LOCAL GOVERNMENT IN SCOTLAND BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Local Government in Scotland Bill introduced in the Scottish Parliament on 16 May 2002:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 53–PM.
These documents relate to the Local Government in Scotland Bill (SP Bill 53) as introduced in the Scottish Parliament on 16 May 2002

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The Local Government in Scotland Bill is intended to enable the delivery of public services which better meet the expectations of those who pay for and use them.

5. The Bill contains provisions in relation to Best Value within local authorities; local authority commercial activity; the Community Planning process; the promotion and improvement of well-being; and certain miscellaneous provisions concerned with local government. The provisions in the Bill will in the main impact most directly on local authorities but particular aspects of the Bill also relate to certain other public bodies.


THE BILL – AN OVERVIEW

7. The Bill provides:

- a duty to secure Best Value in local government service provision;
- an extension of the Accounts Commission for Scotland’s powers to hold hearings and publish findings so that they cover issues relating to Best Value and Community Planning;
- the provision of an Ministerial intervention power for continued or extraordinary statutory failure in Best Value or a significant misuse of the power of well-being;
- amendments to constraints on local authority trading activity, with the repeal of all existing legislation relating to compulsory competitive tendering;
These documents relate to the Local Government in Scotland Bill (SP Bill 53) as introduced in the Scottish Parliament on 16 May 2002

- a statutory basis for public performance reporting and arrangements to improve accountability;
- a statutory basis for Community Planning to allow for co-operation between local authorities and other key bodies and organisations and the community;
- a power for local authorities to promote and improve the well-being of their areas; and
- a vehicle to progress a small number of miscellaneous provisions which relate to local government matters.

8. The Bill is in 6 parts as follows:

- Part 1: Best value and accountability
- Part 2: Community planning
- Part 3: Extension of Controller of Audit’s functions
- Part 4: Power to advance well-being
- Part 5: Miscellaneous
- Part 6: General

THE BILL – SECTION BY SECTION

Part 1 - Best value and accountability

9. Part 1 provides a new performance management and accountability regime for local authorities. For the purposes of Part 1 “local authority” is defined by section 34 so as to include all Scottish councils, joint police boards, joint fire boards, joint valuation boards, and Strathclyde Passenger Transport Authority. It puts local authorities under a duty of Best Value and requires them to have regard to guidance about what that may mean. It extends the powers of the Accounts Commission for Scotland (“the Accounts Commission”) and the Scottish Ministers to encourage failures in Best Value to be identified and addressed. It provides more freedoms and flexibilities for local authorities over commercial trading activity and removes the requirement to submit specified activities to compulsory competitive tendering (CCT). It provides a new framework for performance reporting to local authority stakeholders which leaves decisions about the ways and means of publication to be decided at local level.

Section 1 – Local authorities’ duty to secure best value

10. Section 1 places all Scottish local authorities (as defined by section 34) under a duty to secure Best Value and describes Best Value in terms of the continuous improvement of performance of functions. This statutory definition builds on the working definitions used by local authorities, the Accounts Commission and HM Inspectors since 1997 on the basis of advice provided by the Best Value Task Force. The term “functions” has the meaning given to it by section 126 of the Scotland Act by virtue of the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379). It includes therefore both the powers and duties of local authorities.
11. Subsection (3) provides that in securing continuous improvement in a particular service local authorities will be expected to maintain a balance between the quality of the outcome of the service delivered and the cost of that service. Subsection (4) provides that in maintaining this balance between quality and cost local authorities will be expected to consider the efficiency, effectiveness, and economy of their actions and how well those actions comply with the requirements of equal opportunities legislation.

Section 2 – Considerations bearing on performance of duty under section 1

12. Section 2 requires local authorities to have regard to any guidance issued by the Scottish Ministers to support the duty of Best Value. The Scottish Ministers are required to consult associations of local authorities and whoever else they judge appropriate on the guidance.

13. In the absence of guidance produced by the Scottish Ministers, local authorities will be expected to have regard to arrangements which are generally accepted within Scotland as constituting proper arrangements for securing Best Value, because they are described as such in commonly accepted or endorsed guidance or codes of practice. Subsection (3) ensures that if there is a conflict between guidance issued by the Scottish Ministers and any of the recognised codes of practice referred to in subsection (1) that local authorities should always consider the guidance issued by the Scottish Ministers to have priority.

Section 3 – Action by Accounts Commission following report by Controller of Audit

14. Section 3 sets out what the Accounts Commission can do once it has received a report from the Controller of Audit ("the Controller") made under section 102 of the Local Government (Scotland) Act 1973 ("the 1973 Act"). Whether in relation to Best Value or community planning, the Accounts Commission may require the Controller to look into a specific issue or to look at an issue in more detail. In circumstances where it thinks it appropriate the Accounts Commission may hold a public hearing on the issue, before stating findings; state findings without holding a hearing; or decide to take no further action.

15. Subsection (2) clarifies that any findings made by the Accounts Commission without a hearing having taken place have the same status as findings issued by the Accounts Commission after a hearing. As with those issued after a hearing such findings can include recommendations to the Scottish Ministers or directly to the relevant local authority.

Section 4 – Hearings under section 3 above

16. Section 4 makes new provision for the procedures to be followed in a hearing held under section 3. The section makes cross-reference to certain provisions contained in the 1973 Act (as amended in particular by the Ethical Standards in Public Life etc. (Scotland) Act 2000 ("the 2000 Act")). These provisions ensure that the Accounts Commission has the right to determine the procedure at any hearing but that certain basic requirements must be met.

17. These include that the hearing should be conducted (if appropriate) in public, that no fewer than three members of the Accounts Commission should attend, and that any local authority or individual mentioned in the report or likely to be mentioned during the hearing has the right to be heard at the hearing. The Accounts Commission may require individual officers
or members of an authority to attend a hearing, under pain of a level 3 fine, but may pay their expenses if it thinks it appropriate.

18. At the conclusion of the hearing the Accounts Commission must prepare written findings to be copied to the relevant local authorities and any other parties the Accounts Commission considers should receive a copy. Subsection (3) provides that the findings issued at the conclusion of a hearing can include recommendations made either direct to the relevant local authority or to the Scottish Ministers.

19. As a consequence of provision made by sections 3 and 4, subsection (7) repeals those subsections of the 1973 Act that have been superseded.

Section 5 – Action by local authorities on receipt of findings

20. Section 5 simplifies the actions the local authority (or group of authorities) will be expected to take after taking receipt of findings from the Accounts Commission. Reference is again made to the provisions of the 1973 Act (as amended), which provides for the authority to advertise the findings and the time and date of a public meeting at which they may be discussed. Local authorities will be expected to consider any findings issued by the Accounts Commission at a previously-advertised meeting of the authority within three months of receiving the findings (unless the Accounts Commission specify some other time-scale). The local authority will be expected to notify the Accounts Commission of its proposed actions in response to their findings. A summary of this response should be published in a local newspaper.

21. As a consequence of provision made by section 5, subsection (2) repeals those sections of the Local Government Act 1992 that have been superseded.

Section 6 – Enforcement: preliminary notice

22. Section 6 sets out the circumstances in which the Scottish Ministers are allowed to act to enforce a local authority’s obligations under section 1, and the preliminary procedure that must be followed.

23. This section makes clear that such ‘intervention’ may be on the recommendations of the Accounts Commission but does not need to be. Subsection (1) provides that the Scottish Ministers must, however, take the view that an authority is failing to comply with its obligations under its duty of Best Value and that giving the local authority an enforcement direction is justified in order to protect the public interest from substantial harm.

24. If the two tests mentioned above are met, then Ministers may serve a preliminary written notice on that authority. Subsection (2) provides that this notice should inform the authority that in the Scottish Ministers’ opinion the criteria set out above apply and asks for a response. The response may be to argue that the case does not meet the criteria, or that although the preliminary notice is accurate, there are persuasive reasons why further intervention is not appropriate.

25. Subsection (3) provides that it is only after considering this response, or after the deadline for offering such a response has expired, that the Scottish Ministers will have the power to issue an enforcement direction as provided in section 7.
Section 7 – Enforcement directions

26. Section 7 sets out the nature and scope of enforcement directions issued by the Scottish Ministers under section 6(3) above.

27. Such a direction must be subsequent to the preliminary notice described in section 6, but does not have to be made. Subsection (2) provides that the Scottish Ministers may specify the action required or place conditions on the continued exercise of certain of the local authority’s functions. The Scottish Ministers may subsequently amend the direction without having to repeat the preliminary notice procedure described in section 6, and may revoke the direction at any time. Subsection (3) provides that the direction may include a direction for the local authority to rectify inaccuracies in its financial accounts.

28. Subsection (7) places local authorities under a duty to follow any direction given to them by the Scottish Ministers. As a consequence of this duty a local authority which ignores such a direction may be forced to do so by court order.

Section 8 – Accounts Commission’s studies and recommendations to include aspects of securing best value

29. Section 8 amends the 1973 Act to ensure that the Accounts Commission’s existing power to undertake studies into the economy, efficiency, and effectiveness of local authorities’ activities (either singly or in groups) is extended to allow the Accounts Commission to undertake studies into the extent to which they have secured Best Value. The existing power to undertake studies specifically into the economy, efficiency, and effectiveness of local authority activity is retained.

Section 9 – Auditor’s duty in relation to aspects of best value

30. Section 9 amends the 1973 Act to widen the existing duty of local authority auditors so that they can audit the arrangements local authorities have made to secure Best Value.

Section 10 – Local authority contracts: relaxation of exclusion of non-commercial considerations

31. Section 10 amends section 17(5) of the Local Government Act 1988 (“the 1988 Act”) to allow local authorities to take into consideration issues which relate to employment practices previously excluded from commercial contractual negotiations.

32. Subsection (2) provides that these issues may only be considered in circumstances where they are relevant to (a) the local authority being satisfied that a contractual partner will be able to comply with the terms specified in the contract; (b) the local authority securing Best Value; and (c) whether the relevant contract is likely to involve the transfer of staff or any other issues relating to the Transfer of Undertakings (Protection of Employment) Regulations 1981.

33. Subsection (3) amends the 1988 Act to remove the prohibition on local authorities from taking into account whether or not contractors use local authority building control services. This prohibition was introduced in the 1988 Act in response to the provision of the private sector alternative to ‘Approved Inspectors’ in England and Wales by the Building Act 1984. There is
no approved private sector alternative in Scotland to the services provided by the local authority, and this restriction is therefore considered unnecessary.

Section 11 – Relaxation of restrictions on supply of goods and services etc by local authorities

34. Section 11 amends the Local Authorities (Goods and Services) Act 1970 (“the 1970 Act”) to provide a new framework for the provision of goods and services by local authorities to individuals and other organisations.

35. This section provides that where the provision is to (a) other public bodies, (b) contractual partners where the provision is intended to support a pre-existing contract, or (c) to bodies serving a public purpose where the provision is to support that public purpose, goods and services can be provided within the United Kingdom to whatever extent local authorities determine.

36. In relation to the provision of goods and services to other trading partners, such goods and services can be provided within the UK to whomsoever an authority chooses. However, where such activity is considered to be significant trading activity under proper accounting practice (as specified in section 14), and the income generated thereby is considered to be commercial, the income generated by the delivery of goods and services under such agreements will be subject to financial limits set by the Scottish Ministers. Such limits will be set by order. They will be authorised by statutory instrument which the Scottish Parliament will have power to annul if it thinks fit. Ministers will also have the power to allow income generated under a particular agreement entered into a particular local authority to exceed the limit specified for that activity. It is expected that such approvals will only be offered according to clear and explicit criteria and after consultation.

37. Subsection (2), inserted subsection (1K) ensures that a local authority choosing to provide goods and services on the basis of the 1970 Act should in so doing or before so doing consider the well-being of its area, the persons in that area, or either of those. “Well-being” is here intended to follow the meaning it has in section 21.

Section 12 – Trading operations and accounts

38. Section 12 provides that where proper accounting practice (as specified in section 14) states that a local authority should keep and publish a trading account for an activity, that activity should be budgeted for so that over a consecutive three year period the revenue of the activity at least equals the expenditure.

Section 13 – Disposal of land by local authorities for less than full value

39. Section 13 amends section 74 of the 1973 Act to remove the existing Ministerial consent regime relating to those circumstances when local authorities seek to sell or otherwise dispose of land and associated assets at less than the best available price. The section provides Ministers with a power to issue regulations on this issue and sets out some of the basic conditions that those regulations may cover.
Section 14 – Proper accounting practices

40. Section 14 places local authorities under a duty to observe proper accounting practice. **Subsection (2)** specifies the sources, statutory and otherwise, to which local authorities should have regard in fulfilling their duty under the section. **Subsection (3)** indicates how local authorities should resolve any conflict between these sources.

Section 15 – Publication by local authorities of information about finance and performance

41. Section 15 places local authorities under a duty to make whatever arrangements are necessary to report publicly on their performance. As with the duty of Best Value, this duty is intended to cover all of an authority’s functions. Although it is expected that the reporting of performance will be proportionate to the public importance of and public interest in such functions, **subsection (2)** makes clear that in the first instance it is for individual authorities to decide how best to fulfil the basic duty; this includes issues such as when and to whom any report on performance should be made.

42. **Subsection (3)** provides that Ministers may issue regulations in relation to the publication of information. **Subsection (4)** provides that the Scottish Ministers may only issue such regulations after consultation. It is expected that such regulations will provide for the publication of information considered to be of particular public importance. **Subsection (6)** outlines some of the basic issues that may be dealt with in such regulations.

43. **Subsections (7) and (8)** provide that the Scottish Ministers may, after consultation, issue guidance about how local authorities should discharge their obligations under this section.

44. **Subsection (9)** amends section 1 of the Local Government Act 1992 (“the 1992 Act”) to provide the Accounts Commission with the power to direct local authorities to publish performance indicators on Best Value. The existing power to direct local authorities to collect information in relation to economy, efficiency, effectiveness and cost is retained. Section 1 of the 1992 Act is also amended to ensure that the Accounts Commission can make such directions whenever it thinks fit.

Part 2 – Community planning

Section 16 – Community planning

45. This section provides a statutory basis for the Community Planning process and relates to local authorities (as defined in section 34).

46. **Subsection (1)** describes the Community Planning process as one in which the public services in a local authority area must be planned and provided after consultation with community bodies and other public bodies responsible for providing those services, and with the on-going co-operation among those bodies. This section requires local authorities to initiate, maintain and facilitate such a process in their area and they have responsibility to determine the means of consultation and co-operation.
47. In subsection (2) local authorities are further required to invite and encourage all other public bodies in their area, and appropriate community bodies, to participate in Community Planning.

48. Subsection (3) makes provision where two or more local authorities jointly plan and deliver a service. Where such an approach is taken, the local authorities involved may fulfil their duty of Community Planning jointly.

49. Subsection (4) defines “community bodies” and “other public bodies” for the purposes of this section.

Section 17 – Community planning: further provision

50. This section concerns the participation of bodies, other than the local authority in the Community Planning process by means of a duty.

51. Subsection (1) requires Health Boards; joint police boards; chief constables; Scottish Enterprise; Highlands and Islands Enterprise, Strathclyde Passenger Transport Authority; and Joint Fire Boards to participate in Community Planning.

52. Subsection (2) provides that the Scottish Ministers may, by order, modify the list of bodies with a duty to participate in community planning by adding an eligible body (as defined by subsection (3)) or deleting a body, person, or office holder. Subsection (3) describes the categories of body etc that may be added to the list. Subsection (4) provides that Ministers may specify the geographical area or areas in which the duty of Community Planning may be exercised by such bodies and, in doing so, allows for the duty to be modified. Subsection (5) requires Ministers to consult the body concerned, and those local authorities in whose areas the body provides services, before exercising their power to apply a duty to that body. Subsection (6) requires that an order modifying the list of bodies contained in subsection (1) should be made through a statutory instrument approved by a resolution of the Scottish Parliament.

Section 18 – Reports and information

53. This section requires a local authority to publish reports on how it has implemented its duty of Community Planning and on what has been done by way of Community Planning in its area. Subsection (1) provides for a local authority to determine what form such reports should take and how often they should be published. This subsection also requires that the local authority, in its role as facilitator of community planning, should report on what action has been taken to comply with section 32 requiring the encouragement of equal opportunities and the observance of the equal opportunity requirements. Subsection (2) allows for the local authority to determine the means of reporting subject to subsection (3) which can enable the Scottish Ministers, by regulation, to set down conditions on the form, content, frequency of reports, who they are given to and the means of publication.

54. Subsection (4) provides that such regulations shall be by statutory instrument which the Scottish Parliament will have power to annul if it thinks fit and subsection (5) requires that the Scottish Ministers consult with associations of local authorities and others as appropriate.
55. **Subsection (6)** makes provision for a local authority to provide the Scottish Ministers with reports or other information relating to community planning as required.

56. **Subsection (7)** has the effect of amending the powers of the Accounts Commission in section 1 of the Local Government Act 1992 to allow them to collect information which will facilitate the drawing of conclusions about what has been done by way of community planning in the discharge of functions under this part of the Bill.

**Section 19 – Guidance**

57. This section requires those initiating, maintaining, facilitating or participating in Community Planning to have regard to any guidance given by the Scottish Ministers about participation in Community Planning. A requirement is also placed on the Scottish Ministers to consult before issuing such guidance.

**Part 3 – Extension of Controller of Audit’s functions**

**Section 20 – Extension of Controller of Audit’s reporting functions to best value and community planning**

58. This section restates certain of the Controller of Audit’s reporting functions, originally provided by the 1973 Act, and extends them so that they include reports about a local authority’s performance in discharging its obligations under the duty of Best Value in section 1 and the duty of Community Planning in section 16.

**Part 4 – Power to advance well-being**

**Section 21 – Power to advance well-being**

59. **Subsection (1)** enables a local authority to do anything it considers likely to promote or improve the well-being of its area, persons in that area, or both of these. **Subsection (2)** sets out potential activities that may be undertaken using the power to advance well-being. This list is illustrative rather than limiting.

60. **Subsection (3)** allows flexibility in the way the power may be used. The power may be used in relation to the whole local authority area or any part of that area, for example, to a council-wide project covering the whole council area or to a project for a particular community; a particular town; or a particular island within the area. Similarly, the power may be used in relation to all or some of the persons within a local authority area – for example, to benefit all residents, a particular group such as tourists to the area or commuters into the area. **Subsection (4)** enables a local authority to use the power outwith its geographical area if it considers doing so is likely to promote or improve the well-being of its own area and/or persons within its area.

61. **Subsection (5)** enables the Scottish Ministers, by order, to extend the meaning of “well-being”. This power might be used if, for example, the common understanding of the phrase becomes narrower or changes significantly over time.
Section 22 – Guidance on exercise of power under section 21
62. This section requires a local authority to have regard to any guidance given by the Scottish Ministers relating to the exercise of the power to advance well-being. A requirement is also placed on the Scottish Ministers to consult associations of local government and any other person they consider appropriate before issuing such guidance.

Section 23 – Limits on power under section 21
63. This section sets out the limitations on how local authorities can use the power to advance well-being.

64. Subsections (1) and (2) establish that the power to advance well-being does not enable a local authority to do anything that is expressly prohibited, prevented, restricted or limited by other legislation.

65. Subsection (3) establishes that use of the power to advance well-being is not limited by what may be deemed an implied, rather than an explicitly stated restriction, prohibition, prevention or limitation.

66. Subsection (4) prevents the power being used in a way that unreasonably duplicates the statutory functions of another body or person. This does not prevent a local authority carrying out the functions of another body where doing so may be considered reasonable, for example where the local authority had first obtained the consent of the body concerned. It is for the local authority to consider whether any proposed action is reasonable.

67. Subsection (5) prevents a local authority from raising money by levying any form of tax or charge, by borrowing or otherwise. Subsection (6) establishes that a local authority will continue to set and determine amounts of council tax and may make reasonable charges for services provided, so long as doing so is not prohibited by existing legislation.

68. Subsection (7) provides that the power may be used outside the United Kingdom for the purpose of promoting or improving economic development of the local authority’s area but only with the prior consent of the Scottish Ministers.

69. Subsection (8) makes the power of well-being subject to section 92(5) of the Housing (Scotland) Act 2001 which requires Ministers’ consent in giving financial assistance for certain housing purposes.

Section 24 – Excess of power: preliminary notice
70. Section 24 sets out the circumstances in which the Scottish Ministers are allowed to start enforcement action. These circumstances are where they are satisfied that a local authority has significantly exceeded its power to advance well-being and where they consider that enforcement is justified.

71. In such circumstances, Ministers may serve a preliminary written notice on that authority. Subsection (2) provides that this notice should inform the authority that in the Scottish Ministers’
opinion the circumstances set out in subsection (1) have occurred. The Scottish Ministers will require a response which may be to argue that the case does not meet the criteria, and in this case such a response will need to be justified. Alternatively the response will need to give reasons why, even though the preliminary notice is accurate, the local authority considers further intervention is not appropriate. Subsection (3) provides that after considering this response, or after the deadline for offering such a response has expired, the Scottish Ministers will have the power to issue an enforcement direction.

Section 25 – Excess of power: enforcement

72. Section 25 describes the nature of the enforcement direction the Scottish Ministers may make under the power provided in section 24. They may direct a local authority to remedy any existing excess or to take action to ensure that no further significant excess of the power to advance well-being takes place. Such a direction must be subsequent to the preliminary notice described in section 24, but does not have to be made. Subsection (2) provides that the Scottish Ministers may specify the action required or place conditions on the continued exercise of certain of the local authority’s functions. The Scottish Ministers may subsequently amend the direction without having to repeat the preliminary notice procedure described in section 24, and may revoke the direction at any time.

73. Subsection (7) places local authorities under a duty to follow any direction given to them by the Scottish Ministers. As a consequence of this duty a local authority which ignores such a direction may be forced to do so by the courts.

Part 5 – Miscellaneous

Section 26 - Remote participation in and calling of local authority meetings

74. This section provides that in addition to the traditional form of meeting with members being present in one place, meetings of a local authority may be conducted in any way in which each member can communicate with each other, for example by video-conference. Subsection (2) provides that such meetings shall be conducted only on the direction of the convener or deputy convener in the absence of the convener. Subsection (4) allows summons to meetings to be delivered by means other than post or hand-delivery, for example, by e-mail.

Section 27 – Travel concessions

75. This section equalises for both men and women the age of eligibility for concessionary travel at age 60. This ensures that men and women aged 60 and over will be entitled to the same concession travel arrangements within their local transport area. This section amends section 93(7) of the Transport Act 1985 to remove the differential in eligibility for concessionary travel between men and woman. Similarly, it amends the definition of “eligible persons” under section 68(7) of the Transport (Scotland) Act 2001 and gives the Scottish Ministers power to make an order providing for the age of eligibility for concessionary travel to rise in due course in line with Schedule 4 to the Pensions Act 1995.
Section 28 – Parliamentary procedure for regulations about vehicles used as taxis and private hire cars

76. This section requires all regulations made by Ministers under section 20 of the Civic Government (Scotland) Act 1982 to be subject to scrutiny by the Parliament.

Section 29 – Suspension of requirement to advertise principal teacher posts

77. This section suspends section 87A of the Education (Scotland) Act 1980 in connection with the advertising of principal teacher posts for a period of 1 year.

Section 30 – Qualification of and assistance for Accounts Commission auditors

78. This section amends the provisions in the 1973 Act relating to appointment of local authority auditors to allow a wider group of qualified persons from within the UK or European Economic Area to undertake this role. In addition this section provides for a scheme of delegation whereby auditors approved by the Accounts Commission for Scotland may delegate some or all of their functions to another individual or group where approval from the Accounts Commission has been sought.

Part 6 – General

Section 31 - Power to modify enactments

79. Subsection (1) enables Ministers, by order, to amend, repeal, revoke or disapply any legislation that they consider prevents or hinders local authorities in complying with their duties of Best Value and Community Planning and their duty to make arrangements for the reporting to the public of the outcome of the performance of its functions. In addition it may be used where they consider that any legislation is preventing local authorities in their use of the power of well-being. This power may be used where the public may be used to assist in the effective use of the power of well-being and to assist in the Community Planning process and the public reporting process and can apply to all local authorities, a class or classes of local authority, or a particular local authority or local authorities. An enactment may be amended or disapplied for a particular period of time.

Section 32 – Equal opportunities

80. This section places a duty on the Scottish Ministers; local authorities; those authorities, bodies, office holders and other persons mentioned in section 17(1) (i.e. those subject to the duty to participate in Community Planning) and any other person discharging a function under the Bill to carry out their functions in a way which encourages equal opportunities and observes equal opportunity requirements.
FINANCIAL MEMORANDUM

INTRODUCTION

81. Where the provisions in the Bill impose obligations on local government or on its Community Planning partners, these provisions by and large give statutory expression to existing voluntary commitments. To that extent, they do not have significant financial implications.

82. To the extent that the provisions in the Bill refer to arrangements for scrutiny and enforcement of the way the new duties and powers are discharged, they too will build on existing arrangements although the Executive estimate that there will be some incremental costs. In some instances they will reduce or remove monitoring by central government. In others, they will build on existing scrutiny arrangements by the Accounts Commission, Inspectorate bodies and within local authorities themselves.

COSTS ON THE SCOTTISH ADMINISTRATION

83. In relation to Community Planning, no significant additional costs to the Scottish Administration although the Scottish Executive will consider whether some assistance to develop Community Planning is necessary.

84. In relation to travel concessions, included in Part 5 of the Bill, additional resources will be made available by the Scottish Executive through the Grant Aided Expenditure allocations made to each local authority.

COSTS ON LOCAL AUTHORITIES

85. Where the provisions in the Bill offer new freedoms and flexibilities for local government, the Scottish Executive anticipates that they should contribute to cost savings for local authorities and other public bodies which can then be used by them to improve services.

86. The Accounts Commission estimates that the incremental costs relating to the enhancement and expansion of arrangements provided in parts 1 and 3 of this legislation come to approximately £1.2 million per annum. The majority of this will fall on the Accounts Commission, which precepts directly from local authorities.

87. The Bill imposes new obligations on local government to introduce arrangements that improve public accountability. These too build on and, to an extent, replace arrangements which imposed specific statutory obligations on local authorities to provide and publish information, including information related to the compulsory competitive tendering regime. The Scottish Executive estimates that the total incremental cost of the new arrangement will therefore be negligible.

88. Community Planning will provide for an opportunity for services to be planned and provided more efficiently and effectively between public agencies. It is also envisaged that Community Planning will provide scope for reducing technical and administrative duplication in
the planning and delivery of public services. In that respect, whilst there will be new ways of working to plan and deliver services, Community Planning is also about rationalising existing activity and increasing efficiency and should not place a significant additional burden on local authorities or the other bodies engaged in the process.

89. However, the Scottish Executive will consider whether some assistance to community planning to help meet the requirements of the legislation is necessary - for example- in developing systems for information sharing or measuring progress. It is envisaged that initial development for Community Planning will be mainly a local authority responsibility in their facilitation role. The Scottish Executive will assess whether some assistance with development for Community Planning is necessary although it is not envisaged any assistance will be significant on the basis that local authorities are already carrying out many activities associated with community planning.

90. In relation to Part 5 of the Bill the costs of the equalising age eligibility for concessionary travel is estimated at up to £10 million per annum. The estimated figure took account of research on the travel patterns of men aged 60 to 64, and the population-based formula used for the costing of travel concession schemes in Scotland. The direct costs will be borne by local authorities who are required to reimburse transport operators, but additional resources will be made available by the Executive through the Grant Aided Expenditure allocations made to each local authority. There will be no significant financial implications from sections 26, 28, 29 and 30.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

91. As with local authorities, a number of key bodies are already engaging with the Community Planning process on a voluntary basis and undertaking activities on a joint basis, for example the joint planning of services. The Executive does not consider that the application of a duty to engage in Community Planning will place significant additional costs or demands in terms of the ability to participate in the process. Costs that do arise should be met from efficiency savings from more effective joint working. In terms of initial development costs (described above under local authorities) it is envisaged that other bodies should also benefit from access to any resources made available for Community Planning should that be considered necessary.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

92. On 15 May 2002, the Minister for Finance and Public Services (Mr Andy Kerr) made the following statement:

“In my view, the provisions of the Local Government in Scotland Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Local Government in Scotland Bill (SP Bill 53) as introduced in the Scottish Parliament on 16 May 2002

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

93. On 15 May 2002, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Local Government in Scotland Bill would be within the legislative competence of the Scottish Parliament.”
LOCAL GOVERNMENT IN SCOTLAND BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

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