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DEPARTMENT FOR ENVIRONMENT, FOOD & RURAL AFFAIRS

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GUIDANCE ON BEST VALUE AND PERFORMANCE
IMPROVEMENT FOR NATIONAL PARKS AND
THE BROADS AUTHORITY

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SCOPE OF THE GUIDANCE

1. This guidance sets out how National Park Authorities (NPAs) in England and the Broads Authority might meet the requirements of Part I of the Local Government Act 1999 to make arrangements to secure continuous improvement in their functions, with regard to efficiency, effectiveness and economy. It replaces DETR Circulars 10/99 and 02/01. Paragraphs 23-40 and Annexes B, C, D and E below consist of statutory guidance provided under Section 3 (the general duty), Section 5 (Best Value Reviews), Section 6 (Best Value Performance Plans), and Section 19 (Contracts: exclusion of non-commercial considerations) of the 1999 Act.
2. National Park Authorities and the Broads Authority have responsibilities to the nation as a whole as well as to local residents and those who visit the area. They were established under legislation which recognises the value of our finest landscapes. The Government recognises the valuable contribution that NPAs and the Broads Authority are making towards the delivery of quality services in pursuance of their conservation and recreation purposes and, in the case of the Broads Authority, its navigation functions. The guidance below is intended to help them secure continuous improvement in the delivery of their services, by focusing on best value and performance improvement. By delivering better quality services NPAs and the Broads Authority can improve the quality of life for everyone who lives, visits, or works in, the National Parks and the Broads.

SECTION 1 – INTRODUCTION

3. On 13 March, ODPM published Circular 03/03 on Best Value and Performance Improvement¹ for principal local authorities in England. It reformed best value, and explained how best value should be taken forward in the context of the Government's new performance framework for local government. It also took account of the experience of operating best value since its introduction in April 2000, as well as the findings from best value research and associated publications.
4. This guidance draws on that Circular, and sets it in the context within which NPAs and the Broads Authority operate. It incorporates measures previously taken to streamline best value, and is relevant to the recommendations in the Government's Review of English National Park Authorities about tailoring best value to meet the requirements of the National Park Authorities. It also reflects the issues that were raised in response to the Draft Circular on Best Value and Performance Improvement last year.
5. This guidance should be read alongside Circular 03/03 on Best Value and Performance Improvement.

¹ ODPM Circular 03/2003 available from http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_609121.pdf

SECTION 2 – DELIVERY OF QUALITY PUBLIC SERVICES

6. For many people, the services provided by the NPAs and the Broads Authority contribute directly to their quality of life and their experience of public services. It is therefore vital that these services are delivered to a high standard, and in ways that are responsive to the needs of users, and that are fair and accessible to all.
7. The provision of quality services requires a concerted commitment by NPAs and the Broads Authority in planning, providing and maintaining services and in developing their own capacity to do better. It will involve a wide range of bodies working in partnership at the local level. NPAs and the Broad Authority should continue to work closely with neighbouring local authorities and a wide range of others (including local communities, those who visit the parks and use its services, the voluntary sector, social enterprises and businesses).
8. Delivery of quality public services also relies on Government setting the framework and policy direction within which services should be delivered. The Local Government White Paper, *Strong Local Leadership – Quality Public Services*² set out a new performance framework within which the Government is committed to working in partnership with local government to improve performance. It gives concrete expression to the 4 principles of public service reform:
 - **national standards:** a framework of clear and exacting performance standards, with performance independently monitored so that people can see how local services compare;
 - **devolution:** giving successful organisations more freedom to deliver these standards;
 - **flexibility:** removing artificial bureaucratic barriers which prevent staff and organisations from improving local services; and
 - **choice and contestability:** expanding choice so that users of public services are given the kind of options that they take for granted in other walks of life and taking full advantage of alternative means of provision where these would offer best value.
9. To help focus efforts in priority areas where joint working is necessary to deliver improvements, the Government and Local Government Association have agreed a statement of shared priorities. These priorities have also helped shape the targets contained in the national Public Service Agreement (PSA) for Local Government. Both the shared priorities and the national PSA for Local Government are set out at Annex A.

² *Strong Local Leadership – Quality Public Services*, DTLR, December 2001 [CM5327].

10. Although few elements of the national PSA for Local Government expressly relate to the statutory functions of NPAs and the Broads Authority, the authorities have an important contribution to make in support of local authorities working towards shared environmental, recreational and other priorities relevant to their functions. This is in addition to the annual priorities set by DEFRA with the advice of the Countryside Agency.
11. The following paragraphs provide guidance to help NPAs and the Broads Authority use best value and performance improvement to deliver quality local public services.

SECTION 3 – IMPROVEMENT PLANNING

12. Responsibility for improvement and improvement planning, which the duty of best value confers, rests firmly with each NPA and with the Broads Authority. Delivering improvement requires a concerted commitment from each authority to look continuously for ways to achieve improvement in services, as part of their performance management framework. The desire for such improvement must permeate the whole organisation, and in particular NPA and the Broads Authority members must own the outcomes that best value is designed to achieve. Their staff also have a key part to play and should be committed to continuous improvement.
13. The way in which NPAs and the Broads Authority approach best value and improvement planning also needs to take account of the *Audit Commission's 2001 statement – Changing Gear*³ which identified the following four building blocks as key to achieving and sustaining improvement:
 - ownership of problems and willingness to change;
 - a sustained focus on what matters;
 - the capacity and systems to deliver performance and improvement; and
 - integration of best value into day-to-day management.
14. ODPM Circular 03/03 explains how the comprehensive performance assessment (CPA) is helping principal local authorities with improvement planning by providing an independent assessment of overall performance, and giving feedback on strengths, weaknesses and opportunities. A subsequent Audit Commission report on learning from CPA⁴ sets out the factors that have a positive impact on service delivery, including:
 - clear frameworks for managing performance that support priorities and links to planning and budget setting;
 - human resource strategies that harness staff skills to match levels of ambition; and

³ *Changing Gear – Best value annual statement 2001*, Audit Commission, September 2001.

⁴ *Patterns for Improvement*, Audit Commission, April 2003.

- an ability to build capacity through partnership and procurement.
15. Over the coming year, the Government and the Audit Commission will look at the lessons learnt from the CPA, and in consultation with NPAs and the Broads Authority, will consider how a tailored framework might be developed for assessing the overall performance of each NPA and the Broads Authority in ways which tackle meaningful comparisons to be made between individual authorities. Its purpose and focus would be to identify and facilitate improvement, and it is expected that the framework would include self-assessment, peer involvement and inspection activity.
 16. For principal local authorities, CPA provides a framework for granting freedoms and flexibilities where there is capacity and capability to use them effectively. The Government will consider, in the context of the comments in paragraph 15 above, whether there are any freedoms and flexibilities that might be appropriate for the NPAs and the Broads Authority.
 17. In the meantime NPAs and the Broads Authority should be developing their improvement planning arrangements. Part I of the 1999 Act allows considerable discretion as to how improvements in service provision are achieved in practice. Through best value reviews, self-assessments, analysis of inspection and audit reports, public consultation, and discussion with the Government in each annual expenditure round, NPAs and the Broads Authority should be looking to identify where their weakness and opportunities for improvement lie, and developing arrangements for addressing them.
 18. External scrutiny will continue to play a key role in helping NPAs and the Broads Authority improve performance, through assessments of the extent to which best value is being delivered. Inspections will be risk-based and co-ordinated, and wherever possible the timing of inspections will be agreed with the inspected body⁵. Inspections will focus on priority areas for improvement, and will highlight areas of risk or weakness that may hinder improved performance. The frequency of such inspections will be at the discretion of the Audit Commission, and, as at present, NPAs and the Broads Authority will be expected to respond to recommendations contained in inspection reports, in accordance with Section 13 of the 1999 Act.
 19. If any best value authority, including an NPA or the Broads Authority, fails to comply with the requirements to deliver best value, Section 15 of the 1999 Act provides the Secretary of State with powers to act. The Government is committed to working with authorities and others to ensure that the incidence of failure is minimised. The precise measures that might be introduced to address such failure would depend on the circumstances of the case, and the nature of the failure. NPAs and the Broads Authority, like other best value authorities, would normally be expected to put their own house in order. However, the Government will not hesitate to act where necessary to protect the interests of local people and service users.
 20. In considering improvement planning, NPAs and the Broads Authority need to address the impact of those services on all sections of the community. They already have a duty under the Race Relations (Amendment) Act 2000 to promote race equality, and the

⁵ *Proportionate and co-ordinated inspections and audit of authority services*, LSIF, available at http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_609936.pdf

Government is committed to introducing similar obligations in respect of gender and disabilities when Parliamentary time allows. A recent Audit Commission report highlights the relatively poor performance of local authorities in respect of equality and diversity, and concludes that they need to be better integrated into all aspects of delivering, monitoring and inspecting services⁶. The Government endorses this view, in respect of all best value authorities, including NPAs and the Broads Authority.

21. In developing improvement planning arrangements, NPAs and the Broads Authority should also consider how they can help principal local authorities in working towards the long-term well being of their communities. Part of this will involve recognising that actions taken locally have wider impacts and contribute to damaging developments such as global warming. Sustainable development is fundamental to best value, and should be reflected in the NPAs' and Broads Authority's programmes of reviews, the review process itself, and improvement planning arrangements⁷. This includes operation by the authorities of the Sustainable Development Fund.
22. Developing improvement planning arrangements is likely to involve NPAs and the Broads Authority in making arrangements for:
 - reviewing performance;
 - planning improved performance;
 - sharing good practice and learning from others;
 - valuing their workforce.

SECTION 4 – REVIEWING PERFORMANCE

23. NPAs and the Broads Authority are required to review all their functions, as specified by Section 5 of the 1999 Act. Such reviews can play a significant role in helping to improve services. They should be undertaken in the spirit in which they were envisaged – as an opportunity to fundamentally assess the functions and services provided – rather than an exercise in complying with the necessary review processes.
24. The statutory management plans which NPAs and the Broads Authority are required to prepare and review every five years provide the strategic context for the authorities' forward planning, best value and for the performance reviews. The broad principles for conducting performance reviews remains the 4'Cs' identified in Circular 10/99. In carrying out reviews, NPAs and the Broads Authority should, in no particular order:
 - **challenge** why, how and by whom a service is being provided;

⁶ *Equality and Diversity*, Audit Commission, May 2002

⁷ The Government's strategy on sustainable development is set out in 'A better quality of life – a strategy for sustainable development for the UK' (May 1999); summarised in 'The Government's sustainable development strategy: What does it mean for local authorities?' (July 1999).

- **compare** process and performance of others across a range of relevant indicators, taking into account the views of both service users (or other stakeholders) and potential suppliers;
 - **consult** key stakeholders, including where appropriate local taxpayers, service users, partners, the wider business community, the voluntary sector, social enterprises, staff and trade unions;
 - use fair and open **competition** wherever practicable as a means of securing efficient and effective services.
25. The requirement for NPAs and the Broads Authority to review all their functions over a five-year cycle was revoked in SI 2002/305. This change enables a proportionate approach to be taken in the context of the weaknesses and opportunities for improvement. Reviews should not be carried out simply because an undertaking has previously been given to assess a particular service. Similarly, many straightforward improvements can be made without the need for a review. But reviews can help where:
- there is a need to improve performance on a local or national priority; or
 - it is unclear whether a service is still needed or its contribution is as effective as it could be; or
 - there is a prima facie case for a new service or new configuration of an existing service; or
 - there is evidence that the costs of a service are significantly out of line with comparable services elsewhere; or
 - there is a clear opportunity to work with neighbouring local authorities to deliver common services, through for example, new technology.
26. In programming reviews, NPAs and the Broads Authority should focus on the areas that present the most serious challenges and biggest opportunities for service improvement. There may be scope for conducting joint reviews with other national parks.
27. Reviews will only be effective if they are scoped to achieve improvements that are ambitious, challenging, and likely to deliver value for money. Genuinely challenging why and how a service is provided, regardless of whether it is a single service or a cross-cutting service, requires a fundamental rethink about the needs that the service is intended to address and the methods of delivery. It might include considering a range of possibilities such as helping needs to be met by service users, or introducing new services to meet previously unmet needs.
28. For challenge to be effective, NPAs and the Broads Authority should typically involve:
- **Board members, and officers** throughout the review process to ensure that the scope of reviews reflects the authority’s strategic objectives and priorities, as well as the perspective of actual and potential users, including hard to reach groups;

- **staff, particularly front line staff**, who have knowledge of the current service. NPAs and the Broads Authority must now consult recognised unions and employees' associations and staff when reviewing functions. This will ensure that better decisions are made and increase understanding of the reasons for those decisions. The mechanisms for involving staff and trade unions should be set out clearly, including how their views will be taken into account in decision-making processes;
- **service users** and, when appropriate, the wider community, who can provide useful information on how well current services are working and how they may be improved. It is important that NPAs and the Broads Authority seek out the views of all potential users, including those that have been traditionally under-represented, and other hard-to-reach groups; and
- **'third parties'** in providing an element of 'challenge' in reviews. Their use alone will not guarantee effective challenge, which requires particular skills, attitudes and organisational approaches. But third parties, such as partners or alternative providers in the public, voluntary, community, social enterprise and private sectors, or service users (or potential service users) can bring an external perspective and expertise that may be lacking in the NPA and the Broads Authority. They can also play an important scrutiny role by questioning and challenging NPAs and the Broads Authority's approach. The use of a proportionate and accredited peer challenge mechanism also provides opportunities for third party involvement in reviews. The Government would expect NPAs and the Broads Authority to increasingly explore the scope for using peer challenge during reviews.

COMPETITION AND PROCUREMENT

29. SI 1999/3251 requires NPAs and the Broads Authority to assess the competitiveness of their performance in exercising their functions. Whilst there is discretion about how individual services are provided, the highest standards of service are more likely to be achieved where there is genuine competition, choice for service users and a mixed economy rather than where any one supplier dominates the provision of services.
30. Rigorous challenge of current service delivery arrangements are likely to include exacting comparisons with the best that other authorities and service providers can offer through the application of new technology, modern management and employment practices, and genuine innovation. When it is clear that improved services can be achieved by making changes to management and employment practices, for example, it is important that these are addressed as quickly as possible, whether or not the NPA and the Broads Authority intends to retain the work in-house or seek an external partner. Failure to do so can perpetuate poor quality and high costs, which are inconsistent with best value. Partnerships are likely to work better where the decision to seek a partner has been considered carefully after quality and cost issues have been tackled internally.
31. NPAs and the Broads Authority should consider a practical range of options for service delivery and select the most appropriate, based on a robust and challenging process. The options might include: partnerships with other public, private and voluntary sector bodies, at both a strategic and local level. ODPM's Strategic Partnering Taskforce is

preparing a range of guidance on how to set up effective partnerships for delivering services⁸.

32. The joint Government/LGA response to the report by the Local Government Procurement Taskforce (the “Byatt Report”) endorsed the recommendation that local authorities should re-consider their procurement practices to ensure they are getting the maximum value from them. This principle holds good for NPAs and the Broads Authority, too. Successful procurement strategies are likely to be based on whole life cost considerations that include subsequent revenue implications, and not simply the lowest initial tender price. Procurement know-how has a critical role to play in best value and should be brought to bear at an early stage.

SECTION 5 – PLANNING IMPROVED PERFORMANCE

33. All effective organisations need to focus clearly on their priorities. They need to know their strengths and weaknesses, and take steps to improve any areas that are under-performing. Effective improvement planning requires them to report what they are doing to address their weaknesses, exploit new opportunities, and deliver better quality services.
34. Performance Plans will be the principal means by which NPAs and the Broads Authority communicate their priorities for improvement and their achievements in the previous year. They also provide opportunities to track improved service delivery and to share their experiences with others.
35. In recording the progress being made in delivering improved outcomes for local people, Performance Plans should address key priorities, including progress on agreed delivery targets, and summarise the NPAs’ and the Broads Authority’s improvement planning activities. Whilst there is a need for some contextual data, this should directly support improvement and delivery planning information.
36. The principal audiences for such Plans should be the staff and members of the authority, groups and organisations with an interest in its activities, regulatory bodies and central Government. Performance Plans are public documents and an important means of communicating with local people, and hence should be made available on NPA and the Broads Authority websites and in information centres.
37. Annex E of this guidance lists the issues that NPAs and the Broads Authority must include in their Performance Plans⁹. Requirements to include information that can be obtained from other sources have now been removed, and Annex E also incorporates

⁸ Structures for Partnership – Technical Notes, ODPM, September 2002. Available at http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_605702.pdf

⁹ The Local Government (Best Value) Performance Plans and Reviews Amendments (England and Wales) Order 603/2003 revokes articles 3 and 4 of SI 1999/3251 on the content of performance plans.

amendments that have previously been made to the timing and content of plans¹⁰ including:

- changing the deadline for publishing the plan from 31 March to 30 June;
- removing the requirement to summarise any assessment of the level, and way, in which an authority exercises its functions; and
- removing the requirement to set out the five-year period of reviews.

PERFORMANCE INDICATORS AND TARGETS

38. The Government has developed a set of national Best Value Performance Indicators (BVPIs) for 2003/04, which reflects the importance that is attached to service delivery at the local level and enable performance information to be compared between authorities¹¹. Additionally, NPAs and the Broads Authority are developing their own indicators to measure performance on local and national priorities. The Government welcomes moves to develop such indicators that are consistent across all NPAs and the Broads Authority.
39. In their Performance Plans, NPAs and the Broads Authority should report progress against BVPIs and other indicators used to measure performance on local and national priorities. They should also report progress being made towards the targets that they have set on all such indicators, and explain any significant differences between targets and actual performance.
40. The new deadline of end June for the publication of Performance Plans should allow NPAs and the Broads Authority to include out-turn data for the previous financial year rather than estimated data. This will make Performance Plans more robust statements of performance.

AUDIT OF THE PERFORMANCE PLAN

41. The requirement in Section 7 of the Local Government Act 1999 for Performance Plans to be audited remains, though the deadline has been changed from 30 June to 31 December. The requirements in Section 9 of the 1999 Act for authorities to respond within 30 working days to recommendations contained in auditors' reports also remains.

SUMMARY PERFORMANCE INFORMATION

42. People need access to clear and relevant information about the performance of NPAs and the Broads Authority. The Government therefore considers it is important that these bodies should continue to make a summary of their performance publicly available each year.
43. NPAs and the Broads Authority have discretion over the content of their summaries of performance, subject to the Code of Recommended Practice on Local Authority

¹⁰ SI 2002/305 and accompanying guidance notes.

¹¹ Chapter 14 of ODPM's 'Best Value Performance Indicators for 2003/04' sets out the BVPIs relevant to the NPAs and the Broads Authority.

Publicity. They also have discretion over how such summaries are presented and communicated. Research about attitudes to services provided by locally-based authorities suggests that people prefer receiving information in the form of newsletters or reports in local newspapers. Placing information on the internet alone emerged as the least popular option. This suggests that NPAs and the Broads Authority might wish to experiment with different methods of communicating performance information and should recognise that different groups will respond to different approaches.

44. The previous requirement for auditors to assess summaries as ‘fair and accurate’ reflections of Performance Plans no longer applies, though the provision of summary performance information may be taken into account in considering the quality of communication with local people and park visitors as part of future inspections.

SECTION 6 – SHARING GOOD PRACTICE AND LEARNING FROM OTHERS

45. The Government recognises that no single approach to performance improvement under best value fits all circumstances. It is important that the NPAs and the Broads Authority continue to learn from each other to share experiences and good practice. Annex F provides a list of sources of information and websites about best value and performance improvement which could help NPAs and the Broads Authority secure continuous improvement in their functions.

OFFICE OF THE DEPUTY PRIME MINISTER

DEPARTMENT OF THE ENVIRONMENT, FOOD AND RURAL AFFAIRS

THE STATEMENT OF SHARED PRIORITIES AND THE NATIONAL PSA FOR LOCAL GOVERNMENT

The Statement of Shared Priorities

Central and local government share a strong commitment to improving our local services through investment and reform. Local councils have a key contribution to make as a result of their local democratic accountability and their ability to integrate the work of different agencies and organisations at a local level.

By **working together** to improve delivery, we can ensure:

- we achieve faster progress towards ambitious targets;
- services reflect the different needs and aspirations of local communities and contribute to tackling deprivation; and
- the right technology and support are put in place to underpin successful delivery.

Across the board improvement is essential. We nevertheless need to focus our efforts on a number of key priorities:

- **raising standards across our schools** by helping all schools match the excellence of the best, sustaining improvement in primary schools, transforming secondary schools and ensuring that the school workforce has the capacity to support this;
- **improving the quality of life:**
 - **of children, young people and families at risk** by tackling child poverty, maximising the life chances of children in care or in need and strengthening protection for children at risk of abuse;
 - **of older people** by enabling them to live as independent lives as possible and avoid unnecessary periods in hospital;
- **promoting healthier communities and narrowing health inequalities** by targeting key local services – such as health, education, housing, crime and accident prevention – to match need; and the encouragement of healthy lifestyles;
- **creating safer and stronger communities** by working with the police and other local agencies to reduce crime and anti-social behaviour, strengthen community cohesion and tackle drug abuse;

- **transforming our local environment** by improving the quality, cleanliness and safety of our public space;
- **meeting local transport needs more effectively** by improving bus services and other forms of local transport and securing better access to jobs and services, particularly for those most in need; and
- **promoting the economic vitality of localities** by supporting business improvement, providing positive conditions for growth and employment, improving adult skills, helping the hardest-to-reach into work, and extending quality and choice in the housing market.

The National PSA for Local Government

The Public Service Agreement for Local Government seeks to ensure that central Government, local councils and other organisations work together as effectively as possible to secure tangible improvements in the services that matter most to local communities.

The PSA draws together targets from the PSAs of government departments where councils and their partners have a contribution to make in delivering the outcomes. It reflects the existence for the first time of a joint statement of shared public service delivery priorities agreed between Government and the LGA. The agreement therefore has fewer targets and is more focused, reflecting a shared understanding of the things that matter most to local communities.

[Note: An asterisk (*) at the end indicates that the target is a neighbourhood renewal floor target]

Performance Targets

1. Raise standards in English and maths so that:
 - by 2004 – 85% of 11 year olds achieve level 4 or above* and 35% achieve level 5 or above with this level of performance sustained to 2006; and
 - by 2006 – the number of schools in which fewer than 65% of pupils achieve level 4 or above is significantly reduced*.
2. Raise standards in English, maths, ICT and science in secondary education so that:
 - by 2004 75% of 14 year olds achieve level 5 or above in English, maths and ICT (70% in science) nationally, and by 2007 85% (80% in science);*
 - by 2007, the number of schools where fewer than 60% of 14 year olds achieve level 5 or above is significantly reduced;*
 - by 2007, 90% of pupils reach level 4 in English and maths by age 12.
3. By 2004 reduce school truancies by 10% compared to 2002, sustain the new lower level, and improve overall attendance levels thereafter.

4. Raise standards in schools or colleges so that:
 - between 2002 and 2006 the proportion of those aged 16 who get qualifications equivalent to 5 GCSEs at grades A* to C rises by 3 percentage points each year on average and in all schools at least 20% of pupils achieve this standard by 2004, rising to 25% by 2006*; and
 - the proportion of 19 year olds who achieve this standard rises by 3 percentage points between 2002 and 2004, with a further increase of 3 percentage points by 2006.
5. Improve the quality of life and independence of older people so that they can live at home wherever possible, by increasing by March 2006 the number of those supported intensively to live at home to 30% of the total being supported by social services at home or in residential care.
6. Improve life chances for children, including by:
 - improving the level of education, training and employment outcomes for care leavers aged 19, so that levels for this group are at least 75% of those achieved by all young people in the same area, and at least 15% of children in care attain five good GCSEs by 2004. (The Government will review this target in the light of a Social Exclusion Unit study on improving the educational attainment of children in care);
 - narrowing the gap between the proportions of children in care and their peers who are cautioned or convicted; and
 - reducing the under-18 conception rate by 50% by 2010*.
7. Increase the participation of problem drug users in drug treatment programmes by 55% by 2004 and by 100% by 2008, and increase year-on-year the proportion of users successfully sustaining or completing treatment programmes.
8. By 2010 reduce inequalities in health outcomes by 10% as measured by infant mortality and life expectancy at birth*.
9. Secure improvements to the accessibility, punctuality and reliability of local public transport (bus and light rail), with an increase in use of more than 12% by 2010 compared with 2000 levels.
10. Improve delivery and value for money of local services by:
 - introducing comprehensive performance assessments and action plans, and securing a progressive improvement in authorities' scores;
 - overall annual improvements in cost effectiveness of 2% or more; and
 - assisting local government to achieve 100% capability in electronic delivery of priority services by 2005, in ways that customers will use.

11. All local planning authorities to complete local development frameworks by 2006 and to perform at or above best value targets for development control by 2006, with interim milestones to be agreed in the Service Delivery Agreement. The Department to deal with called in cases and recovered appeals in accordance with statutory targets.
12. By 2010, bring all social housing into decent condition with most of this improvement taking place in deprived areas, and increase the proportion of private housing in decent condition occupied by vulnerable groups*.
13. Reduce crime and the fear of crime; improve performance overall, including by reducing the gap between the highest Crime and Disorder Reduction Partnership areas and the best comparable areas; and reduce:
 - vehicle crime by 30% from 1998-99 to 2004;
 - domestic burglary by 25% from 1998-99 to 2005;
 - robbery in the ten Street Crime Initiative areas by 14% from 1999-2000 to 2005; and maintain that level*.
14. Over the three years to Spring 2006, increase the employment rates of disadvantaged areas and groups, taking account of the economic cycle – lone parents, ethnic minorities, people aged 50 and over, those with the lowest qualifications, and the 30 local authority districts with the poorest initial labour market position, and significantly reduce the difference between their employment rates and the overall rate*.
15. In the three years to 2006, increase the employment rate of people with disabilities taking account of the economic cycle, and significantly reduce the difference between their employment rate and the overall rate. Work to improve the rights of disabled people and to remove barriers to their participation in society*.

HANDLING OF WORKFORCE MATTERS IN CONTRACTING

1. This Annex contains guidance to local authorities made under the provisions of Section 19(4) of the *Local Government Act 1999*. It covers:
 - background on Section 17 of the *Local Government Act 1988* and Section 19 of the *Local Government Act 1999*;
 - details of the Statutory Instrument, the *Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001* (SI 2001 No 909);
 - the context of best value and EC Procurement Directives, implemented in the UK by Public Procurement Regulations;
 - principles of good procurement practice; and
 - how workforce matters can be handled at the different stages of the contractual process.

Section 17 of the Local Government Act 1988

2. Section 17 of the *Local Government Act 1988* prevents authorities from introducing political or other irrelevant considerations into the procurement process. It achieves this by defining certain matters as ‘non-commercial’ and prohibiting authorities from having regard to these matters in the contractual process. The relevant matters, as set out in Section 17(5) of the 1988 Act, include:
 - ‘the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or other opportunities afforded to, their workforces’ (section 17(5)(a)); and
 - ‘the conduct of contractors or workers in industrial disputes between them’ (part of section 17(5)(d)).

Section 19 of the Local Government Act 1999

3. Under Section 19 of the *Local Government Act 1999* the Secretary of State may by Order provide, in relation to best value authorities, for a specified matter to cease to be ‘non-commercial’ for the purposes of Section 17 of the *Local Government Act 1988*. Section 19(4) of the *Local Government Act 1999* requires best value authorities to have regard to guidance issued by the Secretary of State in exercising a function regulated by Section 17 of the 1988 Act which is also the subject of an order made under the 1999

Act. This Annex constitutes guidance issued by the Secretary of State under Section 19(4) of the 1999 Act.

The Statutory Instrument

4. The Order made under Section 19 of the *Local Government Act 1999* provides, in respect of best value authorities, for the workforce matters described above to cease to be defined as ‘non-commercial’ matters for the purposes of Part II of the *Local Government Act 1988* to the extent that they are relevant to the achievement of best value, and also in circumstances where they are relevant for the purposes of a TUPE transfer. Workforce matters that are not directly relevant to the delivery of the service in question should not be taken into account (e.g. corporate training unrelated to the contract). The provisions of Section 17(5) of the 1988 Act that are not modified by the Order remain in force.

Guidance

5. This guidance sets out how workforce issues should be taken into account in local government tendering, where such matters are relevant to the achievement of best value and also in circumstances where the requirements of the *Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended* (TUPE) are to be applied.
6. The guidance is consistent with Procurement Regulations and with the achievement of best value. This guidance does not purport to be an authoritative guide to public procurement law, and best value authorities will continue to need to interpret the relevant legislation and seek legal advice as necessary. It will always be for authorities to decide, in the light of their own legal advice, how to handle these matters in each individual contract.

Modern procurement and best value

7. Under the *Local Government Act 1999* best value authorities are required to make arrangements to secure continuous improvement in the way in which they carry out their functions, having regard to a combination of economy, efficiency and effectiveness. Best value recognises that good procurement practice is essential if local government is to obtain real improvements to service cost and quality.

Workforce issues in the context of best value procurement

8. In taking account of the workforce issues that arise in procurement under best value, authorities will need to recognise:
 - the connection between service quality and handling of workforce issues. Good quality services depend on appropriately skilled and motivated workforces. Neglecting relevant workforce matters in order to drive down costs can have adverse effects on the desired quality and value for money of the service;
 - the necessity of achieving the appropriate balance between considerations of cost and quality. This will depend on the nature of the service to be provided and the requirements of the service users. It is unlikely that either a purely cost-driven or an unjustifiably expensive service will represent best value;

- that a transparent, open and fair procurement process is essential to attracting bids that provide the optimum combination of whole life cost and quality. All decisions should be based on objective criteria that are justifiable in terms of the performance of the service specified under the contract. Authorities should therefore have clear procurement strategies, procedures and written policies for evaluating tenders;
 - the emphasis on continuous improvement within best value and the implications for how strategic contracts in particular are structured;
 - the relevance of equal opportunities to the delivery of contracts;
 - the importance of handling TUPE well, so as to allay workforce reservations about transferring to new employers.
9. Procurement decisions by best value authorities should take proper account of workforce issues. Staff and unions should be involved in the option appraisal stage, and where there is a decision to outsource, staff and unions should be involved in the selection process and in the subsequent detailed work around the transfer. Where TUPE applies, the current employer is obliged to make information available to workers' representatives and the new employer and to consult workers' representatives on matters relating to the transfer.

EU procurement rules

10. This guidance covers all best value contracts, whether or not they are subject to the European Public Procurement legislation (e.g. below the relevant threshold or specifically excluded). It is consistent with EC Treaty based principles and EC Procurement Directives, as implemented in the UK by Public Procurement Regulations ("Procurement Regulations"). Contracting authorities will need to bear in mind that:
- if a best value contract is subject to the Procurement Regulations then the contracting authority must apply the relevant procedures;
 - if a best value contract is not subject to the Procurement Regulations then the contracting authority will still need to adhere to general obligations contained within the EC Treaty (e.g. not to discriminate on grounds of nationality and to treat all suppliers fairly) and to the relevant UK law. In particular contracting authorities should be mindful that Part II of the *Local Government Act 1988* as modified applies to all best value contracts.
11. Under the Procurement Regulations, workforce matters may come into consideration at the pre-qualification and tender evaluation stages of the contractual process. Under the Procurement Regulations the criteria for short-listing candidates are restricted to technical capacity, economic and financial standing and, for service contracts, ability. At the pre-qualification or selection stage, only workforce matters that affect the suitability of a candidate, as determined by those criteria, can be considered. Contract award criteria can be selected on the basis of either 'most economically advantageous tender' or 'lowest price'. For most best value contracts awarding on the basis of 'lowest price' is unlikely to be satisfactory. The best value option will involve other factors such as whole life cost, quality and service delivery. Contract award criteria therefore, should

not simply rely on price alone, unless the authority is satisfied that the specification for the work incorporates all these matters. In practice, these conditions are unlikely to be satisfied in all but the simplest contracts. Choosing the 'most economically advantageous' tender allows contracting authorities to consider more general matters, provided that these matters relate to the subject of the contract and provide benefit to the contracting authority and do not result in discrimination between contractors. Workforce matters can be taken into account in so far as they relate to contract award criteria that concern the performance of the contract (e.g. whole life cost, solution, risk sharing, transition, delivery etc). The general award criteria to be used must also be clearly stated.

Principles of good procurement

12. There is a range of advice and guidance on good procurement practice which best value authorities can draw on. Sources include the Office of Government Commerce (OGC) – an independent office of HM Treasury on procurement, the Treasury Taskforce guidance on PFI projects and guidance produced by the Public Private Partnership Programme (the 4ps) and the Improvement and Development Agency (IDeA). The joint DETR/Local Government Association (LGA) taskforce which undertook to review commissioning and procurement practice, under the chairmanship of Sir Ian Byatt, reported in June 2001 and the joint Government/LGA response was published in July 2002. The Review of Best Value also reported in May 2002.
13. Some common principles of good procurement apply in all circumstances:
 - the procurement process should give the contracting authority sufficient information to form a view of potential service providers' competence but without placing an undue burden on them;
 - requirements and criteria should be consistently and fairly applied. The Government recognises that firms/organisations of different sizes (by number of employees) may satisfy purchasers' requirements in different ways. This is consistent with the aim of Ministers to encourage Small and Medium Enterprises (SME's) and in particular, small community businesses. The Government's aim is to take proper account of the circumstances of small businesses and also to help local authorities discern the best contractor to carry out the work. Quality small businesses stand to benefit as much as larger organisations;
 - potential service providers should understand clearly from the outset what categories of information and service standards may be expected. They should be provided with adequate, accurate and timely information at all the relevant stages of the procurement process;
 - all potential service providers, including those that are part of the authority, must be subject to the same requirements to ensure fair competition and be treated equally throughout the procurement process;
 - care should be exercised to avoid taking too narrow a view of how the service might be delivered as this may limit the options and deter potential providers;

- in order to be able to demonstrate that procurement has been undertaken in an open and transparent manner, authorities should ensure that bidders are fully aware of the basis for bid evaluation and that all stages of the procurement process can be audited satisfactorily with reference to a clear, written policy on evaluating tenders and awarding contracts, which is publicly available and made available to all bidders.
14. The Treasury Taskforce Private Finance, Policy Statement No 4, *Disclosure of Information and Consultation with Staff and other Interested Parties*, sets out for central Government departments a strategy for the disclosure of information and consultation at various stages in the procurement process. This does not explicitly cover local government, which is why the 4ps published on 21 July 2000 specific guidance for local government: *Disclosure of information and consultation with staff and other interested parties*. This is available from the 4ps website at www.4ps.co.uk. The modifications made by the Order to Part II of the Local Government Act 1988 permit best value authorities to follow the 4ps guidance to the extent that it is relevant to the performance of a particular contract.
 15. Another helpful model is the ‘continuous dialogue’ approach adopted by the NHS. NHS Trusts have to follow a Code of Practice designed to involve staff and their representatives in a process of continuous dialogue during the PFI procurement process. This recognises that the role of trade unions is important in informing an NHS Trust’s decision but the correct balance must be struck between an informed, constructive dialogue and observing the Procurement Regulations process.

The approach to workforce matters: contract procedures

Introduction

16. Workforce matters will come into consideration at the pre-qualification, service specification, invitation to tender and tender evaluation stages of the contractual process. Ideally the service specification will be largely finalised before the pre-qualification stage, although in practice an outline specification will often be sufficient. This part of the Guidance sets out in detail how workforce matters can be taken into account in each of these stages.

Pre-qualification

17. For most contracts it is good practice to follow a pre-qualification process. The purpose of pre-qualification is to produce a shortlist of organisations that have the capability to perform the contract. Candidates who do not meet the minimum requirements can be rejected, and the contracting authority can then invite the best of those candidates, who do meet the minimum requirements, to tender.
18. At the pre-qualification stage the criteria for short-listing candidates are restricted to personal standing, economic and financial standing, technical capacity and for service contracts, ability. At this selection stage, only workforce matters that affect the suitability of a candidate as determined by those criteria should be considered.
19. For certain classes of contract, pre-qualification shortlisting could be simplified by using appropriately recognised databases such as *Constructionline*, although this does not

preclude the need to advertise the contract and follow other Procurement Regulations where relevant. Such a database can be used to identify contractors who are fitted to carry out the work and to ensure that there is a sufficient core of likely or possible tenderers. For all contracts a database can also reduce the burden on clients and contractors of issuing and responding to requests for information in any advertisement, including OJEC, or a pre-qualification questionnaire. However, the presence of a contractor on a database does not automatically mean that it should be invited to tender, nor can the absence of a contractor from a database preclude a potential contractor from consideration.

20. Procurement Regulations set out the criteria and the nature of the evidence for assessing potential bidder's suitability and general competence, including their economic and financial standing, technical capacity and, for service contracts, ability to perform a service taking into account skills, effectiveness, efficiency, experience and reliability. The criteria should be set out in the OJEC notice, and in any other advertisement or the tender documents. Alternatively, potential providers can be invited to complete a questionnaire. *HM Treasury CUP Guidance no. 59A* provides a standard pre-qualification questionnaire which it is recommended that authorities should use as a basis for their own questionnaires. The questionnaire is available from the Office of Government Commerce website at www.ogc.gov.uk.
21. In terms of information that will be relevant to the handling of workforce matters, authorities may wish to consider enquiring about the following matters:
 - experience and track record over the past three years (five years for works contracts) in providing similar services, and referees that can be called upon to vouch for performance (such references can be a particularly valuable source of information especially with well established contracts). Reference site visits can also be useful and provide reliable evidence of track records;
 - quality – details of accreditation, documentation and procedures, including health and safety management, environmental management, human resources procedures (staff management and employment practices), as relevant to the performance of the contract. This could include: background information on the organisation; average annual staffing for the previous three years; details of staff involved in the provision of the service in question; their qualifications and training; and the organisation's TUPE track record where relevant;
 - details of convictions for criminal offences or any acts of grave misconduct relating to the bidder's business or profession, including details of cases over the last three years where the bidder has been found by a Court or Tribunal to have breached the requirements of employment protection, including legislation on sex, race, disability, and health and safety matters. Details of any appropriate remedial actions taken should also be included.
22. This list is not intended to be exhaustive and there will be instances where it will be appropriate for contracting authorities to ask further detailed questions. The key test will always be relevance to the performance of the contract.
23. In some circumstances only the bidding entity and not the company as a whole should be evaluated with regard to workforce matters. The workforce of an associated or parent

company will, in some circumstances be irrelevant and information relating to it therefore, should not be requested. However, it is acceptable to use evidence produced by the associated or parent company to meet a request for information.

Service specification and conditions of contract

24. The purpose of the service specification and contract conditions is to define the contracting authority's objectives for the service to be provided and to set out the terms of the relationship between the authority and the contractor. The authority's objectives should take account of any statutory or regulatory requirements as well as the authority's own objectives for the contract and the views of service users.
25. Writing the appropriate level of quality into the specification should attract bids which incorporate suitable staff management practices. The successful bidder would need to attract and retain a suitably skilled and motivated workforce in order to achieve satisfactory delivery of the contract. A poor specification that fails to address quality aspects is likely to lead to poor handling of staff management practices and poor delivery of the contract and hence to fail service users.
26. As far as possible, requirements should be specified in terms of output and performance, rather than how the contractor is to go about providing the service. This will provide scope for innovation in service delivery. Care must be taken not to infringe the procurement rules, for example by referring exclusively to national standards or schemes without including the term 'or equivalent', or by failing to refer to relevant EU standards or equivalents where available. Authorities should avoid deterring private or voluntary sector organisations, or smaller firms and new entrants to the market, by specifying requirements that may not be necessary and which these types of organisations may have difficulty in meeting.

Invitation to tender

27. The invitation to tender documents, sent to those organisations being invited to bid, would normally consist of the covering letter, instructions to tender, background information, terms and conditions of contract, specification, price schedule and, where relevant, the Code of Practice on Workforce Matters (attached at Annex C). The invitation letter, or an annex to it, should set out the information that tenderers should include in their tender. This information should as appropriate include, for example, a transition plan for taking on staff under TUPE, training and development plans, as well as how the tenderer would meet specific service and quality issues.
28. Where appropriate, there should be a joint commitment between contracting authority and contractor to service improvement during the life of the contract, including an agreed training and development plan. A view should be taken on whether the existing skills of the workforce are appropriate to the requirements of the contract and, if not, it should be made clear in the invitation to tender what additional skill levels may be required and ask how tenderers propose to make up any skills gap.

Tender evaluation

29. The purpose of tender evaluation is to select the bid that meets the authority's requirements and delivers best value. It is essential that this is undertaken fairly and is

seen to be so. The evaluation should be systematic, objective and well documented to provide a clear and logical audit trail. The approach taken on workforce issues at tender evaluation will depend on the service to be delivered and the proposed relationship between the contractor and the contracting authority. Consideration of workforce matters at evaluation stage should be as a means of clarifying the tenderer's response to clearly expressed requirements set out in the service specification, including those in the Code of Practice, and should relate directly to the contractor's ability to deliver the service in question. Training policies and development of the workforce may be relevant to the delivery of the contract, for example, where it will be necessary for staff employed on the contract to keep abreast of any technical or other developments during its term.

30. Care should be taken that matters addressed at the pre-qualification stage are not revisited at the tender evaluation stage (unless a tenderer has a change of circumstances), where only matters relating to the deliverability of the contract should be considered.
31. Contracting authorities should ensure that all bidders, successful and unsuccessful, are debriefed as soon as possible after the contract has been awarded. Unsuccessful bidders should be told the outcome of the tender and why they were unsuccessful. Under the Procurement Regulations there is a mandatory timescale of 15 working days from a request to carry out a debrief. This will help to improve the market for future tendering exercises.

Contract management

32. Successful contract management depends on the soundness of the agreement made between the contracting authority and the contractor, and the effectiveness of their relationship (which also recognises the perspective of service users). Contract management should be conducted in a positive and co-operative fashion, in a way that is time and cost effective for both contractor and contracting authorities, which will in turn be supportive for staff. Heavy handed and over-detailed monitoring arrangements are likely to lead to distrustful relations and should be avoided. Supplier development, partnering and relationship management initiatives and other incentives can be important in building a mutually beneficial and fruitful partnership, where relevant, and proportionate, to the contract.
33. Monitoring of workforce-related issues should be concerned with those matters identified as relevant to the performance of the contract, as well as to statutory and regulatory requirements, and should fit into the normal reporting regime to avoid unnecessary burdens on contractors. Monitoring of the contractual requirements should be the same between in-house and external providers although in-house providers may have additional corporate requirements to meet.
34. A positive approach to contract management will not only have direct benefits for the service being provided: it will also give contractors the opportunity to develop or enhance their reputation as a good employer, providing good quality services. This will raise the quality of the market and will in turn be valuable to the contracting authority in future tendering exercises.

Health and safety

35. Best value authorities have a statutory duty under the *Health and Safety at Work etc Act 1974* with regard to the health and safety of their employees and others who may be affected by their undertaking. This duty cannot be delegated even where the work activity which forms part of the undertaking is contracted out. Authorities are required by legislation to take reasonable steps to satisfy themselves that contractors have the ability and resources for managing health and safety in relation to the work being carried out. In assessing such arrangements, authorities may request details of a contractor's health and safety management system in respect of the work concerned. Consideration of these issues at the pre-qualification stage, in so far as they relate to track record, quality management, criminal offences, is covered in paragraph 21. No additional, non-statutory requirements should be placed on external providers that are not placed on in-house providers supplying the same or a comparable service. After a contract has been awarded, authorities should have monitoring arrangements in place to ensure that any risks arising from the work contracted out are being managed properly. The level of monitoring necessary will depend on the hazards and risks associated with the work.

Equal opportunities

36. Under the Statutory Instrument best value authorities may consider workforce matters where they relate to the achievement of best value and the delivery of the contract. Best value works within the existing legal framework and authorities have to observe the requirements of all other legislation on equality. In particular, the *Race Relations Act 1976* as amended by the *Race Relations (Amendment) Act 2000* gives authorities a strengthened legal duty to eliminate race discrimination, promote equality of opportunity and good race relations. Procurement policy may be relevant to this duty: indeed the Commission for Racial Equality (CRE) consider it is likely to be so relevant.
37. Where appropriate, changes in policy should therefore be assessed for adverse impact on race equality, and existing policies monitored. If goods, works or services are provided by external suppliers, authorities retain responsibility for meeting their duty, and where the contract is relevant to the duty, authorities should ensure race equality is adequately considered in the contract to enable them to meet their duty. It will be for the NPAs and the Broads Authority to decide in the light of their own legal advice how far they should bring equal opportunities into the contracting process. This guidance suggests ways in which the treatment of equal opportunities may be relevant to each stage of the contracting process. The CRE has produced a detailed guide *Race Equality and Procurement in Local Government* (CRE July 2003) to assist authorities in meeting their race equality requirements.

Pre-qualification stage

38. Best value authorities may take account of the practices of potential service providers in respect of equal opportunities (e.g. race, gender, disability, religion, age, and sexual orientation) where it is relevant to the delivery of the service under the contract.
39. Contracting authorities should during the pre-qualification stage seek information as to the general competence, track record, details of criminal offences and acts of grave misconduct (as set out in the Procurement Regulations) including in relation to

legislation on sex, race and disability. Contractors may be excluded from the tendering exercise if they have been convicted of a criminal offence or have committed an act of grave misconduct.

40. At pre-qualification this should provide sufficient information to make a proper assessment as to whether an individual contractor should be invited to tender. Best value authorities should not make requirements of potential contractors that exceed what is permitted under the Procurement Regulations and they should be careful to strike a balance in their approach to seeking information. Neither will they wish to leave themselves vulnerable to the risk of poor performance during the life of the contract, but equally they should avoid making requests for information that are disproportionate to those risks and not strictly relevant to the contract. Where the contract is highly relevant to the duty to promote race equality it will be necessary to seek information to check capacity to deliver the contract in terms of race equality, covering both workforce matters and where relevant service delivery.

Race legislation

41. Section 71 of the *Race Relations Act 1976* places a duty on local authorities to ensure that their various functions are carried out with 'due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity, and good relations, between persons of different racial groups'. Section 2 of the *Race Relations (Amendment) Act 2000* replaces Section 71 of the 1976 Act. The intention of the new general duty on specified public authorities, which includes the NPAs and the Broads Authority, is to promote race equality and to avoid discrimination before it occurs.
42. In recognition of the duty at Section 71 of the 1976 Act, before it was amended, Section 18 of the *Local Government Act 1988* already provides, in respect of race relations, for local authorities to be able to ask approved written questions and include terms in a draft contract if it is reasonably necessary to do so to secure compliance with the duty. Six approved questions were set out in *Department of the Environment Circular 8/88*¹². Authorities will continue to be able to ask the six questions specified in Circular 8/88 although they are no longer restricted to these six questions as the sole means of taking account of racial equality. In addition, and where relevant to the contract, and for the purposes of achieving best value, the authority will be able to ask some further questions in relation to racial equality, examples of the questions which may be asked and model contract clauses are contained in the guide produced by the Commission for Racial Equality, *Race Equality and Procurement in Local Government*. Consideration of these issues at the pre-qualification stage, in so far as they relate to track record, quality management, criminal offences, is covered in paragraph 21.

Invitation to tender and service specification

43. Services that involve regular contact between providers and the users of the service, or the wider community, may frequently require of providers specific attributes with regard to fair treatment and equal opportunities. Authorities should address such considerations fully in their contract specifications in a way that does not prejudice fair

¹² *Local Government Act 1988 – Public Supply and Works Contracts: Non-Commercial Matters*, Joint Circular from the Department of the Environment and the Welsh Office 6 April 1988.

competition or best value considerations. For example, where the service requires particular qualities in the staff, contracting authorities should address these matters in output terms as part of the specification (i.e. how the bidder would meet the needs of a particular community group), not in terms of the composition of the contractor's workforce which in itself is no guarantee of quality of service.

44. The authority may require a contractor's staff, when those staff are employed on the contract, to abide by any staffing policies, including those on equal opportunities, which are in operation where the work is being carried out.

Tender evaluation

45. Best value authorities and private and voluntary organisations alike are subject to the requirements of equalities legislation (e.g. the *Sex Discrimination Act 1975*, the *Race Relations Act 1976* and the *Disability Discrimination Act 1995*). However, under the *Race Relations Act 1976* whilst private and voluntary organisations are prohibited from discriminating, they do not have the same legal duty as public authorities to promote race equality. All sectors are directly subject to the *Human Rights Act 1998* if they are exercising a function of a public nature. At the evaluation stage, authorities should assess how, on the basis of the bid, the tenderer will deliver the service and meet the needs of service users. The contracting authority must also satisfy itself that the bid will meet legal requirements placed on the authority, and those which are placed on the contractor in respect of equal opportunities and human rights legislation.
46. In view of their duties under the legislation on equality, best value authorities should also consider how they can promote good practice in equal opportunities outside the contractual process. For example, authorities can work with commercial partners to promote equality in employment and raise awareness of how the application of equal opportunities to staff recruitment and management can bring commercial and other benefits.

CODE OF PRACTICE ON WORKFORCE MATTERS IN LOCAL AUTHORITY SERVICE CONTRACTS

Workforce matters under best value

1. This document sets out an approach to workforce matters in local authority service contracts which involve a transfer of staff from the local authority to the service provider, or in which staff originally transferred out from the local authority as a result of an outsourcing are TUPE transferred to a new provider under a retender of a contract. This Code will form part of the service specification and conditions for all such contracts.
2. The Code recognises that there is no conflict between good employment practice, value for money and quality of service. On the contrary, quality and good value will not be provided by organisations who do not manage workforce issues well. The intention of the authority is therefore to select only those providers who offer staff a package of terms and conditions which will secure high quality service delivery throughout the life of the contract. These must be sufficient to recruit and motivate high quality staff to work on the contract and designed to prevent the emergence of a 'two-tier workforce', dividing transferees and new joiners working beside each other on the same contracts.
3. Contractors who intend to cut costs by driving down the terms and conditions for staff, whether for transferees or for new joiners taken on to work beside them, will not provide best value and will not be selected to provide services for the council. However, nothing in this Code should discourage local authorities or contractors from addressing productivity issues by working with their workforces in a positive manner to achieve continuous improvement in the services they deliver.

Treatment of transferees

4. In its contracting-out of services, the local authority will apply the principles set out in the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector and the annex to it, A Fair Deal for Staff Pensions. The service provider will be required to demonstrate its support for these principles and its willingness to work with the local authority fully to implement them.
5. The intention of the Statement is that staff will transfer and that TUPE should apply, and that in circumstances where TUPE does not apply in strict legal terms, the principles of TUPE should be followed and the staff involved should be treated no less favourably than had the Regulations applied. The Government has now indicated an intention to legislate to make statutory within local government the provisions in the Cabinet Office Statement.

6. The annex to the Statement requires the terms of a business transfer specifically to protect the pensions of transferees. Staff must have ongoing access to the Local Government Pension Scheme or be offered an alternative good quality occupational pension scheme, as defined in the annex to the Cabinet Office Statement, under which they can continue to earn pension benefits through their future service. There must also be arrangements for handling the accrued benefits which staff have already earned.

Treatment of new joiners to an outsourced workforce

7. Where the service provider recruits new staff to work on a local authority contract alongside staff transferred from the local authority, it will offer employment on fair and reasonable terms and conditions which are, overall, no less favourable than those of transferred employees. The service provider will also offer reasonable pension arrangements (as described at paragraph 10 below).
8. The principle underpinning the provisions of paragraph 7 is to consider employees' terms and conditions (other than pensions arrangements which are dealt with in paragraph 10) in the round – as a 'package'. This Code does not prevent service providers from offering new recruits a package of non-pension terms and conditions which differs from that of transferred staff, so long as the overall impact of the changes to this package meets the conditions in paragraph 7. The aim is to provide a flexible framework under which the provider can design a package best suited to the delivery of the service, but which will exclude changes which would undermine the integrated nature of the team or the quality of the workforce.
9. The service provider will consult representatives of a trade union where one is recognised, or other elected representatives of the employees where there is no recognised trade union, on the terms and conditions to be offered to such new recruits. The arrangements for consultation will involve a genuine dialogue. The precise nature of the arrangements for consultation is for agreement between the service provider and the recognised trade unions. The intention is that contractors and recognised trade unions should be able to agree on a particular package of terms and conditions, in keeping with the terms of this Code, to be offered to new joiners.

Pension arrangements for new joiners to an outsourced workforce

10. The service provider will be required to offer new recruits taken on to work on the contract beside transferees one of the following pension provision arrangements:
 - membership of the local government pension scheme, where the employer has admitted body status within the scheme and makes the requisite contributions;
 - membership of a good quality employer pension scheme, either being a contracted out, final-salary based defined benefit scheme, or a defined contribution scheme. For defined contribution schemes the employer must match employee contributions up to 6%, although either could pay more if they wished;
 - a stakeholder pension scheme, under which the employer will match employee contributions up to 6%, although either could pay more if they wished.

On a retender of a contract to which this Code applies the new service provider will be required to offer one of these pensions options to any staff who transfer to it and who had prior to the transfer a right under the Code to one of these pension options.

Monitoring arrangements

11. Throughout the length of the contract, the service provider will provide the local authority with information as requested which is necessary to allow the local authority to monitor compliance with the conditions set out in this Code. This information will include the terms and conditions for transferred staff and the terms and conditions for employees recruited to work on the contract after the transfer.
12. Such requests for information will be restricted to that required for the purpose of monitoring compliance, will be designed to place the minimum burden on the service provider commensurate with this, and will respect commercial confidentiality. The service provider and the local authority will also support a central Government-sponsored review and monitoring programme on the impact of the Code, drawn up in consultation with representatives of local government, contractors, trade unions and the Audit Commission and will provide information as requested for this purpose. Such requests will follow the same principles of proportionality and confidentiality.

Enforcement

13. The authority will enforce the obligations on the service provider created under this Code. Employees and recognised trade unions should, in the first instance, seek to resolve any complaints they have about how the obligations under this Code are being met, directly with the contractor. Where it appears to the local authority that the service provider is not meeting its obligations, or where an employee of the contractor or a recognised trade union writes to the authority to say that it has been unable to resolve a complaint directly with the contractor, the local authority will first seek an explanation from the service provider. If the contractor's response satisfies the local authority that the Code is being followed, the local authority will inform any complainant of this. If the response does not satisfy the local authority, it will ask the service provider to take immediate action to remedy this. If, following such a request, the service provider still appears to the local authority not to be complying with the Code, the local authority will seek to enforce the terms of the contract, which will incorporate this Code. In addition, where a service provider has not complied with this Code, the local authority will not be bound to consider that provider for future work.
14. The contract shall include a provision for resolving disputes about the application of this Code in a fast, efficient and cost-effective way as an alternative to litigation, and which is designed to achieve a resolution to which all the parties are committed. The contractor, local authority and recognised trade unions or other staff representatives, shall all have access to this 'alternative dispute resolution' (ADR) process. The Government has asked local authorities, trade unions and contractors to come forward with an ADR mechanism which is consistent with this Code, for inclusion in contracts. In the event that within a specified timescale the parties are unable to agree, the government will publish as an annex to this Code its proposed ADR mechanism.
15. Local authorities will have a duty in their performance plans to certify that individual contracts comply with best value requirements, including workforce requirements in

this Code and the accompanying statutory guidance. The Audit Commission's appointed auditor will through the audit of the Performance Plan:

- provide assurance that councils are meeting their statutory duty of certifying their compliance with the Code and that they have put in place adequate arrangements to ensure compliance;
 - receive information from third parties about any concerns with the council's compliance;
 - consider the information received and decide how to deal with those concerns;
 - where the subject of any concern is of material significance (e.g. large contracts or where a major breach of this Code is alleged) the auditor will decide on a proportionate response to investigate the concerns.
16. If, as a result of investigations, the auditor has concerns about an authority's compliance with this Code, they may exercise their appropriate statutory powers, which include:
- requiring the authority to respond publicly to a written recommendation;
 - recommending that the Secretary of State should give a direction under Section 15 of the Local Government Act 1999.

The Audit Commission will issue guidance to councils and auditors on how these matters will be dealt with.

Sub-contractors

17. This Code sets out procedures for handling matters between the local authority and a primary contractor. Where the primary contractor to provide services to the local authority transfers staff originally in the employ of the local authority to a sub-contractor in consequence of the terms of the primary contractor's obligations to the local authority, the primary contractor will be responsible for the observance of this Code by the sub-contractor.

Operation of this Code

18. The Government will monitor the operation of this Code and consult with representatives of local government, trade unions, contractors and the Audit Commission to assist in this process.

VALUING THE WORKFORCE

1. Best value cannot be delivered without a well trained and motivated workforce. This is the responsibility of all NPAs and the Broads Authority, both as employer and, where appropriate, as client. Full, effective and continuous communication with staff is important.
2. Where there is a Transfer of Undertakings (Protection of Employment) Regulations (TUPE) transfer, NPAs and the Broads Authority need to provide bidders with accurate and timely information on all relevant matters. Bidders also need to be able to demonstrate that they understand and can manage their obligations under TUPE.
3. Local authorities should consult their employees and recognised trade unions or staff representatives throughout, with full disclosure of information on all matters affecting the workforce. Contractors selected to provide services should also have policies which ensure good communication and consultation with the workforce on key issues following a transfer. Annex B sets out in more detail the way in which workforce matters should be considered at each stage of the contracting process. Employees' pensions entitlements should also be secured in staff transfers.
4. The Government's Review of Best Value¹³ last year reaffirmed the link between quality services under best value and good employment practices, and recommended ways to ensure that all contractors to local authorities have employment practices that will secure high quality delivery throughout the life of a contract. In particular, it identified a need to ensure that the quality of a workforce transferred to a provider in an outsourcing exercise would be enhanced and not undermined during the period of the contract.
5. In response to the Review, the Government announced a package of measures for local authorities in England that will meet the need under best value to protect and build on the quality of the workforce. Key measures include:
 - better protection of the terms and conditions for transferred staff. The Local Government Act 2003¹⁴ provides powers for Ministers to ensure that contracting exercises by best value authorities in England and Wales, and relevant authorities in Scotland, are conducted on the basis that staff transfer and that their terms and conditions will be preserved unless there are exceptional circumstances. It also ensures that local authority transferees will be offered either retention of the Local Government Pension Scheme or a broadly comparable scheme.

¹³ On 1 October 2001 the then Secretary of State for Transport, Local Government and the Regions, Stephen Byers, announced a review of Best Value for local authorities in England. The conclusions of the review were published on 14 May 2002, further details are available on the ODPM website at www.odpm.gov.uk

¹⁴ Link to the Local Government Act 2003 available at <http://www.hms0.gov.uk/acts/acts2003/20030026.pdf>.

- fairness for new joiners taken on to work on such service contracts beside transferred workforces. NPAs and the Broads Authority are expected to include the Code of Practice at Annex C in service contracts.

Transferred staff

6. The Cabinet Office Statement provides that contracting exercises (including retendering) should be conducted on the basis that TUPE should apply unless there are genuinely exceptional reasons for it not to do so, for example where the activity is essentially new or a one-off project, or where the features of the service are significantly different. The Statement recommends that at the earliest appropriate stage in the contracting exercise, the contracting authority should state that staff should transfer and this should normally have the effect of causing TUPE to apply. The Government expects all authorities to follow this policy, which also provides that in circumstances where TUPE may not strictly apply in legal terms, the principles of TUPE should be followed and the staff should be treated no less favourably than they would have been had the regulations applied. Whether TUPE applies is however a matter of law, to be decided on the facts of each case and legal advice should be sought to confirm the applicability of TUPE in individual cases.
7. Provisions in the Local Government Act 2003, will ensure principles set out in the Cabinet Office Statement, allow the Secretary of State to make directions to best value authorities to secure compliance with the Statement and accompanying HM Treasury guidance, including protection of pension rights of transferring staff.
8. There are two ways of achieving the pension protection. In the case of employees who are eligible for membership of the Local Government Pension Scheme (LGPS), there is the option for the new employer, if they wish, to seek admitted body status within the LGPS. Transferred staff will then continue to have access to that pension scheme for their future service, to ensure continuity of pension accrual.
9. Where staff are not offered this option, they must be offered membership of an alternative scheme by the new employer which is actuarially certified as being 'broadly comparable' with the public service scheme (as defined in the Statement). Where the transfer to a broadly comparable scheme is offered, the relevant authority must be in a position to offer bulk transfer terms to the scheme provided by the new employer. Individuals are not required to be party to such a transfer, which should be sufficient to provide service credit in the new employer's scheme on a day for day basis (or such equivalence determined by actuaries taking account of differences between schemes) for those who wish to transfer their accrued rights from the LGPS.
10. Negotiations to establish fair treatment in respect of pensions for transferring staff as part of business transfers should be based from the outset of the procurement process on a careful identification of the appropriate pension options, the full costs, liabilities and actual transferee data. Throughout this whole process, local authorities should ensure that staff are treated fairly, trades unions are informed and that the operation is open and transparent.

New joiners

11. The Code of Practice should be applied where a best value authority transfers its employees to a private or voluntary sector partner as part of a contract to provide any service to the authority. It will ensure that new joiners to the transferred-out workforce are offered terms and conditions which are, overall, no less favourable than those of the transferred staff. This 'no less favourable' formula does not apply to pensions, but under the Code new joiners must also be offered a reasonable pension provision, which may be either membership of the LGPS, membership of a good quality employer pension scheme or membership of a stakeholder pension scheme with an employer contribution.
12. The Code will ensure that the provision of quality services is not undermined by poor employment practices in respect to new joiners. The Government is clear that partnerships with the private and voluntary sectors should be selected where these will drive up service performance standards, not in order to drive down staff terms and conditions.
13. The Code will not prevent best value authorities or contractors from addressing productivity issues by working with their workforces in a positive manner to achieve continuous improvement in the services they deliver. Whilst the overall package must be no less favourable, this does not mean that its elements cannot be changed. Indeed, a contractor would be unlikely to provide best value if it did not consider the various elements that make up the terms and conditions and ensure that it provided a package best suited to delivering an improved service. It will therefore be important for the NPAs and the Broads Authority to discuss with contractors, from an early point in the procurement process, how they intend to recruit and motivate staff under the Code in order to raise service standards.
14. In giving effect to these statutory requirements, the Government recognises that NPAs and the Broads Authority, might not be frequently, or heavily, engaged in outsourcing functions, but where they are, the above guidance should be followed.

PERFORMANCE PLAN REQUIREMENTS

1. The following requirements are issued under Section 6 of the Local Government Act 1999. They should be read in conjunction with paragraphs 33 to 41 of this guidance.
2. All NPAs in England and the Broads Authority must include the following items in their Performance Plans¹⁵:
 - (a) a brief summary of the authority's strategic objectives and priorities for improvement. This should be drawn from its overall vision, and corporate planning processes and be consistent with Defra's aim's and objectives.
 - (b) progress in, and plans for, delivering local and national priorities including:
 - progress over the past year in implementing improvement measures, including those identified in best value reviews and in audit and inspection recommendations;
 - outcomes from, or impact of, improvement measures implemented over the past year;
 - plans for improvement over the current year, and where appropriate future years. This should include best value review and inspection programmes for the current year and, if available, future years¹⁶.
 - (c) details of past, current and planned performance against local and national performance indicators, including:
 - actual performance over the past year on:
 - all Best Value Performance Indicators that apply to the authority, and
 - any local indicators set by the authority to measure performance in priority areas;
 - details of the performance targets for the past year as set out in the last year's Performance Plan for the indicators referred to above;
 - targets for the current year for the indicators referred to above. These must have regard to nationally set standards and floor targets.

¹⁵ References to the "current year" relate to the financial year in which the Performance Plan is published.

¹⁶ As at the time of publication.

- (d) A summary of financial information¹⁷ under the function headings used by the NPAs and the Broads Authority in their Best Value Performance Plans. This should record budgeted and actual (or estimated) income and expenditure for the past two financial years, with supporting text where necessary, and provide a brief explanation of any significant variation. It should also include planned income and expenditure for the current year and the following year.
3. Additionally, in their Performance Plans published by June 2004, and in subsequent years, all NPAs and the Broads Authority will be required to include a brief statement on contracts. This should state and certify that all individual contracts awarded during the year which involve a transfer of staff comply, where applicable, with the requirements in the Code of Practice on Workforce Matters in Local Authority Service Contracts (Annex C to this guidance).

¹⁷ CIPFA's *Best Value Accounting – Code of Practice* provides authorities with accounting guidance that facilitates the comparability of local authority financial information. The Code helps authorities comply with the provisions of Sections 5 and 6 of the 1999 Act and the Orders made under these sections, and is recognised as proper practice for all authorities.

FURTHER INFORMATION

Legislation and other statutory documents:

(available from the Office of the Deputy Prime Minister's website – see below)

- Local Government Act 1999: Part 1 Best Value.
- Statutory Instrument: 1999 No 3251 – Local Government, England & Wales : The Local Government (Best Value) Performance Plans and Reviews Order 1999.
- Statutory Instrument: 2001 No 909 The Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001.
- Statutory Instrument: 2002 No 305 Local Government, England & Wales : The Local Government (Best Value) Performance Plans and Reviews Amendment and Specified Dates Order 2002.
- Statutory Instrument: Local Government, England & Wales: The Local Government (Best Value) Performance Indicators and Performance Standards Order 2003.
- Statutory Instrument 2003 No 662: Local Government, England & Wales: The Local Government (Best Value) Performance Plans and Reviews Amendment (England and Wales Order 2003.
- Best Value Performance Indicators 2003/2004.

Useful Website Addresses

Department / Organisation	Website address	Type of information available
Office of the Deputy Prime Minister	<p>http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_locgov_605468.hcsp</p> <p>http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentserver/template/odpm_index.hcst?n=1946&1=3</p> <p>http://www.bvpi.gov.uk</p> <p>http://www.local.odpm.gov.uk/research/bestvalue.htm</p> <p>http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentserver/template/odpm_index.hcst?n=2117&1=2</p> <p>http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentserver/template/odpm_index.hcst?n=1344&1=3</p>	<ul style="list-style-type: none"> • Modern Local Government: In Touch with the People 1998 [CM 4014] (White Paper) • Strong Local Leadership–Quality Public Services [CM 5237] 2001 (White Paper) • Best Value Performance Indicators • Research findings from long–term evaluations of the operation of best value. • Information on the work of the Strategic Partnering Taskforce and Supporting Strategic Service Delivery Partnerships in Local Government • Best Value in Housing – links to information leaflets, the Best Value in Housing framework and research related to Best value in Housing
Department for Environment, Food and Rural Affairs	<p>http://www.defra.gov.uk/environment/waste/strategy/guidance/bestvalue/index.htm</p> <p>http://www.defra.gov.uk/</p>	<ul style="list-style-type: none"> • Best Value and Waste Management Statutory Guidance for waste collection and waste disposal authorities • Our Countryside: ‘The Future’ A fair deal for rural England 2000 [CM 4909] (White Paper)
Audit Commission	<p>http://www.audit-commission.gov.uk/home/</p> <p>http://www.bvpps.audit-commission.gov.uk/System/search/default.asp</p>	<p>Various publications on Best Value and Improvement including:</p> <ul style="list-style-type: none"> • Learning from Inspection Audit and Research series • Performance Indicators • Inspection Reports • Best Value Performance Plan Library
Improvement and Development Agency	<p>http://www.idea.gov.uk/</p>	<p>Various Best Value and Improvement publications and guidance including:</p> <ul style="list-style-type: none"> • Best Value Essentials; • Best Value Reviews; • Joining up Best Value; • Making Best Value Work; • Making Performance Management Work; • Procurement;

Useful Website Addresses

Department / Organisation	Website address	Type of information available
		<ul style="list-style-type: none"> • Toolkits and research – including ‘Connecting with Communities’ – IdeA toolkit on communications; • IDEa Knowledge – interactive website; • Improvement helpline.
Local Government Association	http://www.lga.gov.uk/home.asp	<ul style="list-style-type: none"> • Various publications on Best Value
Employers' Organisation for Local Government	http://www.lg-employers.gov.uk/index.html	<ul style="list-style-type: none"> • Achieving Best Value through people: a toolkit • Research and surveys on Best Value • Guidance on pensions and procurement • Service delivery and quality surveys • Guidance on mainstreaming equalities into Best Value • Mainstreaming racial equality objectives into Best Value
Planning Officers Society	http://www.planningofficers.org.uk/pos/index.htm	<ul style="list-style-type: none"> • Planning Officers Society's Guide to Best Value and Planning

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