

## **EAST AYRSHIRE COUNCIL**

### **SPECIAL POLICY AND RESOURCES COMMITTEE – 1<sup>ST</sup> FEBRUARY 2002**

#### **LOCAL GOVERNMENT (SCOTLAND) BILL – CONSULTATION EXERCISE**

##### **Report by Depute Chief Executive/Director of Corporate Resources**

### **1.0 PURPOSE OF REPORT**

- 1.1 To invite Members to consider and approve a proposed response on behalf of the Council to the consultation exercise currently being undertaken by the Scottish Executive in respect of its proposals for a Local Government (Scotland) Bill.

### **2.0 BACKGROUND**

- 2.1 The Scottish Executive has issued a final consultation document prior to presenting a draft Local Government (Scotland) Bill to the Scottish Parliament sometime in the spring of this year. Consultation responses are required to be submitted to the Executive by 6<sup>th</sup> February 2002.

- 2.2 The consultation paper sets out the Executive's key legislative proposals, which relate to three broad areas as follows:-

- (i) The introduction of a general power to enable Local Authorities to undertake any activity which it considers is likely to promote or improve the well being of its area and/or persons living therein. This will be known as a Power of Well Being (PWB).
- (ii) The introduction of a statutory framework underpinning the Community Planning Process, incorporating new statutory duties on both Local Authorities and their key planning partners to promote and develop Community Planning within their area.
- (iii) The introduction of a statutory duty of Best Value on Local Authorities to ensure continuous improvement in the delivery of services, together with the repeal of existing CCT legislation from the statute books.

- 2.3 The Executive also intends to use the Bill as a vehicle to address various other miscellaneous matters, the most significant of which include:-

- (i) Amendments to Section 94 controls on Local Authority capital expenditure to replace current arrangements with a more flexible system.
- (ii) Proposals to allow Authorities to develop joint collection of rent and Council Tax and

- (iii) A new duty to prepare integrated waste management plans.

### **3.0 POWER OF WELL BEING**

- 3.1 The Executive's proposals in this regard do not appear to extend as far as might have been expected, given the discussion which had previously taken place at earlier stages of the consultative process concerning proposals for a broader power of general competence.

Nonetheless, the proposed PWB is still to be welcomed, as it is envisaged that it will enable Councils to act more flexibly and innovatively in promoting and improving the well being of their areas and allow them to further develop genuine partnerships with key partners to improve services across the public sector and deliver added value. The new power will be permissive and will enable Councils to act provided there is no express prohibition, restriction or limitation contained within existing legislation. Specifically, a Council will have the power to incur expenditure in exercise of the PWB and to provide financial assistance to any person in its area. This will also include powers to enter into arrangements or agreements with any person, or body, and will incorporate the ability to exercise on behalf of such person or body any function presently carried out by them or to provide staff, goods, services and/or accommodation to such persons or bodies.

- 3.2 Terms of Response – the main issues which are of concern, or at least merit further clarification and/or consideration are:-
  - (i) The Executive's proposed approach to addressing existing legislation which is, or may be, incompatible with the exercise of the proposed PWB.
  - (ii) The proposed restriction on charges which can be levied by Local Authorities when providing discretionary services in the exercise of the PWB.
  - (iii) The status and content of the associated guidance to be issued by the Executive.

The Council's position on these issues and proposed alternatives, where appropriate, are set out in full within the terms of the proposed response.

### **4.0 COMMUNITY PLANNING**

- 4.1 The proposed response welcomes the introduction of a statutory duty not just on Local Authorities but also their key community planning partners on the basis that this should create a broader and more flexible framework against which individual joint initiatives can be developed.

## **5.0 BEST VALUE/CCT**

5.1 The main proposals in this area include:-

- (i) A statutory duty of Best Value, linked to the pursuit of continuous improvements in a manner that maintains an appropriate balance between quality and cost.
- (ii) Guidance to support stewardship and performance management under Best Value.
- (iii) Revised audit arrangements to reflect the duty of Best Value.
- (iv) Repeal of existing CCT legislation and new changes to restrictions on trading activities.
- (v) New streamlined powers of intervention by Ministers of the Executive.

5.2 The consultation paper recognises that Best Value should reflect the needs of both service users and service providers and it is therefore proposed that the Bill will include a requirement on Local Authorities to make appropriate arrangements to pursue continuous improvement in the exercise of the powers and functions, while paying due regard to economy, efficiency, effectiveness and equal opportunities requirements.

5.3 The proposed legislation will also include an obligation of Local Authorities to put in place a public performance reporting framework, aimed at ensuring stakeholders are given the required information in order to make informed decisions about a particular service. Accordingly, the Bill will incorporate an obligation upon Local Authorities to publish an annual description of performance alongside annual accounts. This publication will also be expected to detail how continuous improvement is being pursued. There will also be a revised duty in respect of annual Statutory Performance Indicators with the aim of providing greater flexibility to Councils as regards how and where they publish returns, although the existing annual deadline will remain. In addition, there will be new powers to the Accounts Commission to enable them to create new Performance Indicators on cross cutting issues which are tied to the Community Planning process.

5.4 Whilst the repeal of CCT legislation is in itself to be welcomed, the Executive's proposed treatment of the definition of 'commercial activity', the maintenance of a separate accounting and financial monitoring regime and the reserved power of Ministers to set specific financial targets, when taken together cause substantial concern that the new statutory Best Value regime could be unduly and unnecessarily onerous and prescriptive.

5.5 Terms of Response - one of the more important points to note in this context is that the new statutory duty of Best Value will only apply to Local Authorities, and not to public sector partners. This is addressed within the terms of the proposed response, along with various other specific comments relative to the proposed monitoring and scrutiny arrangements. The concerns expressed at paragraph 5.4 above relative to CCT are also set out in more detail within the terms of the proposed response.

## **6.0 FINANCIAL IMPLICATIONS**

6.1 There are no financial implications arising directly from consideration of the consultation paper or the enclosed draft response on behalf of this Council.

## **7.0 LEGAL/POLICY IMPLICATIONS**

7.1 None at present.

## **8.0 RECOMMENDATION**

8.1 It is recommended that the Committee:-

- (i) consider and approve, subject to any amendment, the proposed response to the Scottish Executive set out in Appendix 1.

Fiona Lees  
**Depute Chief Executive/Director of Corporate Resources**  
FL/DM/CMCT

27<sup>th</sup> January 2002

### **LIST OF BACKGROUND PAPERS**

1. Local Government (Scotland) Bill – outline of proposals – paper issued by Scottish Executive on 21<sup>st</sup> December 2001
2. Draft Cosla response to item 1 above, issued on 21<sup>st</sup> January 2002

For further information please contact David Mitchell, Head of Administrative and Legal Services, Telephone (01563) 576061.

**Implementation Officer – David Mitchell**

## Appendix 1

Our Ref: DM/DM/CMCT

Your Ref:

### **For the attention of Mr Donald Coutts**

Scottish Executive  
Local Government Constitution and Governance Divisions  
Area 3H  
Victoria Quay  
EDINBURGH  
EH6 6QQ

Dear Sir,

### **LOCAL GOVERNMENT (SCOTLAND) BILL FORMAL RESPONSE TO CONSULTATION PAPER**

In respect of the above I hereby confirm the formal response of this Council, following the same numbering and presentation used in the consultation paper, to be as follows:-

#### **Introduction/Background**

This Council generally welcomes the principal proposals of the Executive relative to the Power of Well Being (PWB) and the new statutory duties in respect of Best Value and Community Planning, together with the fact that these proposals have been, and will continue to be, developed in partnership with Local Authorities and other public sector agencies. We also welcome the attempt by the Executive to develop the necessary statutory framework within a single coherent piece of legislation.

It is noted, however, that the present consultation exercise did not afford any opportunity for comment on the specific details of a draft Bill and accordingly this response must be regarded as qualified in so far as we may require to make further comment when the full detail of the proposed Bill is subsequently made available.

This Council also endorses the general view as expressed in the Cosla response to the consultation exercise to the effect that the aim of the Bill is recognised to be the provision of a framework to enable the delivery of better, more responsive and integrated public services and this is an objective which this Council will continue to actively support. We also welcome the fact that the proposed Community Planning process provides for a shared vision and should also provide a sufficiently flexible framework to make local arrangements for the improvement of many public services which can be delivered in a way which best reflects specific local needs and circumstances.

### **Power of Well Being**

This Council welcomes the proposed general power for Local Authorities to promote and improve the well being of its area, and to take specific action in furtherance of this aim, provided there is no specific restriction, limitation or prohibition contained within existing legislation. It also notes that this new power is to be regarded as a power of first, rather than last, resort and is intended to promote innovative and progressive thinking and planning in the delivery of public services by freeing Councils from some of the more negative aspects of the existing statutory framework.

It would be a matter of concern, however, if the new power were itself to be the subject of unnecessary or otherwise inappropriate restrictions and this is reflected within the following specific comments:-

#### **(a) Repeal/Amendment of existing incompatible legislation**

The proposed approach to the implementation of the new PWB relative to the need to address existing legislation which might be incompatible with the exercise of the PWB causes concern in so far as it could itself have an unduly, and unnecessary, restrictive effect on the ability of Councils to use the new power.

As stated, the power is intended to allow Councils to act in the interests of their area unless there is a specific restriction, limitation or prohibition contained within existing legislation. The Executive only intends to repeal or amend two of the most obvious of these provisions (being Sections 83 and 171A of the Local Government (Scotland) Act 1973) within the Bill itself and to address the rest as and when they are identified by Local Authorities in the course of utilising the PWB.

This Council considers that more can be done at this stage to identify and address other existing provisions which are likely to require repeal or amendment, thereby leaving less to be picked up at a later stage. In particular, it is respectfully suggested that the Executive may wish to also consider the following when drafting the proposed Bill:-

Section 56 Local Government (Scotland) Act 1973  
Section 171B Local Government (Scotland) Act 1973  
Part II of the Local Government (Scotland) Act 1988 (in full)

#### **(b) Charging**

It is noted with some concern that in terms of the present proposals Local Authorities will not, in exercise of the PWB, be allowed to raise money by levying any form of tax or charge, except reasonable charges for services or facilities "as a means of recovering costs to reinvest in the maintenance or continued provision of that facility or service or related facilities or services".

This is not entirely clear and this Council would welcome early clarification of the Executive's proposals on this issue. In any event, this Council would support a specific power within the Bill enabling Local Authorities to make reasonable charges for discretionary services and allowing for activities which may generate surplus income, provided any such surpluses are to be reinvested in the provision of services generally or even to reduce Council Tax levels or at least limit further increases. In support of this provision it is noted that such a proposal is contained within the recently issued white paper on Local Government in England and Wales.

If such an approach were to be adopted, then consideration would also have to be given to any necessary amendment of Section 69(2) of the 1973 Act.

**(c) Guidance**

It is clear from the consultation paper that the Executive proposes to make extensive use of guidance in support of the primary legislation and it is accepted that this will be necessary. This Council would prefer such guidance to be non-statutory, and is, therefore disappointed by the clear intention on the part of the Executive to introduce such guidance on a statutory basis, particularly in view of the positive, non-prescriptive approach which has been successfully operated in recent years by both central and local government, for their respective interests, in respect of Best Value.

In any event, whether or not it is to be of a statutory nature, such guidance should be flexible and facilitative to allow Councils to take full account of local factors and circumstances and to be innovative in their exercise of the PWB.

**(d) Ability to Discharge Functions of other Public Bodies**

The present proposal that Councils will not be allowed to unreasonably duplicate functions which may or must be carried out by other bodies requires further consideration and clarification.

We would also support the view that any such provisions should mirror the present position in England and Wales, where Councils may undertake functions ordinarily carried out by another service provider, with the agreement of that other body. It is believed that such an approach would afford Councils in Scotland and their Community Planning partners greater flexibility in developing appropriate arrangements for the delivery of the broadest range of public services within a Best Value framework.

**Community Planning**

It is noted that the Executive propose to introduce a duty rather than a power in respect of Community Planning, with a concomitant duty on other key bodies likely to be involved in the Community Planning process. This is to be welcomed and will hopefully assist in overcoming some of the restrictions and obstacles this Council has previously encountered in the context of existing partnership arrangements such as the multi-agency centres which we have already successfully developed in Drongan and Dalmellington in conjunction with Primary Health Care and Police partners.

More generally, we welcome the proposed new duty on Councils and their key partners as it is likely to consolidate the role of Community Planning as a main element of the proposed new framework for the delivery of better public services and the promotion of community well being. We would, however, welcome the opportunity to make further comment once the specific wording of this proposed duty is known within the context of a draft Bill. Similarly, the manner in which the proposed duty is to be applied, particularly in respect of partner agencies, and the means for bringing non core public bodies within the ambit of the proposed legislation both appear to require further clarification.

**Best Value**

**(a) Application**

This Council endorses the view, as expressed by both Cosla and the Scottish Local Government Information Unit, that while the Executive's proposals for a statutory duty of Best Value are welcomed in principle the proposed duties should be extended across the whole of the public sector, rather than limiting its application to Local Authorities. This would reinforce the proposed expanded role of Community Planning and the need for a consistent approach across the public sector by promoting a level playing field within which both Councils and their community partners would be expected to operate.

**(b) Extent**

It is also noted that the proposed duty of Best Value as set out in paragraph 6.5 of the consultation paper is similar to the duty applied in England and Wales by Section 3 of the Local Government Act 1999, subject to the inclusion of an additional obligation to pay due regard to equal opportunities' requirements. We are unclear as to why the Executive considers it necessary to include this additional element, in view of the relevant obligations and duties which are already set out in existing legislation. By including this issue within the broader duty of Best Value the whole area of equal opportunities will now be subject to the Best Value scrutiny/intervention process, without any objective justification as to why this is considered either necessary or appropriate.

**(c) Reporting on Performance**

The general requirement for Local Authorities to utilise the Public Performance Reporting framework is not in itself contentious, and nor is the proposed obligation to publish an annual description of performance reporting arrangements alongside each Council's annual accounts. However, the proposed requirement for a summary description of what is being done to pursue improvement seems unnecessary and also to invite duplication of effort. The Annual Accounts have a very limited circulation in comparison with the PPR report and there may be little merit in publishing such a statement with the Annual Accounts.

**(d) Publication of Statutory Performance Indicators**

We welcome any proposal which will allow authorities a degree of latitude as regards publication of SPI returns in order to maximise public access to that information, whilst noting that this will still require to be done at least annually.

**(e) Additional Statutory Performance Indicators**

Whilst accepting that there is likely to be a need for some further PIs to be developed we would strongly argue that Local Authorities would have a very clear role in contributing to that process, preferably on a formalised basis along the lines of a joint forum involving representatives of all interested parties/stakeholders.

We would also not wish to see a substantial proliferation in the number or range of PIs and would seek clarification in respect of any cross-cutting PIs which may be introduced as to how reporting requirements are to be managed when multiple agencies are involved – eg is one agency to take the lead (and if so how are they to be identified) or will each agency be expected to comply to the extent of its own involvement in joint initiatives?

**CCT**

Clearly, the proposal to repeal CCT from statute books is likely to be welcomed by all concerned in the provision of public sector services. However, certain aspects of the proposals as outlined in the consultation paper give rise to significant concerns:-

**(a) Commercial Activity**

The Executive are proposing that where there is genuine commercial competition for the supply of particular works or services Local Authorities must keep accounts for those activities and provide an accurate account of the cost involved in accordance with the relevant Best Value Accounting Codes of Practice. As presently proposed, this would appear to cover not just any new areas of activity, such as might be developed through the exercise of the PWB, but also existing activities where competition already exists in the private sector, such as financial, IT and legal services, and any other of those activities formerly recognised as white collar defined activities within the CCT legislation. Accordingly, it would seem that, whether by accident or design, the current legislative proposals could have the effect of reintroducing the concept of defined activities that was

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previously a key feature of the former CCT regime which in turn would lead to many Council activities, including both those already existing and those which may subsequently be developed, being subject to monitoring and accounting mechanisms little different from those required under the CCT regime.

This Council would certainly not wish to see a monitoring and reporting regime in respect of Best Value which places such significant emphasis on the financial accounting element to the detriment, if not the exclusion, of consideration of quality issues.

### **(b) Financial targets**

Similarly, the view outlined above is reinforced by the proposal to allow for the broad extension of set financial returns for a greater range of Council activities. Councils need, and should be afforded, some discretion as to the manner in which they develop and operate their own commercial activities and it is respectfully submitted that the existing accounting mechanisms are more than adequate to secure appropriate financial scrutiny, both internally and externally, without need for specific financial targets or additional financial reporting mechanisms or requirements. In addition, if targets are to be set, we argue in all fairness for a minimum break even requirement rather than any positive rate of return.

### **Power of Intervention**

The consultation paper states that the Executive “intend to set out a streamlined and integrated process in the Bill to allow Ministers to act when the powers and obligations provided in the Bill are abused or ignored”.

Unfortunately, the consultation paper does not set out what such a process will specifically involve and we therefore require to reserve the right to make further comment as and when this detail becomes available. We do, however, welcome the suggestion that such a power will be ‘of last resort’ and that the emphasis of the Executive will be on non crisis intervention “with a graded approach involving Councils co-operating with the Accounts Commission to develop and implement strategies for correcting failures identified through the Best Value process”.

### **Minor Miscellaneous Provisions**

Most of the miscellaneous provisions are non-contentious, as many are necessary adjuncts to the main proposals set out within the consultation paper.

With regard to the development of an integrated Waste Management Plan it is considered that this is in line with the implementation proposals for National Waste Strategy and the Directive on Landfill. However, care will need to be taken that it simply does not become a bureaucratic exercise which duplicates the Area Waste Management Plan which will form part of the National Waste Strategy.

I trust you find this to be in order.

Yours faithfully

David Montgomery  
Chief Executive

**AGENDA**