



Best value: new draft statutory guidance and other measures

Equalities impact assessment initial screening



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DCLG Equality Impact Assessment initial screening form

1. Name of the current or proposed new or changed, policy, strategy, procedure, project or service being assessed:

A decentralising package made up of the introduction of:

A. New Best Value statutory guidance

The government is proposing new minimal, light touch Best Value statutory guidance setting out clear expectations on councils considering cutting funding to local organisations in the voluntary and community sector. This aims to be more explicit about the scope for authorities to consider social value in their functions and provide much clearer expectations for voluntary and community organisations in their relationship with authorities, whilst allowing authorities to exercise appropriate discretion in considering the circumstances of individual cases. The Government is making an additional parallel commitment that central departments and any non-Best Value agencies of departments will sign up to the same fair standards as set out in the guidance.

B. The following deregulatory measures:

- Revocation of guidance – Workforce Matters, ODPM circular 03/2003 (21 pages). This consists of two parts: a) *The code of practice on workforce matters* in local authority service contracts (“the two tier code”) seeks to prevent the emergence of a two tier workforce by providing that new staff recruited to work on a local authority contract must have terms of employment which are overall no less favourable than those of the staff transferred under TUPE from a local authority; b) *The Handling of work force matters in contracting* guidance covers terms and conditions of employment and arrangements for the promotion, transfer or training offered to workers by firms contracting from an authority.
- Revocation of statutory guidance – *Creating Strong, Safe & Prosperous Communities* (56 pages). This statutory guidance is linked to the old Best Value regime, including various aspects of the old local performance framework, such as local area agreements. It includes statutory guidance on the duty to involve, sustainable community strategies and Best Value.
- Repeal of the duty to involve: this duty seeks to ensure that local people have greater opportunities to influence decision-making and get involved. Local authorities should consider, as a matter of course, the possibilities for provision of information to, consultation with and involvement of *representatives of local persons* across all council functions.
- Repeal of the Duty to prepare a sustainable community strategy: a sustainable community strategy is designed to provide the overall strategic direction and long-term vision for the economic, social and environmental wellbeing of a local area. Each principal authority has a duty to have an sustainable community strategy and a linked duty to consult with partner authorities on it.

2. Person and team responsible for completing the Equality Impact Assessment:

David Norris
Productivity & Service Transformation (Local Government Policy & Productivity)

3. What is the main aim or purpose of the current or proposed new or changed, policy, strategy, procedure, project or service and what are the intended outcomes?

The main aim is to give more freedom to local councils and more protection to voluntary and community groups in the face of council funding cuts.

The package is intended to underline the Government's commitment to localism, growth and the Big Society. It addresses the Coalition Agreement's commitments to enable civil society groups to have much greater involvement in the running of public services and to promote decentralisation by ending the era of top-down government. The new draft Best Value statutory guidance sets out clear expectations on councils considering cutting funding to local organisations in the voluntary and community sector, particularly around avoiding passing on disproportionate cuts. This guidance will help to balance out any possible future impacts on equalities groups arising from authorities having less funding overall.

The package also responds directly to the Government's commitment in the Growth Review to remove barriers to leaner, more contested local public services that prevent councils fully focusing on their own priorities and productivity. Finally, it also supports a range of other related initiatives, such as the Government-supported Private Members (Social Enterprise and Social Value) Bill from Chris White MP, the Modernising Commissioning green paper (December 2010) and DCLG's six essential actions for decentralisation.

4. What existing sources of evidence will you use to help you identify the likely impacts on different groups of people?

(For example research statistics, survey results, complaints analysis, consultation documents, customer feedback, and monitoring data)

New guidance

We consulted the DCLG Voluntary and Community Sector Partnership Board at an early stage (February 2011) and subsequently shared the new guidance in draft form with the chair of the Board plus other leading voluntary and community sector representatives. They have welcomed the focus on supporting effective partnership working between local authorities and the voluntary and community sector. The new Best Value guidance is intended to provide more protection to voluntary and community groups than they otherwise would have, in the context of local authority spending cuts. Voluntary and community sector groups have a particularly strong role in reaching out and supporting a diverse range of citizens and communities.¹

The new guidance underlines support for voluntary and community sector organisations more explicitly than the guidance being withdrawn. The Government is also announcing a parallel commitment from central departments and any non-Best Value agencies of departments to meet the same reasonable expectations as set out in the guidance when managing any proposed spending reductions. The new guidance is therefore expected to help ensure a net neutral impact on outcomes for equalities target groups overall.

Workforce Matters (including two tier code)

Removal of the workforce matters guidance, in particular the two-tier code, reflects the Government's general approach on localism and competition. The Government wants to move away from a compliance culture by freeing councils from top-down guidance. It also wants to improve quality and productivity by opening up more public services small businesses and voluntary and community sector organisations – many of whom tend to support equalities target groups.² The TUC and Unison have suggested that women may be adversely impacted by these proposals (women make up over 70 per cent of those working for local authorities and by implication around the same proportion of those working on local authority contracts; in addition many are low paid).

¹ The percentage of VCSE organisations benefiting equalities groups is as follows: 47% children/young people, 23% elderly/old people and 22% people with disabilities. There are also VCSE organisations which benefit each of the equalities groups detailed in the Equality Act 2010. Source: [UK Civil Society Almanac 2010](#). Also, the Social Enterprise Coalition (2009) have found that 40 per cent of social enterprises employ people with disabilities; in 17% of social enterprises more than a quarter of their staff were people disadvantaged/under-represented in the labour market. Source: [State of Social Enterprise Survey 2009](#)

² Evidence of how VCS organisations support equalities target groups can be found, for example, in National Programme for Third Sector Commissioning (Cabinet Office 2009); Public services and the third sector: rhetoric and reality 11th report of session 2007-08 Volume II oral and written evidence (House of Commons Public Administration Select Committee 2008); and The UK Civil Society Almanac 2010 (National Council for Voluntary Organisations 2010).

However we do not accept that the two tier code of itself serves any useful function in promoting equality and to date have not seen any specific evidence to support the unions' claims.

Authorities will remain subject to the general duty set out at section 149 of the Equality Act 2010. As well as the requirements that the Act places on authorities in their own direct functions, it also explicitly extends them to those bodies that are delivering "public functions" – effectively extending the duty to suppliers or contractors delivering "public functions". Withdrawal does not impact on existing TUPE regulations, rights in the Equalities Act 2010 such as the right to equal pay, provisions in the 2008 Employment Act or the Local Authority Staff Transfers (Pension) Direction 2007. Nor does the withdrawal apply retrospectively - existing employees' terms and conditions will be unchanged. The Government previously consulted the TUC and others on the equivalent central Government two tier code in December. Other relevant sources of information exist elsewhere.³

Creating Strong, Safe & Prosperous Communities

A significant amount of *Creating Strong, Safe & Prosperous Communities* statutory guidance is now out-of-date, given the dismantling of the old performance framework. Other parts will be out-of-date given ministers' plans to repeal the last remaining duties it covers (Duty to involve and to prepare a sustainable community strategy). Removing the guidance will therefore align guidance to authorities with wider policy and avoid confusion as to what they should have regard to. The new Best Value guidance provides more explicit support for the voluntary and community sector than this guidance and thus will help balance out any possible impact on equalities groups from its withdrawal.

Duties to involve and to prepare a sustainable community strategy

Subject to Parliament, once the Duty to Involve is repealed, the separate duty to consult local representatives (which supports the duty of Best Value) will remain in place. This will be backed up by the additional support for voluntary and community groups in the proposed new Best Value guidance. Further, this will be buttressed by the Government's actions under decentralisation and transparency.⁴

When the duty on sustainable community strategies (and the associated duty to consult) is repealed, authorities will still be able to carry on having a strategy (it would be very surprising if any council didn't) – it just means they would not have a top-down duty to do so. Similarly, councils will not be prevented from consulting partner authorities and others in developing their strategy, but they would simply not be *required* to. However, consulting the community on how it will fulfil its duty of Best Value (which applies to all its functions) would still be covered by the duty to consult under Best Value.

³ Including [EU Procurement Guidance: introduction to the EU procurement rules](#), and the voluntary [Principles of Good Employment Practice](#) published by the Cabinet Office.

⁴ See the [Decentralisation and the Localism Bill: an essential guide](#) and the [Code of recommended practice for local authorities on data transparency](#).

At the time of writing the DCLG-led review of duties has received approximately 2000 responses, none of which has commented on the duties and guidance in this package. A number of councils, including Hammersmith & Fulham and Suffolk County Council, have previously called for the duty on sustainable community strategies to be scrapped. The Local Government Association has indicated support for scrapping the Duty to Involve and to our knowledge has not commented on the duty to prepare a sustainable community strategy.

5. Are there gaps in evidence that make it difficult or impossible to form an opinion on how the existing or proposed policy, strategy, procedure, project or service does or might affect different groups of people? If so what are the gaps in the information and how and when do you plan to collect additional information?

We will seek to cover any gaps through:

- A public consultation on the new Best Value guidance (which includes open questions on issues the Government might consider).
- Parliamentary legislative scrutiny on repeal of the duties.
- Inviting the views of employers, employee representatives and others on whether there might be anything, such as a statement of good employment principles in place of the two-tier code, that would be helpful for the future.

6. Having analysed the initial and additional sources of information including feedback from any consultation, is there any evidence that the policy, strategy, procedure, project or service has or is likely to have an adverse equality impact on, and/or that there are known or anticipated different needs or requirements, for any of these different groups of people?

We believe the evidence suggests that this package of proposals will have an overall neutral impact on the target equality groups.

7. Is a full Equality Impact Assessment Required? ~~Yes~~/No
(If no, please explain why not.)

Our initial assessment is that a full Equality Impact Assessment is not required at this stage. Primarily the evidence suggests that the overall impact of this policy on equality groups is likely to be neutral. The new guidance will help balance out any possible net impacts arising from overall less funding for councils. It will also balance out any impact arising from the loss of the duties since it supplements the existing duty to consult under best value and underlines support for voluntary and community sector organisations more explicitly than the guidance being withdrawn. It will strengthen the role of voluntary and community sector groups in terms of engagement, funding and potentially running public services. It will also give greater freedom to councils to respond to local rather than central priorities and expand the scope of councils to collaborate with small businesses and voluntary and community sector organisations.

We shall keep this assessment under review and consider whether a full Equalities Impact Assessment is necessary following the next steps set out in box 5 (above).

Note: You will need to complete a full Equalities Impact Assessment if:

- the proposals are likely to have equality impacts and you will need to provide details about how the impacts will be mitigated or justified
- there are likely to be equality impacts plus negative public opinion or media coverage about the proposed changes
- you have missed an opportunity to promote equality of opportunity and need to provide further details of action that can be taken to remedy this

8. The Initial Screening Form should now be signed off by one of the following: a deputy director, director or director general.

Note: Sign off at this point should only be obtained if:

- there are no equality impacts
- the changes have promoted equality of opportunity

Name of person signing off the initial screening: **Richard Harries**



Role: **Deputy Director, Productivity & Service Transformation**

Date: 30 March 2011

Note: A copy of the initial screening form should be retained by the originator for audit purposes.

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