



Ministry of Housing,
Communities &
Local Government

Statutory intervention and inspection

A guide for local authorities



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1. Introduction

This short guide is intended to provide local authorities in England with practical guidance on statutory inspection or intervention. It has been developed in response to requests, in particular, from the Public Accounts Committee¹, for greater transparency for local authorities on the intervention process. Other guides are being developed and will be published in due course covering, in particular, alternative, non-statutory approaches to support for local authorities and lessons learnt from existing interventions.

Powers for the Secretary of State to intervene in a local authority were introduced by Part I of the Local Government Act 1999 (as amended) which also put in place the best value duty. Since 2010, the Secretary of State has intervened formally in 4 local authorities (Doncaster MBC, LB of Tower Hamlets, Rotherham MBC and Northamptonshire CC). Detailed information and documents associated with interventions can be found on gov.uk. From this list of interventions, it will be clear that, in previous interventions by MHCLG, the Secretary of State has only used the powers in the legislation in very exceptional circumstances and very much as a last resort. We at the Ministry of Housing, Communities and Local Government (MHCLG) envisage this continuing to be the case.

This guide should not be taken as a definitive guide to the interpretation of the legislation – that is for the Courts. It also does not cover forms of intervention (such as an Ofsted inspection or a non-statutory intervention) which fall outside the powers provided in the Local Government Act 1999, or action relating to the devolved administrations. However, it attempts to provide practical information on the process and legislation underpinning it, particularly focusing on what a local authority undergoing a best value inspection or statutory intervention can expect throughout the process.

The guide is designed to be a living document which is updated as we learn lessons from future interventions. In this spirit, we would welcome suggestions from local authorities as to omissions or additions. Any comments should be made to mhclgcorrespondence@communities.gov.uk

¹ Local Government Governance and Accountability – the Public Accounts Committee, 2019

2. Overview

This section provides a summary of the processes involved in commission and carrying out statutory inspections and interventions.

2.1. Before an intervention

2.1.1. The relationship between central and local government in England

Local authorities are democratically elected bodies which operate in accordance with a range of statutory requirements. They are independent of central government. But undergo external scrutiny from their external auditor and a number of other government bodies, such as OFSTED and the Local Government and Social Care Ombudsman. They are also required to have internal arrangements for challenge through their statutory scrutiny arrangements. Most importantly, they answer to local residents through local elections and legal mechanisms such as judicial review. In normal circumstances the Government would expect the sector to provide support to the authorities to help them improve through a mixture of guidance, mentoring and peer support. The Government provides funding to finance a programme of work of this type.

2.1.2. Assessing risk

The Ministry of Housing, Communities and Local Government's ("MHCLG") annual Accountability System Statement for Local Government explains the system of checks and balances and reflects the Permanent Secretary's role as Accounting Officer. In support of that role, MHCLG receives data from the local authorities, including in relation to finances, housing, homelessness, planning, and pensions. This data is used by MHCLG alongside soft intelligence about the sector, publicly published documents (for instance, local authority Council and Cabinet papers), audit reports (which should include reporting on governance and best value), and from other government departments (particularly the Department for Education and the Department of Health and Social Care) to identify and engage with local authorities who are assessed to be at risk of failing in their "best value" duty.

2.1.3. Best value

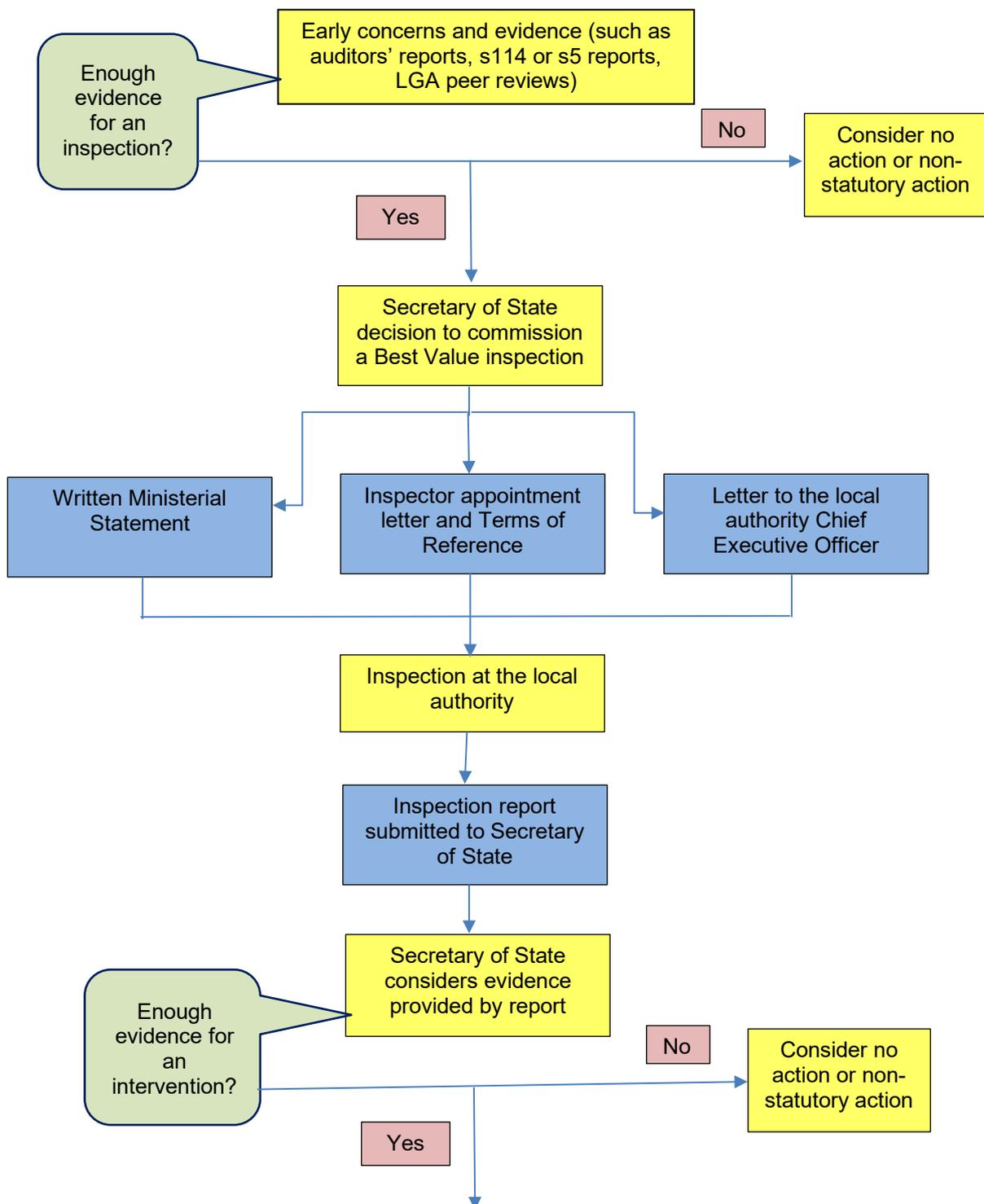
The concept of a "best value" duty with which local authorities must comply in exercising its functions is set out in section 3 of the Local Government Act 1999 ("the 1999 Act"). More detail about the legislation is provided in section 3 of this guide. However, for the purposes of this guide, the relevant parts of the legislation are contained in sections 10 to 16 of the 1999 Act which provide the Secretary of State with powers to appoint a person to inspect an authority and to intervene, taking over its functions, where there is evidence that it is failing in its compliance with the best value duty.

2.2. The process

2.2.1. A pictorial outline

Where the Secretary of State has concerns that an authority is failing to carry out its functions in compliance with its best value duty, the legislation provides significant powers for the Secretary of State to inspect and, subject to there being sufficient evidence, to intervene in that authority. The processes involved are summarised in Figure 1 below and in the bullets set out in subsection 2.2.2. More detail of each stage of the process is provided in sections 4-6 of this guide. Each intervention is different. This flow chart reflects what has happened in previous interventions. Other approaches, such as the issuing of Directions to provide for specific actions, rather than the appointment of Commissioners, may emerge from a best value inspection.

Figure 1 – inspection and intervention: expected process outline



Continued next page.

Figure 1 – inspection and intervention: process outline (continued)

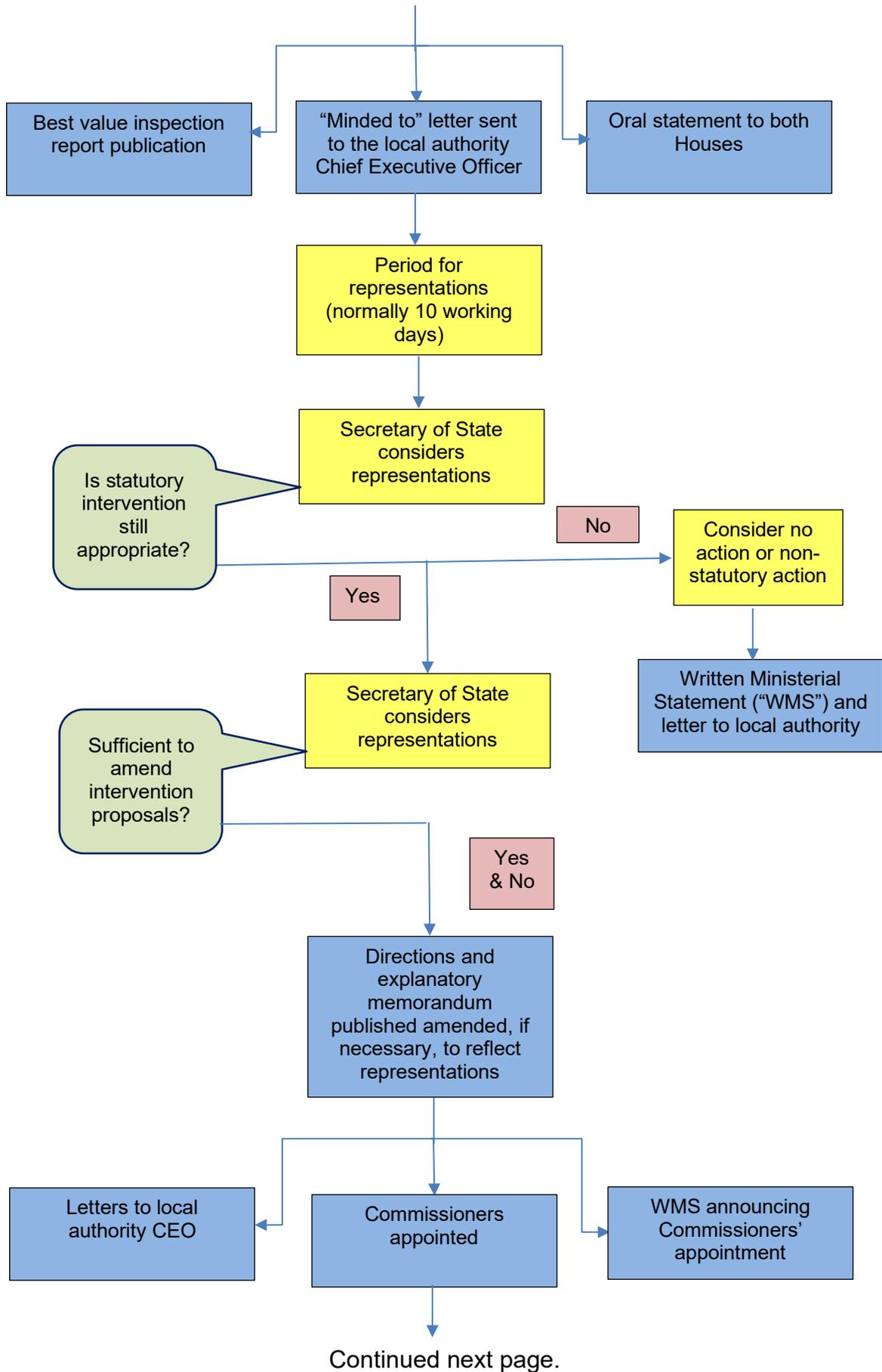
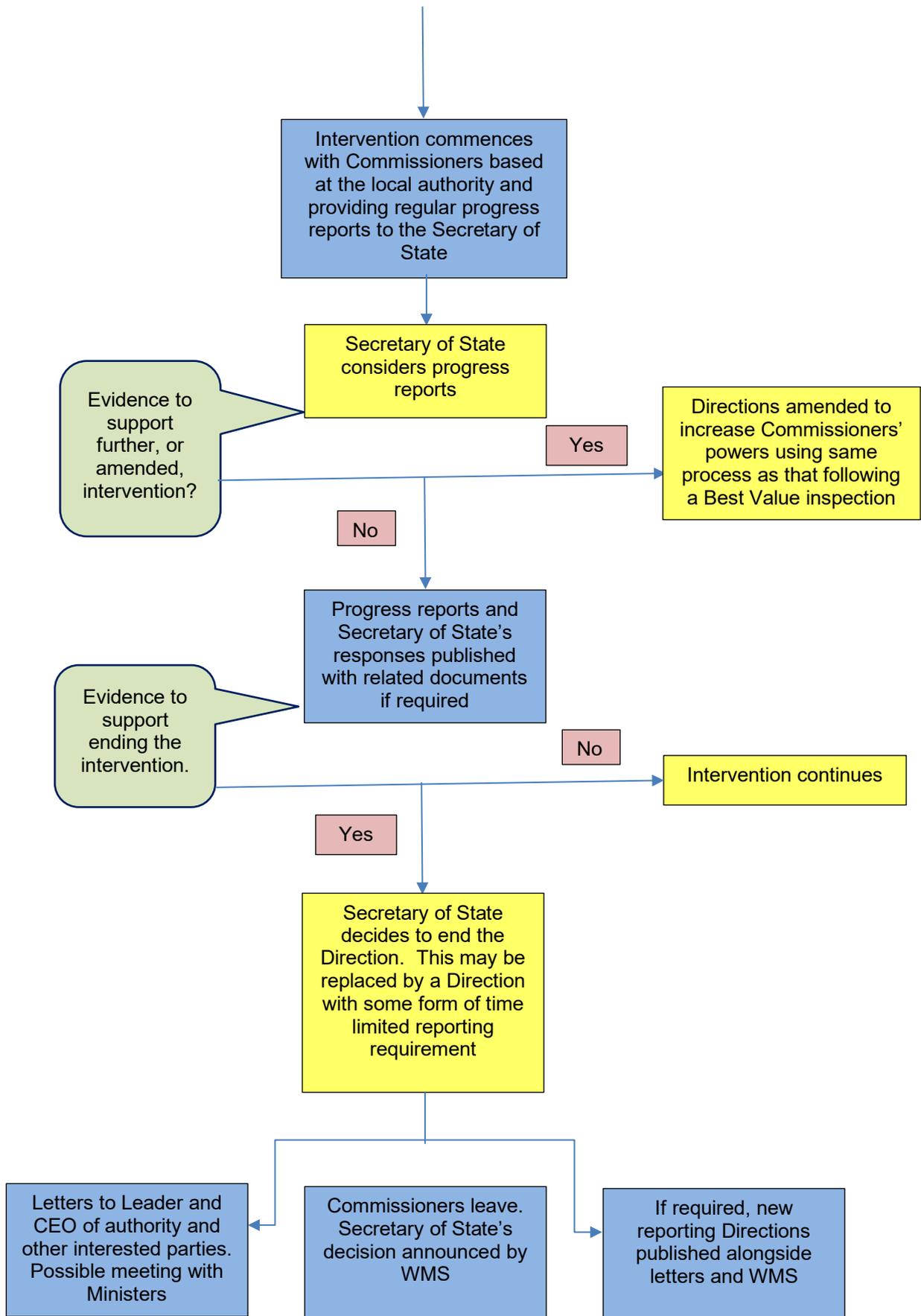


Figure 1 – inspection and intervention: process outline (continued)



2.2.2. Process summary

This section provides a brief outline of the process involved in an intervention as set out in Figure 1 above. It should be stressed that an inspection will only occur after a long process of dialogue with the authority and, if appropriate, the wider sector, about its situation which will aim to explore other options for improvement and the authority's capacity to turn itself round. As mentioned above, each inspection and intervention, if judged needful, is unique. What is described here is designed to give an outline of the process as has generally been followed in previous interventions. There are likely to be variations in order to reflect the specific circumstances surrounding each authority which is subject to intervention.

- The process may be triggered by existing evidence for concern about an authority which might come from external sources (such as the authority's external auditors, a section 114 report from the council's Section 151 Officer or a section 5 report from the council's Monitoring Officer, or substantiated concerns raised by local MPs) or MHCLG's own risk-based work.
- Where there are sufficient concerns, the Secretary of State can use his or her powers under section 10 of the Local Government Act 1999 to appoint an inspector to carry out an independent inspection of the authority's compliance with its Best Value duty.
- The Secretary of State will then consider the findings and evidence set out in the inspector's report, in order to decide what the next steps should be. Because a statutory intervention is such a significant step – directing democratically elected Councillors and, possibly, taking over some, or even all, of their powers – the evidential bar is high for the decision to intervene.
- If, based on the evidence, the Secretary of State is satisfied that the authority is failing to comply with the best value duty, officials will issue a "minded to" letter to the authority setting out proposals for an intervention. Although this often means the appointment of Commissioners, it is important to stress that the Secretary of State's powers also make provision for alternative actions such as directing the council to carry out certain actions (such as preparing and implementing an improvement plan or making certain appointments). The letter will set out the reasons underlying the proposals it contains and, where the proposals involve the intention to appoint Commissioners, the likely extent of their powers.
- The authority, and other interested parties, will have the opportunity to make representations on the Secretary of State's proposals (generally 10 working days).
- If, after considering any representations received and all the relevant available evidence, the Secretary of State still considers that a statutory intervention is necessary, he or she will make Directions as set out in the minded to letter (subject to any amendments arising from representations received). Where appropriate, the Secretary of State will also appoint Commissioners. Directions will apply from midnight on the day on which they are published. Therefore, MHCLG will seek to liaise informally with the authority affected and, where necessary, Commissioners to avoid, for instance, statutory meetings taking place on the day at which decisions could be taken which would be negated by Directions.
- The authority will be informed of the Secretary of State's decision by means of a letter from a senior MHCLG policy official to the Chief Executive which will also contain the final Directions and associated Explanatory Memorandum.

- During the intervention, regular reports on progress to the Secretary of State (quarterly in previous interventions) will be expected. Where Commissioners are involved, they will take on the reporting role. Where this is not the case, reports may be required from the council. There may also be some consideration of changes to the original Directions, either to extend the powers or duration or to hand back functions to the authority.
- When sufficient improvement has been made and the intervention comes to an end, the Secretary of State will consider evidence from the Commissioners, where appropriate, and any other relevant sources (such as an LGA Peer Challenge) before handing functions back to the authority.
- If appropriate, the Secretary of State will withdraw Commissioners. But require the authority to report on progress against an improvement plan for a fixed period before completely ending the intervention.
- All correspondence relevant to the intervention between the authority and MHCLG; Commissioners reports and the Secretary of State's responses; and Directions and Explanatory Memoranda will be published on the government website.
- Decisions of the Secretary of State will also be communicated to the Houses of Parliament by means of written and oral statements.

2.2.3. Alternatives to statutory intervention

This guide concentrates on describing the statutory intervention process and that is reflected in the diagram and outline above. But there are a range of ways in which MHCLG and the sector can help local authorities when they are in difficulties, including sector led support through the LGA's sector led improvement programme and focussed support from MHCLG. In some circumstances, a non-statutory intervention may be more appropriate. A non-statutory intervention typically involves the appointment of an improvement panel, or taskforce, to provide guidance and challenge to an authority. Once again, evidence will be required to support the installation of a panel or taskforce or their withdrawal. Although they are appointed by the Secretary of State and will have his or her backing, the panel or taskforce will not have the powers provided to Commissioners under a statutory intervention. In particular, a non-statutory intervention does not involve the direction of an authority by the Secretary of State or the transfer of any powers from the authority to the Secretary of State or his delegates (such as Commissioners). This means that the Secretary of State's representatives, if any, are involved only in an advisory capacity.

3. Statutory powers

The section provides a brief outline of the statutory powers used by the Secretary of State both to inspect and to intervene in an authority. Whilst the section aims to provide sufficient information to authorities to understand the legislation, **it should be noted that government cannot provide a definite interpretation of legislation – that is for the Courts.**

3.1. Best value legislation

The Secretary of State uses powers provided in the Local Government Act 1999 (“the 1999 Act”) to commission an inspection and put in place Commissioners. These powers centre on the concept of the “best value” duty enshrined in section 3 of the 1999 Act:

“A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”.

In practice, this is generally taken to mean that authorities must deliver a **balanced budget** (Part 1 of the Local Government Finance Act 1992), **provide statutory services** (including adult social care and children’s services) and **secure value for money in spending decisions.**

Authorities bound by the best value duty (termed “**best value authorities**”) are defined in section 1 of the 1999 Act. **Functions** cover what authorities may or must do (commonly referred to as powers and duties respectively). There is also the general power of competence in section 1 of the Localism Act 2011 which provides that “a local authority has power to do anything that individuals generally may do”. There is no definitive list of local authority functions since they vary between different types of authorities (for instance, counties and districts in the same area will perform different functions). For this reason, Directions made under the 1999 Act Best Value powers (see section 5.4 below) tend to use descriptions of functions to be transferred rather than referring to specific references in the legislation.

The 1999 Act has been amended several times, mainly to remove references to the Audit Commission and to reflect devolution.

3.1. Inspections under the legislation

The legislation governing what is generally called a “best value inspection” of an authority can be found in sections 10-13 of the 1999 Act. They cover the appointment of an inspector and (if required) an assistant inspector; the powers and duties of an inspector particularly around access to documents; the requirement of the authority being inspected to pay reasonable fees; the submission of the inspector’s report to the Secretary of State; and its subsequent publication.

3.2. Interventions under the legislation

Section 15 of the 1999 Act provides powers, where the Secretary of State is “satisfied” that an authority is failing to comply with its best value duty, for he or she “to take any action which he considers necessary or expedient to secure its [the authority’s] compliance with the requirements” of the best value duty. In particular, the legislation provides powers for the Secretary of State (or his or her nominee) to take over all or some of the functions of the authority. In recent interventions, the practice has been to use the latter powers to nominate Commissioners to take over some or all of the functions of an authority. However, it should be noted that the wording quoted above allows a wider range of actions to be taken by the Secretary of State, such as the issuing of Directions to an authority requiring it to carry out a review of its exercise of specified functions and either carry specific instructions or develop and deliver an improvement plan. In all cases, the Secretary of State can require the authority to “comply with any instructions...in relation to the exercise of that function” and to provide assistance as required for the exercise of a function.

The Secretary of State is also allowed to extend or cut short directions issued under these powers. Directions will have a time limit after which they will automatically lapse unless further directions are issued. Finally, the legislation requires the Secretary of State to allow the affected authority an opportunity to make representations² about any proposals for directions before they are made. But the legislation allows this requirement to be waived if the Secretary of State “considers the direction sufficiently urgent”.

3.3. Other intervention regimes

Other intervention regimes are not covered in detail in this guide. But it is important to be aware of three main ones:

- **Children’s services (DfE)** – the Secretary of State for Education has powers of inspection (run by OFSTED) of local authorities’ children’s services. Where they are found to be inadequate, the Secretary of State can appoint a Commissioner to support improvements or to run the services pending a more permanent solution (for instance, the creation of an independent Trust).
- **Adult social care (DHSC)** – the CQC has been carrying out a series of inspections of “high risk” local authorities (and the associated Public Health bodies) in respect of the adult social care function. They have no powers to put in place Commissioners although it is possible that, in extreme cases, they could ask our Secretary of State to appoint a Commissioner. Generally, a local authority with a poor CQC review will work with the CQC to develop an improvement plan³.
- **Planning (MHCLG)** – generally, the Secretary of State will not take over the planning function under a 1999 Act intervention. However, where a local planning authority has failed to put in place a local plan for a considerable period, the Secretary of State has powers to appoint someone to develop a local plan for them⁴.

² Originally, the legislation required a minimum period for representations of 10 working days. This was repealed by the Local Audit and Accountability Act 2014. But remains standard practice.

³ CQC have completed their reviews and the DHSC is considering next steps. Proposals might emerge through the Social Care Green Paper.

⁴ Plans to implement these powers are still in development.

4. Best value inspection

4.1. Before a best value inspection

4.1.1. General principles

Given the potential seriousness of the outcome of a best value inspection, MHCLG seeks to follow two principles in commissioning an inspection:

- **Evidence** - the Secretary of State's decision to commission an inspection should be underpinned by significant evidence that a local authority is at risk of failing its best value duty and cannot, or will not, resolve its difficulties on its own.
- **Independence** – although appointed by the Secretary of State (who may give high level guidance as to where he or she would like the Inspector to focus), the Inspector is independent. MHCLG works hard to make sure that the inspector's independence is visible and protected.

4.1.2. Deciding to inspect

Generally, issues around an authority's ability to comply with the best value duty will be picked up through the oversight work carried out by MHCLG. In liaison with other government departments (in particular, DfE and DHSC) a picture will be developed of authorities where there are particular concerns around leadership, finances and service delivery. Authorities where there are these concerns will receive visits from MHCLG officials as well as additional, more detailed, scrutiny and support from the sector (including through peer reviews support, leadership training and mentoring). But, where there are clear signs that an authority is struggling to comply with its best value duty, and there is significant doubt as to whether that authority can recover by itself or with the non-statutory support available from the sector and MHCLG, then the Secretary of State may take the view that an inspection of that authority should take place. At this stage, although an inspection can lead to statutory intervention, it is important to be clear that the inspection will simply be to gain a better understanding of the situation at the authority with no assumptions made about what the outcome might be.

4.2. Initiating a best value inspection

4.2.1. Appointing an inspector

If the Secretary of State decides that there is sufficient concern about the authority's ability to comply with its best value duty to require an inspection, the next step will be the appointment of an inspector.

The appropriate best value Inspectors may vary depending on the issues to be investigated. They can range from retired senior local authority officials to private sector auditors. Given the need for confidentiality, the appointment process cannot be a fully open one. However, it will reflect an objective assessment of the skills and qualities required. It will also involve consultation with the sector in strict confidence. Likewise, the duration of an inspection will vary considerably and may well be driven by the urgency and

complexity of the issues involved. Decisions on these issues will be for the Secretary of State to take, based on the evidence and advice from officials and the sector.

Once an individual has been identified by the Secretary of State and has agreed to take on the role, a formal letter of appointment will be sent to the prospective Inspector. The letter will set out the main pieces of evidence leading to the inspection, the deadline for the Inspector's report, any (high level) guidance as to the areas on which the Secretary of State would like the Inspector to focus and logistical details.

The inspector may wish to have an assistant Inspector or, indeed, a larger team depending on the issues involved (for instance, the inspection team for Rotherham MBC was very large, whereas, that for Northamptonshire CC consisted of only 2 people). The appointment of additional inspectors will involve a similar process to that described for the appointment of the lead Inspector with the difference that the lead Inspector's views will also be taken into account. It should be noted that the legislation is clear (section 10(3)) that, an assistant Inspector can only be appointed on the recommendation of the Inspector unless "the urgency of the inspection makes it necessary to dispense with this requirement." Where an assistant Inspector is appointed, they too will receive a formal letter of appointment with similar contents to that for the inspector.

As with all letters associated with both the inspection and intervention processes, the appointment letters will be sent by a senior civil servant and published on gov.uk.

4.2.2. Informing the authority

Once the appointment of the inspector is finalised, the Inspector's letter of appointment will be sent to the Chief Executive of the authority under inspection with a covering letter setting out the reasons for the inspection, details of the appointment (including any guidance given to the Inspector), the deadline for the Inspector's report and a clear description of the resulting requirements on the authority (access to documents, IT and records, payment of fees and expenses, provision of office space and general cooperation).

4.2.3. Announcing the inspection

The launch of previous Best Value inspections were announced to both Houses of Parliament through a Written Ministerial Statement ("WMS") which will be published on gov.uk. At this point, any press notice and a copy of the appointment letters will also be made public. The WMS will cover the reasons for the inspection, the identity of the Inspector, any guidance given to the Inspector and when the Inspector is expected to report. Whilst ideally the WMS, appointment letters and letter to the authority will be issued simultaneously, the need to find Parliamentary time for the WMS may mean that there is a slight time lag between the letters and the WMS. Once the inspection has been formally announced in Parliament, the Secretary of State may choose to send letters to others with an interest such as local MPs.

4.3. During an inspection

Each inspection is different, both in terms of scale and length, where it will be tailored to the precise circumstances surrounding the authority under inspection. This section,

therefore, focuses on what the authority can expect in terms of its role and what support MHCLG will provide.

4.3.1. Local authority role

Both the legislation and standard appointment letters for the inspector and assistant inspector (where appointed) make it clear that the authority that is being inspected must pay all reasonable costs associated with the inspection. This includes fees and expenses (based on either MHCLG rules on expenses or the relevant authority's handbook). As the inspection team will normally spend the majority of their time at the authority, the expectation is that the authority will make appropriate office space and facilities available to them. The authority may also be required by Directions to make all documents and records available to the inspection team and should be prepared to allow the team to interview both officers and Members; and to contact statutory and non-statutory partners.

4.3.2. MHCLG support

The Department may provide administrative support to the Inspector, as has been the case in previous inspections. This will often be in the form of the appointment of civil servants to provide a secretariat function, including administration. But might also include research, analysis and some specialist legal advice focused on the best legislation, Maxwellisation⁵ and indemnities where appropriate. It should be noted that the secretariat function will be completely separate from the MHCLG team that oversees interventions on a day to day basis. This is to preserve the independence of the inspection team.

4.3.3. The Inspector

The actions of Inspectors are open to judicial review. The Inspector and the inspection operate independently from the Department. Nevertheless, alongside general requirements around fairness and keeping an open mind, the Inspector will take the following factors into account in reaching their conclusions:

- Taking into account relevant evidence.
- Allowing a fair opportunity for the authority to respond or comment on the evidence.
- Taking steps to ensure that the evidence is reliable.
- Giving appropriate weight to different types of evidence.

4.3.4. Freedom of Information

Although the Inspector is independent of both central government and the authority under inspection, he or she would still be subject to Freedom of Information requests. Equally, both MHCLG and the authority would be subject to Freedom of Information requests relating to their interaction with an Inspector and the inspection.

⁵ "Maxwellisation" is where a report into one party is critical of a third party. Normal practice is to allow anyone mentioned in a report to have an opportunity to comment before the report is finalised and published.

4.4. The Inspector's report

4.4.1. Publication

Towards the end of the inspection, the focus will move from gathering and analysing evidence towards preparation of the Inspector's report. As with the inspection itself, the report will be prepared by the inspection team completely independently of both MHCLG and the authority. Each report is different. But, generally, they set out the evidence that the inspection has discovered, analysis of what it means in terms of risks to the authority's ability to carry out the best value duty and recommendations for next steps.

“Looking backwards is important but judging recommendations to bring a local authority back to delivering best value services for all its citizens in a reasonable timescale is the essence of a good report.”

(Max Caller OBE, Lead Inspector for Northamptonshire CC)

The report is addressed to the Secretary of State and it, therefore, falls to the Secretary of State to decide on a publication date in consultation with the inspector. The expectation is that this will not be too long after the Inspector presents the report to the Secretary of State. Publication (on gov.uk) will be accompanied by a WMS and a press notice. MHCLG will liaise with the authority on press coverage where appropriate. Ministers may also decide to brief local MPs and the Opposition on the report's findings.

4.4.2. The Secretary of State's response

The Secretary of State's response to the Inspector's report should be entirely based on the evidence and recommendations set out in that report. There will, therefore, nearly always be a period of reflection between the publication of the report and the announcement of the Secretary of State's response in order to allow proper consideration. This is because the Secretary of State will have no preconceptions as to the likely outcome of the inspection.

Recommendations may take 3 forms:

- **Do nothing** – given that the decision to commission an inspection would have been underpinned by significant evidence, this would be unexpected. But should not be ruled out.
- **Statutory intervention** – the move to a statutory intervention is described in Section 5 of this guide.
- **Non statutory intervention** – non-statutory interventions are not covered in this guide. But are always an option to assist an authority in difficulties.

More detail is provided in Section 5. But, once the Secretary of State has decided on the proposed response to the report, the decision will be communicated formally to the authority through a “minded to” letter issued by officials and announced by a Statement (either written or oral) to both Houses in Parliament. Prior to the issue of the “minded to” letter, there is likely to be some informal dialogue at official and officer level.

5. Statutory intervention

5.1. General principles

5.1.1. Significance of a statutory intervention

Putting in place a statutory intervention (“intervention”) in an authority is a very significant step for the Secretary of State. It will involve the Secretary of State taking control, either directly or through a nominee, of some, or all, of the functions of the elected Members, and requiring the authority to take further action to ensure compliance with the best value duty. In the majority of recent cases, a statutory intervention has meant that functions are taken from those elected to carry them out and are passed, through Directions, to his or her nominees (Commissioners). It is, therefore, not something that is undertaken lightly.

5.1.2. Evidence

The significance of an intervention means that, any decision to put one in place and, if appropriate, appoint Commissioners will be based on careful consideration of robust and transparent evidence. In the past, Ministers have taken the view that an intervention is only warranted where the evidence demonstrates significant and systematic failure in an authority’s compliance with its best value duty. The legislation does not specify the type of evidence required for an intervention. Generally, that evidence will have been collected and examined through a best value inspection as described in Section 4 of this guide.

5.2. Minded to letter

After the Secretary has considered the Inspector’s report of a best value inspection, the decision as to whether or not to propose an intervention on the available evidence will be communicated to the authority in what is known as a “minded to” letter.

5.2.1. Practicalities

The letter will be sent to the Chief Executive of the relevant authority from a senior civil servant (generally, the Head of the Intervention team at MHCLG). It will be copied to the other statutory officers at the authority (the section 151 officer and the Monitoring Officer). The letter could also be copied to other interested parties (perhaps local MPs, other local authorities, and key whistle blowers). But, although it does invite representation (and it will be published on gov.uk), the direct circulation is normally restricted to those immediately affected.

5.2.2. Contents

There are essentially two elements to the letter:

- The **main text** which summarises the Secretary of State’s proposals; the reasoning and evidence behind them; and invites representations from the authority (and possibly others, including residents, if they are directly affected, normally within a defined period, such as 10 working days, but can be less). Where there is sufficient

urgency, the need for representations can be waived. But this would be exceptional, and the evidential bar is very high.

- The **annex** which, in the case where a statutory intervention is proposed, sets out in detail the form of the intervention; how it is proposed to work; and the evidence underpinning it (normally drawn from the best value inspection report).

At this stage, it is important to be very clear that the Secretary of State has only made proposals and that these could be changed by representations from the authority in particular and other parties.

5.2.3. Announcement

This is generally the stage at which Parliament would expect to formally be informed of the Secretary of State's proposals. The issue of a "minded to" letter in previous interventions has been accompanied by a formal Statement (either written or oral) to both Houses as well as announcements in the press. Ministers might also wish to contact key politicians (local MP(s) and the Opposition) to update them on progress. It is a normal courtesy to informally contact (by phone) the Chief Executive and Leader at the authority to let them know that the announcement is to be made in advance of the Oral Statement.

5.3. Representations

As mentioned in paragraph 5.2.2 above, the "minded to" letter invites representations from the authority and parties directly affected by the Secretary of State's proposals. Any representations received will be carefully considered by the Secretary of State and may receive substantive responses where appropriate. Representations are normally explicitly referenced in Directions and might be published on gov.uk. It is worth noting that, in past, representations have certainly affected the way in which Directions are drafted even if they do not affect the overall outcome of the process.

5.4. Directions and the Explanatory Memorandum

5.4.1. Directions

Directions are the legal mechanism whereby the Secretary of State exercises his or her powers under the 1999 Act to put in place an intervention, including, where appropriate removing all or some of an authority's functions and passing them to Commissioners which he or she has appointed. The Directions may vary significantly depending on the extent and type of the intervention involved. But the following structure has been used in previous interventions:

- The main text which incorporates explicit references to representations received as well as references to the powers in section 15 of the 1999 Act and the duration of the Directions.
- Annex A, which sets out actions that the authority is required to take – this generally includes definitions and all the measures around access to documents and the payment of fees and expenses with which the authority must comply. In some cases, it may also include some clauses giving "reserved powers" to the Commissioners, where appointed, to act on information that is passed to them by

officers or elected Members at the authority. This provides a safeguard in case matters come to light which are not covered by the functions in Annex B.

- Annex B which sets out the functions of the authority which are affected by the intervention. It is in this annex that, if Commissioners are to be appointed, the functions they are to be take over are listed.

5.4.2. Explanatory Memorandum

Directions are generally accompanied by an Explanatory Memorandum, which in previous interventions has included:

- The context for the intervention.
- An outline of representations received.
- Where appropriate, details of the Commissioners which have been appointed.
- Again, where appropriate, an explanation of the Commissioners' powers, including an expectation that they will work towards securing sufficient improvement for the authority to resume its powers, possibly on a phased basis.
- An explanation of the requirements placed on the authority.
- The duration of the Directions.

5.5. Approving and announcing the intervention

Once the Secretary of State has considered the representations received in response to the minded to letter, he or she may decide either not to go ahead with the intervention, or to put in place the Directions (which may be amended in response to representations received) as described above. In either event, the decision will be announced by means of a written ministerial statement to Parliament and letters to the Chief Executive. Where the Secretary of State has decided to intervene, the relevant Directions and Explanatory Memorandum will be attached to the letter sent to the authority.

5.5.1. Appointing commissioners

The Secretary of State may direct that some, or all, of the functions of an authority be exercised by a person nominated by him (a Commissioner). Commissioners are private individuals with relevant experience personally appointed by the Secretary of State to whom they report. Appointments are made following an internal process of drawing up criteria, identifying candidates (often in partnership with the sector on a confidential basis), long-listing, short-listing and interview. Because Commissioners will need to be in place as soon as the Secretary of State's intervention is announced, the selection process has to be carried out on a confidential basis in order to avoid prejudicing the position of either the Secretary of State or the affected authority. However, the process is based on a rigorous consideration of how candidates measure up to the criteria required for the role or roles envisaged for the Commissioners.

Each intervention is different and will require correspondingly varied skills from the Commissioners. But all or some of the following criteria are generally key:

- Extensive and successful experience of local government at a senior level (this might be either as an officer or an elected member).
- Understanding and valuing local democratic legitimacy.

- Experience of dealing with politicians and political decisions, including a clear understanding of what constitutes poor political behaviour and standards.
- Experience of addressing poor relationships between members and officers.
- Ability/presence to command attention and credibility within and outside the authority (at senior management and political level).
- Experience of addressing weaknesses in and improving key functions (normally in governance, scrutiny and financial management) at an authority
- Specific expertise and experience to evaluate progress.
- Sufficient breadth of view to identify and encourage the most viable solutions to unusual problems.

Once any appointments have been agreed upon, the prospective Commissioners will be told informally. Formal letters of appointment are only issued when the intervention has been announced and will be copied to the authority. The letters will include a “nomination” for each Commissioner and details of their appointment, such as fees, arrangements for expenses, expectations around the amount of time they will spend at the authority and the likely duration of their appointment. These can be changed by mutual agreement with the Secretary of State.

5.5.2. Announcing the intervention

As mentioned above, the intervention is generally announced by means of a Written Ministerial Statement rather than an Oral Statement (an Oral Statement having already been used to announce the Secretary of State’s proposals as set out in the minded to letter).

At the same time, a letter will be sent to the Chief Executive of the authority covering the Directions and Explanatory Memorandum. In this context it is important to note that Directions normally come into effect at midnight prior to the day they are published. It is, therefore, important for the authority to avoid statutory meetings in the period between midnight and when they receive the letter with the Directions so that they do not end up making decisions which will be negated by the Directions.

As already noted, if required, the Commissioners’ appointment letters and nominations are also sent out at this point, as are any letters which the Secretary of State may wish to send to local MPs. The Commissioners will normally liaise with the authority to agree when they will first arrive.

The letter to the Chief Executive, the Directions and Explanatory Memorandum, the Commissioners’ letters of appointment and any other letters are normally all published on gov.uk.

5.6. During an intervention

As mentioned elsewhere, interventions can take many forms. This section, however, focuses on what happens where Commissioners have been appointed as, in recent years, this has normally the form that an intervention has taken.

5.6.1. The role of the Commissioners

The history of the intervention and the scope of the Directions will impact on the way in which Commissioners will need to work. Subject to this, Commissioners are very largely free to shape their activities themselves according to the needs of the authority subject to the intervention.

Authorities should expect an early dialogue with Commissioners to establish how the Commissioners will undertake their role and conduct their relationship with the authority. This dialogue might cover some or all of the following and may require the authority to amend its constitution in some cases:

- **Vision and outcomes** - further clarity on the outcomes to be achieved and the criteria for judging success. This might include (particularly for longer interventions) considerations of the phases the intervention is expected to move through.
- **Ways of Working** - establishing protocols for how the Commissioners will work with members and officers and their expectations, commissioner portfolios etc. How will commissioners engage with partners, stakeholders and residents? Approach to media communications. How do Commissioners wish to be seen to value democratic legitimacy in the way they work and avoid placing themselves inappropriately between elected representatives and residents? What mechanisms might Commissioners want in order to be held to account locally.
- **Decision-making and Transparency** - how will commissioners take decisions compliant with the normal expectations for good governance and transparency e.g. report formats and publication, forward plan, role of existing local authority committees and cabinet etc. Commissioners adopting or identifying changes needed to the existing Scheme of Delegation. Enacting the requirements in the directions re call-in and scrutiny of Commissioners decisions.
- **Governance** - Commissioners' adoption of the authority's Code of Conduct. Arrangement for Commissioners' register of interests, related party transactions, statements of gifts and hospitality, publication of fees etc,

This initial dialogue will establish the basis on which the intervention will proceed. From the outline above, it will be clear that, in the first instance at least, Commissioners will nearly always seek to work with officers and members at the authority in order to tackle the failings that have led to the intervention. Powers in the Directions are generally held in reserve for use in situations where they encounter opposition to actions designed to help the authority improve. Progress will be recorded through the authority's own processes for reporting and scrutiny and there will be an expectation that the Commissioners will report regularly to the Secretary of State. These reports will generally be in writing, publicly available and backed up by meetings where appropriate.

The Commissioners will be based at the authority. They will generally be supported by a MHCLG official who will act as their Chief of Staff. They may also request some administrative support drawn from the authority's staff.

Commissioners are also recognised as “Prescribed Persons” under whistleblowing legislation for disclosures.⁶ The role of a prescribed person is to provide workers, in this case local authority employees, with a mechanism to make their public interest disclosure to an independent body when they do not feel able to disclose directly to their employer. Commissioners can either decide to look into a disclosure themselves and recommend how the authority could rectify the problems it finds, or to pass responsibility for investigation onto another relevant Prescribed Person.⁷ They will also be required to report annually on any disclosures made to them.

5.6.2. What is expected of the authority under intervention?

The authority under intervention will be expected to provide all resources and support required by the Commissioners to carry out their role. This includes:

- Allowing full access all necessary files and records.
- Providing suitable office space and facilities.
- Paying the fees and expenses of the Commissioners as set out in their appointment letters.
- Providing administrative support as required.
- Where necessary, allowing the Commissioners to access their legal services and personal indemnity insurance.

Other requirements may be set out in the Directions.

As described above (in section 5.6.1.), the way in which the authority works with the Commissioners will be developed in dialogue with the Commissioners both initially and over the period of the intervention.

5.6.3. Changes to the Directions

During the intervention, Commissioners may decide that they need amended powers to those they were originally given. Where this is the case, we use a similar process to that described in earlier in this section although a new Best Value inspection would not normally be required (Commissioners would be expected to provide adequate evidence). Additional Commissioners would only be required if Commissioners advise that they are needed.

Alternatively, Commissioners may suggest a partial return of powers and functions to the authority whilst they continue to exercise other powers. Where this is the case, the process will be similar to that described in this section below with the need for evidence (from the Commissioners), a minded to letter, consideration of representations and a formal announcement to the House with accompanying communications.

5.7. Ending an intervention

⁶ The Public Interest Disclosure (Prescribed Persons) Order 2014.

⁷ For disclosures relating to local government other Prescribed Persons are the external auditor of an authority, the National Audit Office or a Member of Parliament.

All interventions are time limited. Directions will have end dates and Commissioners will have length of appointment set out in their letters of appointment. All these may be changed during the course of the intervention, including following representations from the authority. However, MHCLG will seek, even before an intervention is put in place, to be clear about what the desired outcome is and, therefore, when it will be appropriate for it to come to an end.

5.7.1. Returning functions to the authority

Ending a statutory intervention centres on the return of the exercise of functions which had been passed to Commissioners to the authority, whether at the expiry of the Directions, or at a point before the expiry if the Secretary of State considers it appropriate. In considering whether or not to hand back functions, the Secretary of State may consider representations from the authority. In either case, the advice of Commissioners is key as it acts as the main source of evidence to support a decision on whether or not to hand back functions.

Where Commissioners have advised that functions should be returned, the views of other interested parties (for instance, local MPs or key interested parties) will also often be sought and considered by the Secretary of State.

Where the Secretary of State decides to hand back functions to the authority, the decision will be announced to Parliament by a WMS and a “minded to” letter will be sent to the authority’s Chief Executive. Both will be published on gov.uk. The minded to letter sets out what functions are to be returned, why and, briefly, the background to the intervention. It will also seek representations from the authority within a set period (normally 10 working days). The “minded to” letter may also be copied to key interested parties.

Once the deadline for representations is past, the Secretary of State will consider them and make a final decision. The final decision will, once again be communicated by means of a WMS in Parliament and a letter to the authority’s Chief Executive, both of which will be published.

Sometimes functions are returned piecemeal. This can mean that, even where some functions have been returned, others remain and, therefore, Commissioners remain in place. Eventually, however, the return of functions will mean that Commissioners will be withdrawn.

It is also possible that Directions will simply lapse. Sometimes, that will signal the end of an intervention. On other occasions and, more usually, they will be replaced by new Directions putting in place new reporting requirements often not involving Commissioners.

5.7.2. Residual reporting requirements

It is often the case that, even where functions have been fully returned to the authority, the Secretary of State will wish to keep some form of supervision in place. Where this is the case, new Directions will be drafted setting out reporting requirements for the authority, the timescale during which those requirements will be in place and any additional requirements that must be met before the intervention is fully complete (for instance, assurance through an independent review of the relevant functions at the authority). The

process for putting the Directions in place will be the same as set out earlier in this section, which in previous interventions has not required Commissioners to be appointed.

All being well, these Directions will normally simply be allowed to lapse as there will be no evidence to support further action. It is normal for there to be a final meeting between the leadership team at the authority and Ministers and for MHCLG officials to write to the Chief Executive confirming that no further action will be taken. Those letters will be published on gov.uk.

6. After an intervention

6.1. Dealing with media

After the intervention has ended, MHCLG will treat the authority in the same way as any other authority. However, experience shows that the media spotlight will often remain on the authority for some time. MHCLG officials will be happy to work with the authority on its responses to media stories and queries if the authority finds that helpful.

6.2. Lessons learnt

Interventions are rare. It is, therefore, important to learn as much as possible from each intervention in order to inform future approaches. MHCLG are producing a range of lessons learnt papers for authorities to use. But this is a live process and MHCLG will normally seek views from authorities and others involved (for instance, Commissioners or Inspectors) on both the process and what led to the failings it was designed to tackle. While there is no requirement on authorities to take part in this process, MHCLG is keen to encourage authorities to be involved in order to help others. Regardless of whether the affected authority is consciously involved or not, experience suggests that, where information is available (for instance, through the publication of the best value inspection report and Commissioners' progress reports), it will often be used by other authorities and the sector more widely as a means by which lessons can be learnt and acted upon.

6.3. Leadership

Often, an authority will emerge from an intervention with renewed and refreshed leadership and a stronger understanding of what constitutes "best value" in an authority's delivery of its services. Most importantly, the evidence so far shows that, whilst intervention can be an onerous experience for the authority, it will result in a more sustainable position for the citizen. Again, MHCLG would like to encourage authorities who have undergone an intervention to use their experience to support other authorities who may be facing similar difficulties. This might include encouraging authorities to be take the initiative in making an early admission of difficulties so that they can quickly access support and guidance both from central government and the local government family to plan and implement a way forward.