

Briefing 07/ 66 December 2007

Best value draft guidance and Creating strong, safe and prosperous communities

This briefing is for all local authority contacts including Chief Executives, Council Leaders and Elected Members and Trade Union Representatives in England.

Key issues

1. The Government has issued draft guidance for consultation following on from the local government white paper of October 2006 and the passage of the Local Government and Public Involvement in Health Act 2007
2. *'Creating Strong, Safe and Prosperous Communities Statutory Guidance: Draft for Consultation'* includes the timetable for the scheduled introduction of legislation which will govern Statutory Local Area Agreements, the Duty to Cooperate, Duty to Have Regard to Targets, Deregulation of the Best Value Regime and Duty to Involve Representatives.

1. Background

In October 2006 the Government issued a white paper, *'Strong and Prosperous Communities'* which detailed the government's vision for the future of Local Government and its operation within the context of sweeping public sector reform. The white paper placed a heavy emphasis on the delivery of 'strong and prosperous communities' at a

neighbourhood level, the empowerment of local authorities through a move to lighter touch inspection and reform of the inspection and performance management framework, greater integration of priorities and outcomes at a local level and the revision and deregulation of the Best Value regime.

This briefing therefore examines the main implications of the draft statutory guidance and reflecting the interests of the APSE membership concentrates on those issues that will have a direct impact on local authority service delivery at the front line as well as some of the broader strategic implications.

2. Related documents and issues

During the autumn / winter 2007-2008 government has or will be issuing a series of related documents for both consultation and guidance. These documents reflect the development of the new national performance indicators, the development of localised indicators, the requirements of Comprehensive Area Agreements and Local Area Agreements. These topics are the subject of separate APSE briefings. APSE has already issued guidance on the Local Government and Public Involvement in Health Act 2007 which acts as a framework piece of legislation for many of the different reform issues.

In addition as APSE believes some of the matters relating to the reform of the Best Value regime are integral to the development of responses to competition a further APSE briefing examines the Audit Commission paper on developing 'Healthy Competition'

3. Scope of the guidance

The Local Government and Public Involvement in Health Act 2007 includes provisions that relate to the new statutory framework for Local Area Agreements, (LAA) Joint Strategic Needs Assessments (JSNA) and the new simplified best value regime. It provides in addition guidance under sector 4 of the Local Government Act 2000 on the preparation of Sustainable Community Strategies. The guidance applies only to England. The guidance contains six key strands as follows:-

- Creating strong, safe and prosperous communities** (Delivering the community leadership vision)
- Governance and engagement** (Including the role of LSPs and community empowerment)
- Establishing a vision for the area** (including the new Sustainable Community Strategy)
- Agreeing priorities for an area** (including Local Area Agreements

[LAA])

- **Agreeing the priority outcomes for an area and the role of the local partners**
- **Delivering priorities** (including the reform of Best Value)

Each of the above topics is dealt with in more detail below:-

4. Creating strong safe and prosperous communities (Delivering the community leadership vision)

A new local performance framework has been developed around a new relationship between local authorities and central government. Various pieces of the new performance framework fit together with aim of delivering the new relationship and creating greater localised autonomy over priorities for an area, rather than issues being dictated by central government.

Section 4 of the Local Government Act 2000 was amended by the Sustainable Communities Act 2007 so that Community Strategies are now called Sustainable Community Strategies.

The guidance also references the role of Local Area Agreements and importantly the LAAs will be the ONLY vehicles for agreeing targets between local government and their delivery partners and central government. The **Duty to cooperate** to agree targets in LAAs provides, Government suggests, a lever to bring about a more robust approach to partnership working.

APSE Comment: Whilst local authorities will undoubtedly welcome an enhanced leadership role within the local area on a cross-cutting basis the delivery aspects of Local Area Agreements could nevertheless prove to be problematic. Whilst local authorities will have a cooperation duty individual partners will still retain their own budget controls creating the prospect for partner organisations, and indeed local councils to revert to a more parochial approach when a commitment on resources is required. Whilst government has attempted to address this in terms of the new inspection framework and the contributions that partner organisations make to local priorities there are very limited practical restrictions as to how far the local authority can genuinely influence partner organisations.

5. Governance and engagement

The guidance makes clear that LSPs are not statutory bodies and are a collection of partners that come together to direct resources through the identification of priorities within the Sustainable Community

Strategy. Therefore all resources and contractual commitments must go through the appropriate channels of the partner and in the case of the local authority this will require any commissioning or contractual requirements to be formalised through them directly.

However it is recognised that there will be a legitimate role for the LSP through the identification and articulation of the needs and aspirations of local communities and reconciling or arbitrating between competing interests. In addition the LSP will have an overview of and coordination role in community consultation.

6. Establishing a vision for the area (including the new Sustainable Community Strategy)

The Sustainable Community Strategy should set out the long term vision based firmly on local needs and key priorities for the local area. Where appropriate the Sustainable Community Strategy can incorporate the authority's homelessness and housing strategies. By virtue of Section 1(a) of the Local Government Act 2000 the duty to prepare a Sustainable Community Strategy applies to

- County Councils
- District councils including shire, metropolitan and other unitary districts
- London Borough councils,
- The Common Council of the City of London
- The Council of the Isles of Scilly.

The statutory duty to prepare a Sustainable Community Strategy provides that the strategy should contribute to the sustainable development in the UK. The five principles of which are:

- Living within environmental limits
- A strong, healthy and just society
- Achieving a sustainable economy
- Promoting good governance and
- Using sound science responsibly

The Local Government White paper envisaged that the Local Area Agreement would be the delivery agreement for the Sustainable Community Strategy. Local planning authorities are also required to have regard to the Sustainable Community Strategy when preparing local development frameworks. Moreover the Housing Green paper set out aspirations for the delivery of sustainable affordable housing and authorities are invited to consider this within their responses to the consultation.

APSE comment: APSE has advocated a neighbourhood approach to sustainability arguing that the integration of housing, planning,

environmental services, health and well being and services to older people and children must be fully integrated to provide a more cohesive model of service delivery. It is regrettable that the draft statutory guidance does not make reference to the delivery of local services as part of its approach to the delivery aspects of the strategic vision.

7. Agreeing priorities for an area (including Local Area Agreements [LAA])

Whilst the Sustainable Community Strategy is expected to consider the 10-20 year vision for an area the Local Area Agreement will be the short term delivery mechanism with a focus of around three years.

The responsible local authority must prepare a Local Area Agreement when asked to do so by the Secretary of State. In doing so they must consult and co-operate with all partner authorities and the LAA must be on the evidence base and longer term strategies identified in the Sustainable Community Strategy. The guidance advises that the responsible local authority must work through the Local Strategic Partnership and in order to achieve agreement on most of the targets.

There is an interface with the preparation of the LAA with the new duty to consult under the revised Best Value regime in terms of the involvement of local citizens.

Government also intends to amend SI 2000/2853 which is the Local Authorities (Functions and Responsibilities) Regulations 2000 to ensure that the LAA will need to be approved by full council, prior to submission to the Secretary of State.

8. Agreeing the priority outcomes for an area and the role of the local partners

Statutory partner bodies must be involved in agreeing targets for local area agreements whereas other non statutory partners may wish to be involved on a voluntary basis.

Regardless of the status of the partner body involved the co-operation on the LAA must be through the Local Strategic Partnership framework.

Staff with sufficient authority should be involved in local negotiations and who are able to effectively represent their organisations

The LAA must state which of the partner bodies will be responsible for delivery of the improvement targets including those targets which they

may be contributing to the attainment of.

9. Delivering priorities (including the reform of Best Value)

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The duty of Best Value (by virtue of Section 3 of the Local Government Act 1999 to “*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*”) remains but the requirements to conduct Best Value reviews have been removed. This reflects the stated intentions of government to remove the prescriptive aspects of Best Value whilst maintaining the principles of Best Value in terms of delivery of value for money.

The guidance makes clear that in order to achieve a balance between competing pressures the best value authority will need to consider the following:-

- Respond to the needs of all sections of the community
- Seeking to address the whole life costs of decisions, focusing on early intervention and achieving sustainable outcomes
- Exploiting economies of scale and
- Achieving locally-responsive services

There is also a new ‘*duty to involve*’. This is prescribed by Part 7 Section 138 of the Local Government and Public Involvement in Health Act 2007 and applies to all best value authorities. The new duty does not affect existing requirements on local authorities to engage with users or citizens relating to individual functions, for example in the area of planning.

The new duty requires authorities to ‘take those steps they consider appropriate to involve representatives of local persons in the exercise of any of their functions where they consider that it is appropriate to do so’. It also specifies the three ways of involving that need to be covered in these considerations:-

- **Providing information** about the exercise of the particular function
- **Consulting** about the exercise of the particular function and /or
- **Involving in another way**

‘**Local persons**’ is not considered to be just a geographic description but rather a broader term to include those who may study or work within an area and who will be affected by or interested in the function.

Representative {of local persons} is not considered to be those formally elected such as local councilors.

The guidance suggests that local authorities should consider providing

opportunities for representatives of local persons to:-

Influence decisions for example through participatory budgets

Provide feedback on decisions, services and policies

Co-design/work with the authority in designing policies and services

Co-produce or carry out some aspects of services for themselves

Work with the authority in assessing services

In applying the duty to consult authorities will be expected to balance the circumstances of the engagement against the cost of involvement. Authorities must have regard to issues of privacy. The example provided in the draft guidance is not to involve individual citizens in an adoption case but to involve citizens in the policy development of that area. There is strong emphasis on the need for the authority to have regard to issues of diversity but in any event APSE would remind authorities that they also have a duty under the new Public Sector Equalities Duty (see APSE briefing 05-52).

The guidance also references the involvement of third sector organisations in the delivery of the duty to consult in particular the emphasis being on vulnerable or hard to reach groups.

The guidance states that generally local authorities will be better able to meet their Best Value duties by adopting a commissioning role and without regard to whether services are provided in-house externally or through various forms of partnership. The guidance emphasises a mixed economy of service provision including

- Joint working with other statutory bodies
- Partnership with the local business and third sector
- Intervening to make local markets more effective
- Co-production with service users and communities of interest and place
- Contracting with providers in the public, private and third sectors and
- Securing services through service level agreements with an in-house provider.

APSE Comment. The Best Value duty was an important stage in the development of continuous improvement in local government services and in particular the part it has played in securing best use of resources. The retention of the overall Best Value Duty is therefore welcome whilst the removal of the more procedural aspects is a sensible recognition of the way in which councils are now reviewing and developing services linked to local priorities.

Some aspects of the new guidance may however causes some concern. Co-production is a potential cause of some difficulties. Service areas that have strived to ensure recognition of professional qualifications and

skills appropriate to the needs of the service and service users may view co-production as regressive. APSE would argue that consideration of how co-production is addressed would be entirely dependant on local circumstances, ensuring there are safeguards in place to ensure that co-production does not undermine the legitimate employment status of those workers with skills already in place to provide services or to undermine the universal standards of service delivery.

References in the guidance to 'commissioning' of services could create confusion if they are taken as a steer for local authorities to move back to a client contractor style split. Such arrangements were commonplace during service provision under the former compulsory competitive tendering (CCT) environment and led to less efficient mechanisms of service delivery and less flexibility between different arms within the local authority organisation. However we recognize that there will be a need to ensure good procurement practices especially when using a third party provider. It should also be noted that when using a third party provider client costs and monitoring costs will increase.

APSE is disappointed that the Government has not taken the opportunity in the guidance to emphasise the importance and ability of local authority in-house services to respond to a range of strategic issues through front line service delivery. For example the flexibility of the procurement processes of in-house operations to adopt greener and more sustainable procurement initiatives, localised training projects which contribute to economic well being within the area and anti-poverty strategies. Moreover where in-house teams work on an integrated system basis they are able to deploy resources cohesively across a number of work areas, improving service delivery and customer satisfaction and experience of using the service. Such a delivery method and the consequential improvements to service delivery and efficiency are well recorded.

Moreover integrated service delivery will help the achievement of national objectives. For example, in adapting services such as building maintenance, housing and leisure to assist older people achieve 'independence well being and choice' through supporting older people within the community. An integrated delivery model joining up key services without the restrictions that would apply within a delivery model based on a hard client / contractor split or within an outsourced model, governed by contract restrictions, would help achieve such beneficial outcomes.

Therefore whilst the guidance is a welcome recognition that there ought to be no return to a crude market testing exercise APSE would encourage member authorities to view the issue of competitiveness as a critical factor in determining future service delivery. Competitiveness is

different to that of competition as a public service concept and indeed APSE would strongly advocate the adoption of principles of competitiveness as an essential element in the delivery of public value in local government services.

APSE has developed a 'Competitiveness Continuum' which can be downloaded at www.apse.org.uk.

APSE will make representations on behalf of member authorities in response to the draft statutory guidance and comments from member authorities are welcome. Please send your contributions to Mo Baines on mbaines@apse.org.uk

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