

These notes refer to the Local Government and Public Involvement in Health Act 2007 (c.28) which received Royal Assent on 30 October 2007

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: Best Value

Introduction

352. [Part 7](#) of the Act amends the “best value” regime, i.e. the regime under which best value authorities are required to make arrangements to secure continuous improvement in the way in which their functions are exercised, having regard to a combination of economy, efficiency and effectiveness (see Part 1 of the Local Government Act 1999). “Best value authorities” include most local authorities, police authorities and fire and rescue authorities.
353. [Part 7](#) removes certain aspects of the best value regime, in particular the requirement on best value authorities to carry out best value reviews. It places a new duty on English best value authorities to involve representatives of local people in the provision of local services and policies. It provides the Secretary of State and Welsh Ministers with a new power to issue guidance to best value authorities on the general duty of best value. It also provides Ministers of the Crown and Welsh Ministers with power to issue grants to promote or facilitate the economic, efficient and effective provision of services by best value authorities.
354. The Act confers a Measure-making power on the National Assembly for Wales in relation to best value (see section 238 and Schedule 18).

Best value authorities

Section 136: Parish councils and community councils etc not to be best value authorities

355. [Section 136](#) amends the definition of local authorities in England and Wales that are best value authorities for the purposes of Part 1 of the Local Government Act 1999.
356. *Subsection (1)(a)* removes parish councils and parish meetings from the definition of “local authorities”. This has the effect that parish councils and parish meetings will no longer be subject to the best value duties set out in the Local Government Act 1999.
357. In practice, an Order¹ made by the Secretary of State under section 2(5) of the Local Government Act 1999 exempted all English parish councils and meetings, except those whose budgeted income for 1997, 1998 and 1999 was over £500,000, from the duties set out in sections 3 to 6 of the Local Government Act 1999. The Act will disapply the best value duties for the 41 larger English parish councils.

¹ [The Local Government Best Value \(Exemption\)\(England\) Order 2003 – SI 2003/3343](#)

358. *Subsections (1)(b) and (c)* make equivalent provision for Wales, where the equivalent of a parish council is a community council. They provide that a community council is not a best value authority. An Order² made by the National Assembly for Wales under section 2(5) of the Local Government Act 1999 exempted all community councils with an income of under £1,000,000 in 1998 and 1999 from any of the duties in sections 3 to 6 of the Act. In practice, this exempted all community councils from the best value regime, as none had an income in excess of that sum.
359. *Subsection (2)* removes local precepting authorities³ from the list of authorities and bodies to which the Secretary of State may by order extend the best value regime. In effect it removes the ability of the Secretary of State and Welsh Ministers to re-apply the best value regime to parish councils, parish meetings and community councils or to apply it to other local precepting authorities, such as charter trustees.

Duties of best value authorities

Section 137: Guidance about general best value duty

360. *Section 137* extends the existing power of the Secretary of State and the Welsh Ministers to give guidance to best value authorities. At present, guidance can be given about the consultation of local people by best value authorities about how the authorities fulfil the general best value duty set out in section 3 of the Local Government Act 1999. The Act confers a more general power to issue statutory guidance to best value authorities about how to fulfil that duty.

Section 138: Involvement of local representatives

361. This section inserts a new section 3A in the Local Government Act 1999. *Subsection (1)* of this new section places a duty on best value authorities (apart from police authorities and Welsh best value authorities) to involve representatives of local persons in the exercise of their functions, where they consider that it is appropriate to do so. *Subsection (1)* provides for best value authorities to determine if and how representatives should be involved, having regard to any guidance issued by the Secretary of State (*subsection (5)*). It sets out that best value authorities will need to consider each of three ways of securing the involvement of representatives of local persons in the exercise of their functions, namely informing them, consulting them and involving them in other ways.
362. *Subsection (2)* establishes that the duty to involve local representatives does not grant best value authorities any additional powers. This subsection also clarifies that, where there is a conflict between this duty and another duty, the latter takes precedence.
363. *Subsection (3)* sets out those best value authorities who are not subject to the new duty. It also enables the Secretary of State to provide additional exemptions from the duty by secondary legislation subject to the negative resolution procedure.
364. *Subsection (6)* clarifies what is meant by certain terms, including “local person” and “representative”.
- The term *local person* refers to any person likely to be affected by or interested in the exercise of the relevant function of a best value authority. This could include a group or organisation. Under new section 3A, a best value authority might decide to involve representatives of individual citizens, local residents or service users, community groups, voluntary sector organisations or businesses (amongst others) in the exercise of its functions.

² The Local Government (Best Value) (Exemption) (Wales) Order 2000, SI 2000/1029

³ As defined in section 39(2) of the Local Government Finance Act 1992.

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- The term *representative* refers to individuals or groups who appear to the best value authority to be typical of those likely to be affected by, or interested in, the exercise of the authority's functions.

Section 139: Abolition of performance indicators etc except for Welsh authorities

365. **Section 139** provides that sections 4 and 6 of the Local Government Act 1999 no longer apply to best value authorities in England (including police authorities) or to police authorities in Wales. In so doing, it removes (a) the power of the Secretary of State to specify performance indicators and standards for best value authorities; (b) the duty of such authorities under section 4(5) to meet applicable performance standards; (c) the duty of such authorities under section 6 to prepare and publish best value performance plans ("BVPPs"); and (d) the power of the Secretary of State to issue statutory guidance in respect of BVPPs.
366. **Sections 4 and 6** will continue apply to Welsh best value authorities (ie. all best value authorities in Wales other than police authorities). The power in section 4(1) to specify performance indicators and standards, and the powers as regards BVPPs in section 6, will continue to be available to the Welsh Ministers as regards such authorities. The Assembly will be able to amend or replace these provisions, or to confer power on Welsh Ministers to do so, using the framework power conferred by Schedule 18 to the Act.
367. When this section is commenced, it is intended that provision will be made so that best value performance indicators can continue to be set in respect of police authorities, and so that police authorities will continue to be under an obligation to prepare BVPPs, for a limited period of time. It is intended that any indicators set, and BVPPs prepared, under such provision will relate purely to policing matters and will not have any impact on local authorities. It is expected that such provision will cease to have effect in 2009 or 2010. By that time, the Home Office expects to have in place such provision replicating the relevant provisions of Part 1 of the Local Government Act 1999 for police authorities as they consider necessary.

Section 140: Abolition of best value performance reviews

368. **Section 140** removes the statutory requirement in section 5 of the Local Government Act 1999 for best value authorities to undertake best value performance reviews and the power of the Secretary of State and the Assembly to issue guidance on how best value authorities conduct such a review.

Powers to modify enactments etc

Section 141: Consultation with and consent of Welsh Ministers

369. **Section 141** makes certain changes to the Secretary of State's powers under section 16 of the Local Government Act 1999 to modify enactments obstructing compliance with best value and under section 97 of the Local Government Act 2003 to modify enactments in connection with charging or trading. In particular, it precludes the Secretary of State amending, modifying or removing the application of any Assembly Measures, Assembly Acts or subordinate legislation made by Welsh Ministers or the Assembly without the consent of the Welsh Ministers or the Assembly (as appropriate), except where the provision is consequential on or incidental to other provisions.

Section 142: Power of Welsh Ministers to modify enactments obstructing best value etc

370. **Section 142** confers on the Welsh Ministers a power similar to that in section 16 of the Local Government Act 1999 to modify enactments obstructing compliance with best

value, and removes from the Secretary of State the power to do so in relation to Welsh best value authorities.

371. *Subsection (1)* provides that the Secretary of State's existing power in section 16 is not to be exercisable as regards Welsh best value authorities (that is, all best value authorities in Wales except police authorities).
372. *Subsection (2)* inserts a new section 17A in the Local Government Act 1999 which in effect gives the Welsh Ministers similar powers to modify enactments as section 16 currently gives to the Secretary of State. It allows the Welsh Ministers to modify or exclude the effect of enactments when, in their view, such enactments prevent or obstruct compliance with the best value duties by Welsh best value authorities. It also allows the Welsh Ministers to confer on Welsh best value authorities additional powers which appear to them to facilitate such compliance. New section 17A provides that orders cannot make any provision which could not be made by an Assembly Measure. It also provides that an order under new section 17A must be approved by a resolution of the Assembly before it can be made (unless it merely extends or modifies a previous such order).
373. *Subsection (2)* also inserts a new section 17B in the Local Government Act 1999, setting out the procedures which the Welsh Ministers must follow when making an order under the new section 17A. It requires the Welsh Ministers to consult best value authorities and others with an interest, and to lay a summary of their proposals before the Assembly for a minimum of 60 days (excluding periods when the Assembly is in recess) before the Assembly considers the draft order. These provisions are similar to those that apply to the Secretary of State under section 17 of the Act.
374. **Section 142** will come into force two months after Royal Assent. *Subsection (3)* makes transitional provisions to cover the period before section 144, which adds a definition of the term 'Welsh best value authority' to the Local Government Act 1999, comes into force.

Other

Section 143: Grants to promote or facilitate exercise of functions by best value authorities

375. **Section 143** inserts new sections 36A and 36B into the Local Government Act 2003 ("the 2003 Act"). Those sections enable grants to be paid to a person for the purpose of improving the performance of best value authorities. Any grant can be paid subject to conditions (sections 36A(5) and (6) and 36B(4) and (5)).
376. The powers are exercisable by a Minister of the Crown ("a Minister") and, in relation to Welsh best value authorities, by Welsh Ministers (sections 36A(1) and 36B(1)). Treasury consent is required for any grant made by a Minister (section 36A(2)(a)). The consent of Welsh Ministers is also required where grant is given by a Minister as regards the exercise of functions by a Welsh best value authority (section 36A(2)(b)).
377. **Section 143** will come into force two months after Royal Assent. If section 144 (which introduces the term "Welsh best value authority" into Part 1 of the Local Government Act 1999) has not been commenced at that time, section 143(2) ensures that new sections 36A and 36B will have effect by reference to the existing provisions in the Local Government Act 1999 until such time as section 144 is commenced.
378. The definition of best value authorities in section 36A(7) is slightly broader than the definition used elsewhere in the 2003 Act, since it includes the Greater London Authority exercising functions otherwise than through the Mayor.
379. It is envisaged that the new powers will primarily be used to improve the performance of best value authorities in situations where for example grant cannot be paid under section 31 of the 2003 Act (power to pay grants to local authorities), or where for timing

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reasons grant cannot be paid under section 78 of the Local Government Finance Act 1988 (duty for Secretary of State to pay grants to receiving authorities and specified bodies) or section 84E of the same Act (which contains analogous functions as regards Wales).

Section 144: Best value: minor and consequential amendments

380. [Section 144](#) defines the term “Welsh best value authorities” for the purposes of the Local Government Act 1999 and introduces Schedule 8, which makes further minor and consequential amendments.
381. The amendments made by *subsection (1)* provide that all authorities which are currently “best value authorities in Wales” for the purposes of Part 1 of the Local Government Act 1999 will be “Welsh best value authorities”, apart from police authorities (since responsibility for policing is generally not devolved to Wales). Welsh best value authorities will be subject to subordinate legislation and guidance made or issued by the Welsh Ministers under that Part.