developing and supporting joint inspection systems (where relevant) and procedures;
- to develop methods for joint-working and robust scrutiny processes to ensure that the implementation of Best Value by Scottish local authorities undergoes rigorous appraisal;
- to co-ordinate the Best Value scrutiny of Scottish local authorities to avoid duplication and waste by developing joint working between the Inspectorates, the Accounts Commission and SEDD;
- to support local authorities' own audit and increase effectiveness and minimise burdens on inspection bodies.

Membership

The members of the Scrutiny Forum will be

- the Social Work Services Inspectorate
- Her Majesty's Inspectorate of Schools
- Her Majesty's Inspectorate of Constabulary
- HM Inspectorate of Fire Services
- Benefit Fraud Inspectorate
- the Accounts Commission
- SEDD Planning Division, and
- SEDD Local Government Division

COSLA and SOLACE, will be associate members. SEDD LG3B will provide the chair and Secretariat for the Forum. Policy Divisions of the Scottish Executive will also be kept in touch through receipt of papers.

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Best Value in Local Government: Next Steps

Annex B: ISSUES FOR CONSULTATION

Duty of Best Value

Para 28 We invite views on the proposal to revise s122A of the Local Government (Scotland) Act 1973 to read:

“It shall be the duty of all local authorities to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to economy, effectiveness and efficiency.”

Para 31 We would welcome views on the proposal that guidance should be developed through the same procedures that successfully delivered the first stage of Best Value.

Para 35 We would welcome views on the desirability of a common framework underpinning Best Value across the public sector in Scotland and whether that might require a statutory base.

Scrutiny and Performance Information

Para 37 We invite views **on** our proposition to amend the existing duties of the Accounts Commission to have regard to the new duty of Best Value.

Para 40 We invite views on whether the informal and flexible way of co-ordinating scrutiny through the Joint Scrutiny Forum should continue, or whether a more formalised approach would be better –and if so, what?

Para 41 We would welcome views on what aspects of the existing legislation that regulates scrutiny and inspection requires modification and updating to take into account Best Value.

Powers of Intervention

Para 43 We invite views on how to formulate suitable intervention powers.

Paras 44 We would welcome views on whether we should adopt the code of practice or 46 protocol similar to that developed by DETR and the LGA for intervention,

including views on what might trigger intervention and what might be appropriate sanctions for dealing with poorly performing authorities.

Role of competition within Best Value and Freedoms for local authorities to trade

- Para 53 We would welcome views on how to handle these sensitive issues. For example, should this be part of the remit of the body identified to develop guidance on Best Value (paragraph 30), or is an alternative body required?
- Para 54 We would welcome views on whether any parts of the existing CCT legislation should be retained. For example should Scottish legislation follow the Local Government Act 1999 for England and Wales, which repealed Part III of the 1980 Act and Part I of the 1988 Act?
- Para 56 We would welcome views on the options for improving the freedom to trade of local authorities, such as:
- make further Orders designating public bodies as and when required; or
 - move from a specified list to a more generic approach as recommended by the Task Force, and to redefine permitted bodies by a set of broad descriptors; or
 - to move towards an approach which took more account of the objectives of the intended trading than of the characteristics of the trading partner.
- Para 57 We invite views and comments on any additional legislative barriers to greater flexibility that councils have encountered.

Financial benefits of Best Value

- Para 59 We would welcome views on whether the Ad-hoc Joint Working Group should be asked to consider if councils need either incentives or imposed targets to encourage the generation of recyclable savings.

Other Issues

- Para 60 We would welcome views on how best to deliver a continuous improvement service that was accessible by all public authorities.

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Department of the Environment, Transport and the Regions

Protocol on Intervention Powers

Preamble

1. This Protocol derives from the Framework for Partnership signed in November 1997 by the Deputy Prime Minister on behalf of the Government and the Chairman of the Local Government Association (LGA) on behalf of local authorities. The Framework provides for the Government and the LGA to discuss policy for the use of intervention powers, including how best to facilitate a supportive role for the LGA.

The Protocol gives expression to the shared aim of central and local government to raise standards in public service, to support and assist local authorities in improving services, to provide a clear framework for intervention by central government in cases of service failure, and an orderly process for resumption of service by local authorities following intervention.

Purpose

3. The Protocol sets out the general principles which would underpin the exercise of the Secretary of State's intervention powers in England under section 15 of the Local Government Act 1999 and the role of the LGA. The term 'Secretary of State' is used throughout to mean the appropriate Secretary of State.

4. Local authorities have a responsibility to deliver to local people services to clear standards. Local authorities should set those standards covering both cost and quality for all the services for which they are responsible. But in those areas, such as education and social services, where the Government has key responsibilities and commitments, the Government will itself set national standards. The best value legislation requires councils to improve continuously their economy, efficiency and effectiveness in delivering services and meeting standards.

Role of the LGA in helping authorities at risk of failure

5. Where evidence and experience show that a local authority is at risk of failing in that duty in respect of a service or services, there are several ways of achieving improvements. Councillors, officials and contractors have the prime responsibility for delivering quality services and addressing the shortcomings and failings. The LGA and the Improvement and Development

Agency are committed to work with local authorities to support improvement where problems exist and the LGA encourages its member authorities to give early warning of potential problems emerging from inspections, draft reports, complaints, reviews or other sources so that advice and support can be offered. Support may be offered by other authorities through networks, or the authority may be helped to identify and procure other external advice and assistance.

Principles governing intervention by the Secretary of State

6. The Secretary of State will exercise intervention powers under section 15

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of the Local Government Act 1999 only when there is clear evidence that an authority is failing either to discharge its functions adequately or failing to meet its statutory obligations.

7. The Secretary of State will inform the authority of the reasons for intervention whenever using his powers under this legislation.

8. The form and extent of intervention will reflect the type and seriousness of failure and the need for effective improvement.

9. Except in cases of serious service failure or unless there is a need for urgent intervention, the authority will normally be given the opportunity to make the necessary improvements itself.

10. Best value authorities will provide accurate and timely responses to requests for information and co-operate with such action as the Secretary of State may direct in accordance with his powers and this protocol.

11. In cases where a function is exercised by the Secretary of State or a person acting on his behalf, both the Secretary of State and his nominee will be subject to the statutory duties that the authority would normally be subject to in respect of that function.

Process

Identification of problems

12. Intervention powers will be invoked on the basis of clear evidence. Such evidence may emerge, for example, from:

- annual audits of financial accounts
 - audit of local performance plans
 - Audit Commission inspections of fundamental reviews
 - inspection reports
 - public interest reports
 - reports of inquiries, Ombudsman investigations or judicial findings
 - concerns raised about serious danger or harm to the public
- Examples of triggers are at [Annex A](#)*

13. Before the decision to intervene is taken, the authority will

have had the opportunity to make representations about any report which is the basis for a proposed intervention. If necessary, and as urgently as the case requires, the Secretary of State would make further investigations to ensure he has all relevant information.

14. Once the Secretary of State decides that the facts of the case mean that intervention is likely to be necessary, he will formally notify the authority and the LGA. The usual sequence of action would be as follows:

- the authority will be notified in writing of the improvements the Secretary of State judged necessary;
- the authority will be given until a specified deadline to produce and publish a statement of action for making such improvements;
- the statement of action will need to set out clearly the actions to be carried out, the people responsible, the costs involved, the intended outcomes, the dates by which they are to be achieved and the authority's own proposals for monitoring and implementing the statement of action;
- if the statement of action is acceptable to the Secretary of State, the authority will be notified, informed how implementation will be monitored and given a deadline by which specific improvements must be completed;

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- if the statement is unacceptable, the Secretary of State will notify the authority and the LGA of his decision to direct the authority under the powers contained in section 15 of the Local Government Act 1999;
- the authority will be given the opportunity to make representations about the direction proposed

15. If monitoring of the statement of action shows that it is not being implemented effectively, or if the outcomes are not met on time, the Secretary of State will inform the authority and intervene as necessary to secure improvements.

16. If during monitoring of a statement of action evidence emerges that the authority is failing adequately to discharge one or more of its other functions, the Secretary of State will inform the authority of how he intends to proceed in line with this protocol.

Intervention in cases of emergency

17. Although the above arrangements will be the norm, there may be exceptional cases where the severity of persistence of failure, or the continuing risk of harm or financial loss, show that urgent intervention is necessary. If these circumstances prevail and an authority could be reasonably expected to be aware of these problems and has failed to take adequate action to address them, then the Secretary of State retains the discretion to abbreviate the procedures outlined above as he sees necessary.

When exercising his powers in this way, the Secretary of State will notify the authority and the LGA of the intervention that is necessary and the reasons for intervention, and will provide a full explanation of his reasons for curtailing the procedures.

Nature of the intervention

18. The Secretary of State may take such action he judges necessary to secure compliance by the authority with the requirements of Part I of the Local Government Act. This may require, for example, directing the local authority to act within a specified period to:

- prepare or amend a performance plan;
- follow specified procedures in relation to a performance plan;
- carry out a review of its exercise of specified functions;
- make sure a function is carried out so as to achieve specified objectives;
- secure advice/consultancy on the performance of that function;
- secure the function from a specified provider or put the function out to tender

The Secretary of State may also direct a local enquiry to be held. *A list of the forms of intervention which might be used are at Annex B*

Media relations and exchange of information

19. Any announcements, publications or press releases issued in relation to any part of the procedures for intervention covered under this protocol will be subject to the agreement set out in the section titled '*Public Announcements and Exchange of Information*' in the Schedule for Arrangements for the Conduct of Central-Local Relations under the Framework for Central Local Partnership. *An extract from the relevant section of the Schedule is at Annex C*

Monitoring and Review

20. In cases where a function is exercised by the Secretary of State or a person acting on his behalf, the Secretary of State will aim to return that

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function to the control of the local authority as soon as is practicable. To that end he will regularly monitor the function involved and consider whether the authority is in a position to resume and sustain effective responsibility for the function and will notify the authority and the LGA of his decision and the reasons for it.

21. Where intervention is based on a direction which leaves responsibility for the function with the local authority, the direction will be lifted when the Secretary of State is content that the objectives of the intervention can be met on a sustainable basis. Lifting the direction will not nullify any contracts which resulted

from it.

Annex A

Examples of triggers

22. The following lists provide examples of failures of process and failures of substance in relation to best value. Although the Secretary of State reserves the right to exercise his powers in any of these circumstances, his intention is to intervene proportionately to the seriousness of the failure. A single failure of process, for example, is unlikely to trigger intervention by the Secretary of State, whereas a failure of substance is more likely to attract intervention. *Failure of process*

- a failure to consult or to consult adequately as identified by the external auditor.
- a failure to produce a best value performance plan, or a failure to include any of the prescribed elements within it.
- a failure to agree, publish, or carry out a programme of fundamental performance reviews in compliance with the statutory framework
- unreasonable neglect of alternative options for service provision when conducting performance reviews
- a failure to set performance targets or publish details of performance against them
- a failure to set performance targets, which, in the opinion of the external auditor are sufficiently challenging
- a failure to publish details of how performance compares with that of others
- a failure to publish performance information as prescribed (in respect of content, form or timing)
- a failure to make adequate information available to local people about the comparative performance of other bodies

failure of substance

- failure to meet any single nationally prescribed standard of performance
- persistently high unit costs (by comparison with other councils or, where appropriate, with private and voluntary sector providers) which are not satisfactorily accounted for by higher quality service or greater level of need
- failure to improve service standards or a deterioration in standards
- failure to draw up and implement an action plan following a critical inspection report

Annex B

Local Government Act 1999

23. The form of intervention might include a direction by the Secretary of State:

- to prepare or amend a performance plan
- to follow specified procedures in relation to a performance plan
- to carry out a review of its exercises of specified functions.
- to take such other action as in the Secretary of State's opinion is necessary or expedient to secure compliance with
- to make sure a function is carried out so as to achieve specified objectives
- to secure advice/consultancy on the performance of that function
- to secure the function from a specified provider or put the function out to tender to expose a particular service or work of a particular description to competition (with or without an in-house bid to carry out the work)
- to accept external advice from a specified source relating to the performance of a management function
- **to** transfer responsibility to another authority or third party

24. The Secretary of State may direct a local inquiry to be held into the exercise by the authority of specified functions

Annex C

A Framework for Partnership

Public Announcements and Exchange of information

The Government will always convey announcements (i.e. Parliamentary

statements, publications and new releases) directly concerning local government **to the LGA no later than to the media**. Where announcements are provided to the media on an embargoed basis, in advance of publication or as soon after Parliamentary protocol permits, they will be provided to the **LGA on** the same terms. Announcements **by the LGA** concerning central Government will always be conveyed to the Departments concerned no later than to the media. Where announcements are provided to the media on an embargoed basis, in advance of publication, they will be provided to the **Government on the same terms**.

The Government and the LGA will keep each other informed of their

activities and of their proposals and policies. Where policies and

proposals are founded upon consultants' or research reports each will, wherever practicable, provide copies of those reports and other factual analysis (but not necessarily advice based on them) to the other.

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