

EAST AYRSHIRE COUNCIL

POLICY AND RESOURCES COMMITTEE – 12 JUNE 2003

LOCAL GOVERNMENT IN SCOTLAND ACT 2003 – SCOTTISH EXECUTIVE DRAFT GUIDANCE – CONSULTATION RESPONSE

Report by Depute Chief Executive/Director of Corporate Resources

1. PURPOSE OF REPORT

- 1.1 To present to Committee the Council's draft response to the consultation on the Scottish Executive Draft Guidance in relation to the Local Government in Scotland Act 2003.

2. BACKGROUND

- 2.1 A report was presented to the Policy and Resources Committee on 28 November 2002, advising Members of the content of the working drafts of the Scottish Executive's guidance in relation to the various aspects of the Local Government in Scotland Act 2003.
- 2.2 The Scottish Executive has since circulated further draft Guidance to councils for consultation. A corporate summary of the possible issues contained within the Executive's Draft Guidance has been prepared to assist in the consultation process. This summary was circulated to departments. The Executive has invited comments by 20 June 2003.
- 2.3 Departments have now had the opportunity to make comments on the draft guidance and the basis of a corporate draft response to the Scottish Executive has been prepared.

3. CONSULTATION RESPONSE

- 3.1 Departments have welcomed the guidance and the opportunities presented to councils. The Appendix to the report shows an introduction for each topic as summarised from the draft guidance notes, a boxed summary (in italics) of what the issues are likely to be from the Council's perspective, and lastly in bold text, the summary results of departmental comments.
- 3.2 The comments within the draft response are set out under the three headings contained within the original guidance, namely Best Value, the Power to Advance Well-Being and Community Planning.

4.0 CONCLUSION

- 4.1 Overall, the guidance appears to be quite practical and relevant and is set out in sufficiently broad terms to allow adequate flexibility to relate it to a wide range of different services. The Council welcomes the Government guidance and the opportunity to give comment.

5.0 LEGAL/POLICY IMPLICATIONS

5.1 The Local Government in Scotland Act 2003 is effective from 1 April 2003. Over the coming months, the draft guidance covered in this report will be finalised by the Scottish Executive and councils will require to review and refine their own approaches in these areas. Any specific legal/policy implications will be reported as necessary following the review of this Council's arrangements.

6.0 FINANCIAL IMPLICATIONS

6.1 None arising directly from this report.

7.0 RECOMMENDATIONS

7.1 The Policy and Resources Committee is asked to:

- (i) agree the basis of the corporate response to the consultation on the Scottish Executive Draft Guidance in relation to the Local Government in Scotland Act 2003, as summarised in the appendix to the report
- (ii) remit the Depute Chief Executive/Director of Corporate Resources to summarise the appendix by way of a Council response to the Scottish Executive by the due date of 20 June 2003, and
- (iii) otherwise note the contents of this report.

Fiona Lees
Depute Chief Executive/Director of Corporate Resources
29 May 2003

Appendix – Basis of the Corporate Response to the consultation on the Scottish Executive Draft Guidance in relation to the Local Government in Scotland Act 2003

LIST OF BACKGROUND PAPERS

1. The Local Government in Scotland Bill, 2nd Working Draft Guidance.
2. Nine Supplementary Advice Notes on a Range of Issues Important to the Effective Implementation of Community Planning in Scotland (part of Draft Guidance Notes).

Anyone wishing to view the Background Papers or seek further information should contact Fiona Lees, Depute Chief Executive/Director of Corporate Resources or John Clayton, Head of Corporate Development and Communication on (01563) 576103 and (01563) 576165 respectively.

IMPLEMENTATION OFFICER:- John Clayton, Head of Corporate Development and Communication

Basis of the Corporate Response to the consultation on the Scottish Executive Draft Guidance in relation to the Local Government in Scotland Act 2003

Contents

1. The Duty to Make Arrangements to Secure Best Value
2. The Power to Advance Well-being (PAWB)
3. Community Planning
4. Community Planning Advice Notes (for information only)

1. THE DUTY TO MAKE ARRANGEMENTS TO SECURE BEST VALUE

Introduction

The guidance on the duty to secure Best Value has been prepared by the Best Value Task Force. This is not Ministerial guidance issued under section 2(1)(a) of the Act but rather under Section 1(1)(b) and has equal status to other guidance or material recognised as authoritative by the Accounts Commission for Scotland and other bodies responsible for the scrutiny of Scottish Local Government. Where any conflict between this guidance and any other guidance on Best Value arises, this guidance takes precedence.

In the interest of clarity, the Council may wish to seek confirmation from the Executive on what further guidance or material on best value is recognised as authoritative in relation to section 2 (1)(b). The Executive could also be clearer on the status of previous guidance issued since 1997/98.

There was general agreement that further clarification should be sought from the Scottish Executive.

This guidance is intended to support and expand upon the statutory guidance issued by Ministers under Section 2(1) (a) of the Act. The Executive consulted on this Ministerial Guidance in November 2002 and the finalised guidance is awaited.

The Characteristics of Best Value Arrangements

The Scottish Executive guidance seeks to give more detail about the characteristics authorities are expected to demonstrate in fulfilling the statutory duties which make up the Best Value “regime” provided by the Act.

The guidance is structured into eight sections, each one providing a series of areas to which an authority should have regard in demonstrating that it secures Best Value. Those services involved in the previous Performance Management and Planning Audits conducted by Audit Scotland will recognise much of the content of the guidance as it borrows extensively from the PMP Framework.

The continuity that should be provided through the transfer of the characteristics of Best Value as recognised in the PMP Framework to the guidance should be welcomed. The Council may wish to emphasise that the new Best Value Audit arrangements should now build on this and ensure a smooth transition in scrutiny arrangements.

This point was agreed.

In brief, the guidance looks at the following:-

- **Responsiveness and consultation** – we need to respond to stakeholders needs, engage in dialogue with partners, the business, voluntary and community sectors and consult in an open, fair and inclusive way.

Whilst recognising the need for and undoubted benefits to be gained from wide consultation, the Council may wish to seek recognition in the guidance to the potentially harmful effects of “consultation fatigue”.

The Council may also wish to seek recognition in the guidance of the need for service managers to be allowed responsibility to ensure that the level and extent of consultation on any particular matter is appropriate and the cost of such consultation exercises is in balance with the potential benefits to be secured.

There is still an on-going debate within the Council as to whether there is a risk of ‘consultation fatigue’.

Departments support the inclusion of the second point on managers having delegated authority to ensure that consultation is proportionate and cost-effective.

- **Sound governance and management of resources** – this section of the guidance covers a number of aspects including the need to establish a framework for planning and budgeting, establish effective performance management systems and demonstrate that best use is being made of all public resources.

Whilst it is recognised that an important aspect of performance comparison is the use of external benchmarks, it would be helpful if the guidance recognised that this may not always be feasible. It is important, therefore, to highlight the need for such external comparisons to be accurate and thereby ensure that the resulting analysis represents the true picture of the relative performance of a service.

It may be useful at this point in the guidance to distinguish between performance benchmarking and process benchmarking. Process benchmarking can often be more productive and collaborative than performance benchmarking and the guidance might usefully recognise this.

It was agreed that it should be made clear to the Scottish Executive that comparative analyses with commercial organisations may be difficult in some areas where there is service competition e.g. Refuse Collection, Grounds Maintenance and Sports and Leisure.

- **Use of review and option appraisal** – this aspect of the guidance relates to the need to ensure that all areas of a council’s business is subject to fundamental Best Value Review, that these reviews result in measurable benefits and that all of the options for the future delivery of council services are considered to ensure that they are competitive and provide consistently good service quality.

All of the areas identified in the guidance relating to Best Value Review activity are in themselves worthy of inclusion. However, no recognition is given in the guidance to the need to ensure that the scope of any individual Best Value Review, should, among other things, be commensurate with the scale of the service under review and the council's understanding of the need for any significant change. It may be, therefore, that an authority is confident that the service is needed and that the current service provider is performing well. The guidance should, therefore, allow authorities scope to decide not to subject the service to full option appraisal where the time and other resources invested in this process would be unlikely to result in significant change.

There was support for the inclusion of this point and agreement that councils should have authority to implement the statutory duty of Best Value in ways which are not counter-productive or disruptive to services which are performing well.

- **Competitiveness, trading and the discharge of authority functions** – this aspect of the guidance was not included in any element of the PMP Framework. This relates to local authorities trading activities and the various obligations councils require to meet to demonstrate appropriate competitive practice, considers the needs of the local business community and the need to ensure proper accounting practices. This aspect of the guidance crosses heavily over into the further guidance on the Power to Advance Well-being, a summary of the potential issues for the Council is included in this briefing note.
- **Sustainable development** – this relates to the need to ensure that consideration is given to the social, economic and environmental aspects of the council's activities and decisions.
- **Equal opportunities arrangements** – this aspect of the guidance relates to the extent to which councils have mainstreamed equalities within their Best Value frameworks and authorities can demonstrate that measures are in place to meet the UK wide equal opportunities requirements.
- **Accountability** – this aspect of the guidance relates to the need for councils to report to the public on the quality of service that is being delivered and what can be expected in the future. The guidance identifies the areas councils should have regard to in relation to their approach to public performance reporting and also the content of their public performance reporting.

An important new element to the guidance to the public performance reporting is the need to report on how the authority is working with community planning partners to best meet the needs of its communities. Whilst it is not suggested that this is an issue needing to be raised with the Scottish Executive, it is something that this Council and its Community Planning Partners will need to consider.

It was agreed that there would be a need for joint consultation with Community Planning partners on how expanded public performance reporting arrangements will be managed on an inter-agency basis.

2. THE POWER TO ADVANCE WELL-BEING (PAWB)

What is it?

The PAWB is a new discretionary power to enable local authorities to do anything they consider likely to promote or improve the well-being of their area and/or persons in it. The power came into force on 1 April 2003.

The Scottish Executive aims to encourage local authorities to use the power in innovative and imaginative ways and the guidance is, therefore, not prescriptive. The power to advance well-being is subject to the duty of Best Value and it is likely that some uses of the power to advance well-being will stem from the work of the Community Planning Partnerships. The Act and the PAWB are seen as part of the Scottish Executive's local government modernisation agenda and part of the drive for continuous improvement in public services.

The definition of 'well-being' has been kept deliberately general as each local authority will have its own view of what will promote well-being in its area. Some examples of the key factors which are listed as improving well-being are economic factors (such as high quality jobs, good transport links, lifelong learning, and new ICT) social factors (promotion of good health, good housing, safe communities, access to leisure and education and looking after the needs of young people) and environmental factors (clean, healthy environment, access to open spaces, good quality built environment, protecting communities from the risk of climate change and removal of graffiti from buildings etc).

Any plans made or actions taken under the PAWB need to be informed by and responsive to the views of the people in the area.

Local authorities have considerable discretion in how they act upon the PAWB. They may use it to support their arrangements to secure Best Value and to help secure the objectives of their local Community Planning Partnership. They may also use it for other purposes.

How will it work?

Previously local authorities had to check whether legislation explicitly enabled them to engage in a particular activity. The PAWB means that authorities need to check if they are prevented from undertaking an activity.

The Scottish Executive wants local authorities to regard the PAWB as a "power of first resort", when they are in any doubt about whether existing powers would enable them to take a particular course of action or to deliver a particular service. However, authorities still need to check for other legislation, either UK or European, which prevents or limits the intended action. Commercial activity is still covered by current UK legislation and elsewhere in the provisions of the Local Government Act 2003.

Any decision to spend money under this power needs to be transparent and needs to reflect good practice in assessing options. The use of the power will be subject to audit.

The PAWB can be regarded as a broader spending power; however the financial management disciplines required by Best Value still apply. In addition to financial assistance, "in kind" support can be provided. The PAWB is designed to support local

authorities' efforts in working with Community Planning partners to provide better, more joined-up services to their communities. Whilst the PAWB enables local authorities to deliver services that fall within the responsibility of other service providers, it does not transfer statutory responsibility or accountability for that function.

The power can be used to benefit some or all of the people in an area (e.g. the business community, older people, disabled people, tourists or commuters). However local authorities still have a duty under the Act to discharge the power in a way which encourages equal opportunities.

A local authority can use the power outwith their area if this is likely to promote well-being within their area but they are expected to consult other affected local authorities or relevant bodies.

Safeguards

The PAWB does **not** enable local authorities to:

- do anything prohibited or limited elsewhere
- unreasonably duplicate the legislative functions of another body, unless that body consents
- do anything which may be done under the Local Authority (Goods & Services) Act 1970.
- Raise money by levying any form of tax or charge. However, the local authority may impose reasonable charges for services it provides as long as the activity does not constitute a trading operation/commercial activity (i.e. the local authority can recover costs from use of the PAWB but not make a profit or the Local Authority (Goods & Services) Act 1970 will apply).
- promote economic development outside the UK without consent of the Scottish Ministers.

The Council and its Community Planning Partners will require to reflect upon the benefits to be secured through PAWB.

This point was agreed.

The use of the PAWB will be subject to audit and the Council will therefore need to adopt a mechanism for recording when and how the power has been used. A satisfactory audit trail will have to demonstrate that the use of the PAWB has been used appropriately, how Best Value has been taken account of and how equalities issues have been addressed.

It was recognised that the Council would have to address this issue.

It may be worthwhile to secure a commitment from the Executive to review and promote examples of innovation and 'best practice' use of the PAWB.

It was agreed that this point should be made to the Scottish Executive and further suggested that they should be asked to make funds available to pilot PAWB initiatives.

It may be worthwhile to type up the existing Local Authority (Goods and Services) Act 1970 and amend it to reflect the new powers available under PAWB.

Agreed.

3. CONSULTATION DRAFT GUIDANCE ON COMMUNITY PLANNING AND CONSULTATION DRAFT COMMUNITY PLANNING ADVICE NOTES, MAKING IT WORK FOR SCOTLAND

INTRODUCTION

The consultation draft guidance on Community Planning is provided under Section 18 of the Local Government in Scotland Act 2003 and is accompanied by nine Community Planning Advice Notes, also presented for consultation.

The draft guidance on Community Planning, when finalised, is intended to act as a national framework to all those participating in the Community Planning process.

The accompanying Community Planning Advice Notes are intended to reflect the evolving nature of Community Planning and to be updated on a regular basis as experience is shared and examples of Community Planning in practice are added.

The draft guidance on Community Planning should be read in conjunction with the guidance on Best Value issued under Section 2(1) (b) of the 2003 Act and the Power to Advance Well-Being guidance issued under Section 22 of the Act. Summary papers on these two related sections will be presented separately to this report.

DRAFT GUIDANCE ON COMMUNITY PLANNING

Introduction and key messages

The guidance is structured into twelve main sections, and sets out clearly the duty placed on the Local Authority as the facilitator of the Community Planning process as detailed in Section 16 of the Act. The guidance also sets out the duties placed on other public sector agencies including NHS Health Boards, Police, Fire Services, Enterprise Companies and the SPTA.

There is clear recognition of Community Planning as the key over-arching or 'umbrella' partnership within the guidance, reflecting that Community Planning should therefore not be an additional or parallel process to the various strategies or partnership structures already in place.

The Local Authority will require to establish a Community Planning Partnership for its area, comprising all relevant public, private, voluntary and community bodies.

Section 19 of the Act allows Community Planning Partnerships to apply to Ministers to establish a partnership as a legally distinct body. In previous consultation responses the Council has not favoured the 'incorporated body' approach, is this still the case?

The Council is not in favour of the establishment of an incorporated body unless there was be a specific operational reason to do so and there was evidence that it would provide added value, secure continuous improvement, further promote power of well being, reduce bureaucracy and deliver real outcomes. A concern was expressed that establishing incorporated bodies would take community planning in the opposite direction from the concept which is embodied in the Act.

Integration

As the Act provides a framework for the better delivery of public services, no one part of the Act can be taken in isolation. The Council's use of the Power to Advance Well-Being should be influenced by Best Value and the Community Planning process. Similarly, Best Value should feature in an organisation's participation in Community Planning.

Best Value will apply to the rest of the public sector since its inclusion, as of April 2002, of a duty of Best Value in the memoranda for Accountable Officers. The wording of this duty will be updated to reflect the formulation of the statutory duty for local authorities. Would it be beneficial for an Advice Note to be prepared for other Community Planning Partners not under a duty of Best Value?

The wider application of the Duty to Secure Best Value will assist and support partnership working and is to be encouraged.

Duty of Scottish Ministers

There is a duty under 16(8) of the Act that requires Scottish Ministers, when discharging any of their functions, to promote and encourage Community Planning. Scottish Ministers include the Scottish Executive and Executive Agencies.

Although welcomed, Ministers require to note that although Community Planning will be a vehicle through which national programmes can be addressed, Community Plans will be developed in response to local need and therefore Ministers should not be prescriptive about the actions contained within their Ministerial portfolio appearing in all local community plans.

The role of Communities Scotland – Further clarity is required about the role of Communities Scotland in the local planning process, as the Agencies involvement varies considerable across existing partnerships.

Agreed.

Engaging Community and Other Public Bodies

The guidance note sets out the requirement to engage with community and other public bodies and embrace them as partners within the process, and recognises that consultation is not sufficient to ensure community engagement.

To ensure Best Value engagement should be cost effective and be proportional to the issues being addressed and intended follow-up.

Is the balance between the strategic partnership and the need to engage with a wide range of stakeholders at a local and thematic level right? Great emphasis is placed on the range of stakeholders which the community planning process should embrace, including communities, statutory bodies and other organisations such as Scottish National Heritage, or bodies with a UK remit but local presence i.e. Jobcentre Plus.

Giving recognition to the role community and voluntary organisations can play in shaping public services is welcomed however a balance is required in the guidance to expectations placed on partnerships, regarding the range and level of anticipated partners involvement.

These points were supported. The view was expressed that there is also a need to set reasonable expectations of voluntary and community organisations, based on a realistic appraisal of their capacity to participate in Community Planning without detriment to carrying out their core tasks.

It was also suggested that the Council should explore models for cascading down the Community Plan within local communities to engage local people in a co-ordinated programme covering a range of local issues.

Mainstreaming Community Planning within the Organisation

The guidance states that a local authority fully embracing the concept of Community Planning will demonstrate joint working in its political management; corporate planning and service planning structures; consultations with stakeholders; communications with staff and others; allocation of resources etc.

The Council may wish to advise the Executive of its intentions/agreement to consider the Community Plan as the sovereign strategic document for East Ayrshire and its commitment to review existing service planning arrangements to ensure an appropriate link to the overall community planning process.

The guidance requires to emphasis and provide clarity, for all Partners given a statutory duty to participate, to align financial resources to clearly drive forward the community planning agenda.

Elected Members are committed in their support for the Community Planning process and wider partnership working.

Reporting on Community Planning

Section 17 of the Act sets out the Local Authority's duty to report on Community Planning. Audit Scotland will work with Community Planning Partners to develop a menu of key indicators from which partnerships can select, to support effective performance monitoring and benchmarking.

The Council may wish to request that the Executive streamline the range of indicators which Public Sector Agencies currently require to report on, as well as preparing a menu of key indicators for community planning.

The guidance states that reports should be geared towards the local community and not the Executive, if this is the case it is imperative that the key indicators are meaningful for communities to digest.

It was agreed that any performance indicators for Community Planning should not be additional to existing indicators but should be accommodated by reviewing and rationalizing the already heavy burden of performance indicators on which Councils are held to account. The point was also made that any new indicators for Community Planning should be based on outcomes which will be monitored.

4. COMMUNITY PLANNING ADVICE NOTES

There are nine supplementary Advice Notes attached to the draft guidance on Community Planning. The aim of these Advice Notes is to illustrate how Community Planning may work in practice and facilitate the sharing of experience on developing community planning processes. As the agenda develops, it is the intention of the Executive to update these Advice Notes routinely. The nine Action Notes and a short summary of each are detailed below for information only:

- **Advice Note 1 - National Framework: National Priorities** – This Advice Note sets out the key strands of the main national policy directives which Community Planning Partnerships, as the over-arching partnership framework at a local level, will require to give due regard.
The Executive highlights four main cross-cutting policy themes which require particular mention, namely Social Justice; Regeneration – ‘Closing the Opportunity Gap’; Sustainable Development; and Equalities.
- **Advice Note 2 - Partnership Models and Structures** – This Advice Note provides information on a range of structures which Community Planning Partners will require to consider when establishing their over-arching Community Planning Partnership. The Advice Note details the opportunity for Partnerships to apply to become an incorporated body, where appropriate and the perceived benefits of this model.

The Advice Note also provides guidance on local or neighbourhood community planning mechanisms, for consideration by planning partners.

- **Advice Note 3 - Involving the Private Sector** – This Advice Note covers the Involvement of the private sector is considered by the Executive to be an important ingredient towards the success of the overall community planning process. The Advice Note provides guidance on how to effectively engage with the private sector and examples of good private sector involvement across Scotland.
- **Advice Note 4 - Effective Partnership Working** – This Advice Note highlights the benefits of effective partnership working, and recognises that there will be a need

for a cultural change, and continuous learning and development programmes if partners are going to meet these challenges. The note also addresses the need to mainstream community planning processes and effective partnership working throughout individual organisations.

Within the Advice Note recognition is given to partnership overload, the duty on Local Authorities to facilitate the Community Planning process includes a requirement to develop a framework for streamlining the planning and delivery of services with an emphasis on removing wasteful overlap.

- **Advice Note 5 - Effective Community Engagement** – This Advice Note informs us that the main aim of community engagement should be to improve the planning and delivery of services by making them more responsive to the needs and aspirations of communities. Advice Note 5 sets out the principles of effective community engagement and advocates for the effective deployment of Community Learning and Development staff as a means to achieve effective community engagement.
- **Advice Note 6 - Building Organisational Capacity** – This Advice Note tells us that Community Planning challenges traditional ways of working and delivering services. It requires new attitudes, behaviours and competencies that underpin joined-up policy development, effective partnership working and engagement with communities. Advice Note 6 sets out the requirement for organisational change and recognises that if Community Planning is to be embedded within each partners organisation, it will be necessary to encourage partners to learn and develop together, with the impetus for change coming from the top.
- **Advice Note 7 - The Role of the Elected Member and other Board Members-** This Advice Note deals with the role of the Elected Member both within and out with the partnership structure. The note also deals with the role of those participating on the Partnership Board and consideration requires to be given to all aspects of this note when establishing a Community Planning Partnership.
- **Advice Note 8 - Information Sharing** – This Advice Note tells us that the need for effective information sharing is deemed necessary to the success of the overall community planning process. The Note highlights the barriers to information sharing, the benefits of sharing information and guidance on sharing information successfully.
- **Advice Note 9 - Monitoring Progress and Performance Reporting** – The final Action Note highlights the need for the Community Planning Partners to agree actions and outcomes, balancing local and national priorities. To identify how they will track their progress and establish a framework for monitoring and evaluating the performance against set targets and actions and of the effectiveness of the partnership itself.

27 May 2003