INTRODUCTION

1. This document relates to the Local Government in Scotland Bill introduced in the Scottish Parliament on 16 May 2002. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 53–EN.

POLICY OBJECTIVES OF THE BILL

2. The Local Government in Scotland Bill is a key aspect of the Executive’s local government modernisation agenda. The overall aim of the Bill is to provide a framework to enable the delivery of better, more responsive public services. Local government is of crucial importance to every person in Scotland. The measures in the Bill will make it easier for councils to do their jobs, while giving them more responsibility to act within an appropriate framework, to work in partnership with other bodies and the communities they serve, and to embed a culture of quality, equality and improvement.

3. The main components of this framework are:
   - A duty to secure “Best Value” in local government service provision, replacing compulsory competitive tendering with the pursuit of continuous improvement in all aspects of local authority functions;
   - A statutory basis for “Community Planning” to ensure long-term commitment to effective partnership working with communities and between local authorities and other key bodies and organisations;
   - A “power to advance well-being” to enable local authorities to work in a more innovative and creative way in responding to the needs of their communities.

4. The duty of Best Value and associated measures provide a statutory foundation to the comprehensive Best Value frameworks developed by Scottish local authorities over the last four years. The underlying objective of Best Value is to help local government and other public bodies deliver better, more responsive public services. It commits local authorities to the pursuit of continuous improvement in their performance while finding an appropriate balance between quality and cost. This relies on local authorities being proactive in consulting and engaging with their communities, and on being transparent about the impact their efforts have had on their performance.
5. Community Planning is essentially a process to secure greater engagement from communities in the planning and delivery of services and to secure effective joint working between agencies in promoting the well-being of communities. A shared vision with clear outcomes, allied to more effective partnership working, will result in better use of public money. The overall intention is to provide a basis for the delivery of better, more responsive services.

6. The power to advance well-being is a wide-ranging power which is designed to allow local authorities to work in a more innovative and flexible way in the interests of their communities. It is designed to change the current approach where local authorities may only carry out those functions required or permitted by various pieces of legislation and to re-establish a strong community leadership role for Scotland’s local authorities.

7. In providing a framework to enable the delivery of better, more responsive public services, the Bill ensures that equalities issues are integrated fully (see paragraphs 86-100 below).

8. This Bill is one of a number of ways in which the Executive is pursuing its Local Government modernisation agenda. Local government has already benefited from the changes arising from that. For example, legislation has been passed to provide local authorities with a 4-year term to allow for effective planning over a longer time-scale and expenditure guidelines have been removed and firm grant distribution figures provided in a 3-year settlement stretching up to 2003/04. The wider strategy includes transparency and accountability in the policy development and decision-making processes within local authorities; examining the electoral system; and widening access to council membership. These issues are being progressed separately. The Bill provides a statutory underpinning for Community Planning but that is not an end in itself. The Community Planning Taskforce is considering a series of key issues concerned with making Community Planning work more effectively and their deliberations, in tandem with local Community Planning Partnerships will also be important in making a difference to the planning and delivery of services. In addition, the Best Value Task Force, which was responsible for much of the early policy on Scottish Best Value, will be reconvened to oversee the development of much of the guidance needed to support and develop further the provisions outlined in this Bill.

CONSULTATION – GENERAL

9. The Executive’s working method during the evolution of this Bill has been to engage with others from the early stages of policy development. The core proposals in the Bill were the subject of both broad and more detailed consultation with key stakeholders and wider interests.

10. This has been supplemented by on-going dialogue with key partners – including the Convention of Scottish Local Authorities, the Society of Local Authority Lawyers and Administrators, Audit Scotland (working on behalf of the Accounts Commission for Scotland), the Inspectorates (including HMIE (education), HMIC (police), SWSI (social work)), the Scottish Trades Union Congress, UNISON and other union representatives, the Society of Local Authority Chief Executives in Scotland, and representatives from Scotland’s business community and voluntary sectors. The development of the Bill has also been influenced by support from the Equalities Co-ordinating Group which has made a positive contribution to
mainstreaming equal opportunity considerations. The Executive has benefited greatly from this more detailed consultation with key stakeholders and wider interests in developing the Bill and will continue to do so in relation to associated guidance.

11. Two independent taskforces have also provided valuable input to the development of legislative proposals. The Best Value Task Force and the Community Planning Taskforce have significantly influenced the shape of the Bill introduced in the Parliament.

12. Finally, local authorities themselves have been significant contributors to the Bill, having worked over the last four years to adapt to Best Value and take forward Community Planning – exposing themselves to comment about their success in doing so – and having worked with the audit and Inspectorate community on the scrutiny systems needed to support the new powers and duties provided in the Bill.

**Best Value**

13. The Best Value Task Force (BVTF) – a partnership between the Accounts Commission, local and central government – was set up in May 1997 to establish the essential elements of Best Value. The BVTF’s first report¹ in June 1997 set out the basic principles of Best Value, while the second report in July 1998 developed these principles into a coherent Best Value system tailored to the needs of Scottish local government. A consultation paper was issued in March 1999² on the suggestions made in the two BVTF reports and on what long-term arrangements were needed. A final report from the BVTF which presented its recommendations was issued in December 1999³. These recommendations were accepted in principle by the Executive and a further consultation exercise was undertaken in June 2000 – Best Value in Local Government: Next Steps⁴ – to determine what legislation was needed to implement Best Value. A number of key Best Value issues were discussed further in the “green paper” consultation exercise in November 2000⁵ which brought together the three core elements of this Bill.

**Community Planning and power to advance well-being**

14. The McIntosh Commission recommended that local authorities should have a “power of general competence”⁶. The first consultation paper which sought views on this issue was the Executive’s response to the McIntosh Report. This consultation paper, issued in September

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¹ Best Value Task Force: Report 1, June 1997. (Copies of all the original Best Value Task Force Reports can be found on the Executive’s Best Value in Local Government web-site: www.scotland.gov.uk/bestvalue/reports.asp)
² Best Value in Local Government: Long Term Arrangements – Interim Conclusions, March 1999
³ Best Value in Local Government: Long Term Arrangements – Final Report, December 1999
⁴ Best Value in Local Government: Next Steps, June 2000. (Copies of this document and a copy of an analysis of the responses to consultation can be found on the Executive’s Best Value web-site: www.scotland.gov.uk/bestvalue/longterm.asp)
15. A more detailed “green paper” consultation relating to the Bill was published in November 2000. This paper brought together the options relating to a general power for local authorities (at that time referred to as a “power of community initiative”), a statutory underpinning for Community Planning, and changes to constraints over trading suggested in response to the earlier Best Value Taskforce reports mentioned above. This paper was given a wide circulation with some 2,700 organisations receiving copies. These included local authorities and other public bodies; community councils; equalities bodies; voluntary bodies; business organisations; and other community-based organisations. Copies were also distributed to local authorities to make available more widely through libraries, one-stop shops and other local authority public offices. In addition, efforts were made to raise awareness and encourage interest in the Bill through various speeches to conferences and other events and by making the consultation paper available on the Scottish Executive website.

16. The outcome of this consultation was instrumental in how the Executive developed policy further. This process involved working with others as outlined above, leading to the publication of a further consultation paper in December 2001. This paper focused on the more detailed proposals for legislation and was targeted at key stakeholders and those who had already expressed a view on the proposals being developed. Around 300 organisations received the paper and it was also made available on the Scottish Executive website. The main element of this final consultation process was a series of meetings with key stakeholders and other interests in the months leading to the Bill being finalised. Discussions were held with a wide-range of bodies and groups including: the Scottish Trades Union Congress; the Equalities Co-ordinating Group; the Scottish Construction Industry Group; the Community Leadership Forum; the Society of Local Authority Chief Executives in Scotland; the Society of Local Authority Lawyers and Administrators in Scotland; the Scottish Consumer Council; Scottish Enterprise; the Local Enterprise Company Chief Executives; Audit Scotland; the Chief and Assistant Chief Fire Officers Association; the Department of Transport, Local Government and the Regions; the Local Government Association; the Scottish Local Government Information Unit; the Association for Public Service Excellence; the Convention of Scottish Local Authorities; the Association of Scottish Community Councils; the Community Planning Officers Network; Highland Community Planning Partnership; the Association of Chief Police Officers in Scotland; Highlands and Islands Enterprise; the Federation of Small Businesses; the Forum of Private Business; Scottish Chambers of Commerce; the Chartered Institute of Public Finance Administrators; the Scottish Council for Voluntary Organisations; and the Scottish Local Authority Management Centre. These meetings typically involved a presentation on the Executive’s proposals for the Bill followed by a question and answer session in which the proposals could be discussed in some detail. The opportunities for dialogue that these meetings afforded were an important and useful complement to the formal, written responses to the consultation paper.


17. The Community Planning Taskforce, comprising a broad membership from public, private and voluntary sector bodies and community representatives, has been closely involved in the development of the Community Planning sections of the Bill. A Working Group within the Taskforce has been instrumental in developing the associated guidance to the Bill. The Executive has also endeavoured to raise awareness and interest by covering the key issues in various speeches by different Scottish Executive Ministers and by senior officials.

18. Of the 181 responses to the November 2000 consultation, most respondents welcomed the general thrust of the proposals for the Bill while offering views on some of the specific details. Of the 120 responses to the December 2001 consultation, most respondents were largely content with the measures being proposed for the Bill but raised some final questions of detail. The Executive’s series of consultation meetings with key stakeholders also highlighted these issues and they have been taken into account in finalising the content of the Bill and, importantly, in preparing the first draft of the guidance which will accompany each of the three key elements of the Bill. During the consultation process the Executive explained the rationale behind its proposals when consensus was not possible. The key issues that arose during the consultation process are dealt with in detail throughout the body of this Memorandum.

DETAIL OF THE BILL – INTRODUCTION

Integration

19. A key benefit of the Local Government in Scotland Bill is the ability to integrate the three key components – Best Value, Community Planning, and power to advance well-being. The three concepts are closely inter-related and should be viewed as such by local authorities in seeking to plan and deliver quality services which are responsive to the needs of the people who use them. For example, use of the new flexibilities and freedoms offered by the power to advance well-being and on trading should be influenced significantly by the Community Planning process – the shared vision and approaches to planning and delivery of services which have been jointly agreed. Similarly, Best Value considerations should influence the choices made by a council in using the power to advance well-being or in how it engages with its Community Planning partners. In practical terms, the Bill provides for an integrated public reporting system and streamlines the intervention processes covering the three key strands of the Bill.

BEST VALUE AND ACCOUNTABILITY (PART 1, SECTIONS 1 TO 15; PART 3, SECTION 20)

Policy objectives

20. Sections 1 to 15 set out the Scottish Executive’s proposals to provide a statutory underpinning to the existing voluntary Best Value framework.

21. The Scottish Executive and Scottish local government share a commitment to deliver better quality public services. There is a broad consensus that in a number of crucial areas, such as contract management, the existing statutory framework stands in the way of this shared goal. Since 1997 the Executive and local government have been working in partnership to develop a
new comprehensive framework which better suits the needs of both central and local government.

22. The new statutory framework for local government will accommodate new and radical approaches to service delivery. For instance, with the introduction of the power to advance well-being and the duty of community planning the Executive expects local authorities to look increasingly at joint ventures and partnership working to help deliver their services. While innovation and initiative are welcome in the public sector, increases in risk and the pace of change need to be managed carefully. The Best Value framework will replace the existing cost-focused culture of compulsory competitive tendering with a more flexible system that puts quality and effective management to the fore.

23. The framework is intended to reflect a series of basic principles. First, Best Value is about continuous improvement: achieving quality service provision is a process rather than a goal, and therefore Best Value’s challenge to local government is ongoing. Secondly, Best Value is about accountability: it requires transparency through consultation and engagement to ensure an effective dialogue with the local community. It also requires formal scrutiny, which is reflected in the provisions amending and updating the powers, duties and functions of the Accounts Commission for Scotland.

24. The Bill therefore places Scottish local authorities under a duty to make whatever arrangements are necessary to secure Best Value by pursuing continuous improvement in the performance of all their functions. In making these arrangements, local authorities will be expected to consider a range of factors including their equal opportunities requirements.

25. The Bill also gives the Scottish Ministers the power to issue guidance to support Best Value to which local authorities will be required to have regard. The Best Value Task Force accepted that the flexibility required to implement Best Value effectively in the different areas of Scottish local government would require a coherent framework of both statutory and non-statutory guidance. The power here granted to the Scottish Ministers will be used to support those areas where a more robust framework is needed. To continue in the partnership approach to Best Value, this power will only be used after the key stakeholder groups have been consulted on the content of the guidance.

26. The powers, functions and duties of the Accounts Commission for Scotland, of the auditors it employs, and of the Controller of Audit are amended by the Bill so that Best Value can be looked for and commented on during the Accounts Commission’s existing audit and reporting processes. In addition the Accounts Commission is to be given new power to require authorities to publish performance information about the effectiveness of measures taken under the Community Planning process.

27. The Accounts Commission also has responsibilities which go beyond audit into the investigation and exposure of inadequacies in local authority financial management, and the Bill extends the arrangements for discharging these responsibilities so that they can encompass performance management problems identified through its Best Value work and failures in the duty to facilitate Community Planning. The Bill builds a number of provisions into the process to improve its transparency.
This document relates to the Local Government in Scotland Bill (SP Bill 53) as introduced in the Scottish Parliament on 16 May 2002

28. The Bill provides that one outcome of the Accounts Commission’s considerations may be a recommendation to Ministers to require a local authority to take specific action. The Bill also recognises that some problems by their nature require immediate intervention, and offers Ministers the opportunity to bypass the Accounts Commission process when the public interest is at stake. In either instance, local authorities must be offered the opportunity to make the case why such intervention would be inappropriate.

29. Best Value is not just about effective management. It is also about delivery. The Bill makes a number of changes to the rules governing who local authorities can do business with and to what purpose.

30. The Executive recognises that Best Value is just as much about those who deliver local authority services as those to whom the services are delivered. Section 17 of the Local Government Act 1988 sets out those issues – so-called “non-commercial considerations” – that local authorities are prevented from having regard to when engaging in contractual negotiations. While the Executive is satisfied that a number of the issues currently prohibited by section 17 should remain, the Bill will amend section 17 to allow local authorities to consider some of these issues (including workforce matters) where they are relevant to accepted safeguards for employees, the authorities’ own policies under Best Value, and assessments about a contractor’s ability to deliver according to the terms agreed in a contract. The Executive is clear that this provision will play a significant part in developing a “fair employment” agenda and equalities issues more generally.

31. The Bill redraws current restrictions on the provision of goods and services by local authorities under contract. Local authorities will no longer be prohibited from entering into contracts with partners of their choice. Instead they will be able to provide goods and services to anyone but will be constrained in the amount of income they will be able to generate from such provision, with limits to be set by the Scottish Ministers by statutory instrument.

32. Where trading accounts are required to be prepared and disclosed in order to comply with proper accounting practice, the Bill requires them to show at least break-even every three years. This is a de minimis requirement: the demands of the Best Value duty discourages authorities from seeking to configure services purely on the basis of meeting this requirement, and although no more than break-even is required local authorities will need to consider their obligations under competition law before entering into contracts to supply goods and services at discounted rates.

33. In relation to the disposal of land by local authorities for less than full value provisions in the Bill replace the present statutory Ministerial consent regime with a power to regulate. Regulations will reduce bureaucracy while maintaining a system that prevents abuse. By linking this new system to the new power of well being and the duty of Best Value, the Executive seeks to ensure that local authorities justify their decisions and carry them out in a consultative and transparent manner. The system will encourage responsible asset management as well as the creative use of asset transfer as one means of achieving social policy objectives.

34. A long-lasting discrepancy for local authorities across the United Kingdom has been whether the basis for “proper accounting practice” has been defined in primary legislation. The
Accounts Commission for Scotland and other key commentators from the accounting professions have supported the provision of a legislative basis for proper accounting practice to ensure consistency in accounting and financial management; such statutory reference is made in the Bill. The reference has the further effect of promoting a consistent basis for the preparation and disclosure of accounts for local authority activities that conform to given criteria for trading operations.

35. The Bill emphasises accountability by placing local authorities under a duty to make effective arrangements to report publicly on their performance. This duty is expected to cover every aspect of a local authority’s functions including the observance of their equal opportunities requirements. These arrangements supplement and, where necessary, overtake current reporting requirements. Certain elements will be mandatory and will be set by regulation under a power to be provided to the Scottish Ministers. The intention is not to require authorities to produce information in any particular format, but to establish what should be regarded as the minimum required for public accountability and to build on that according to the preferences of the local community.

Consultation

36. Consultation is a crucial aspect of the Best Value framework and from the beginning the framework has been developed in dialogue with a wide range of stakeholder groups. The Best Value Task Force, set up in May 1997, submitted its final report in December 1999. The Scottish Ministers accepted the main recommendations of the Task Force and the Best Value in Local Government: Next Steps paper invited views on how these recommendations should be implemented.

37. Key issues raised in the Next Steps consultation were:

- There should be a duty of Best Value on Scottish local government. There was broad agreement that this be based around section 122A of the Local Government (Scotland) Act 1973. Many respondents indicated that there should be additional explicit reference in the duty to issues including equality, quality and stakeholder consultation.

- There was unanimous support for a common framework to underpin Best Value across the public sector as a whole.

- Majority agreement that the duties, powers, and functions of the Accounts Commission for Scotland should be amended to accommodate new duty of Best Value. It was stressed that these changes should not add overly to the existing audit and scrutiny responsibilities of local government.

- The importance of a public performance reporting (PPR) framework was stressed. Best Value should include a strong element of stakeholder consultation and involvement. It was accepted that a PPR framework should supersede existing requirements about the publication of statutory performance indicators.

- There was general acceptance that a power of Ministerial intervention is required to protect the public interest. It was stressed that this should only be used as a last resort power. Beyond Ministerial intervention there was acceptance that other
intervention powers should be graduated, transparent, and focused on helping authorities improve performance rather than on punishment.

- There was a strong consensus on the need to repeal all existing compulsory competitive tendering (CCT) legislation. The need to provide enhanced commercial freedom to local government within a well-defined Best Value framework gained support. The Best Value framework should stress principles of openness and should make clear the objectives behind trading.

- The suggestion that Best Value set recyclable saving targets on local government was rejected on the basis that it was not within the general spirit of Best Value. A majority of respondents also rejected the idea of an incentive scheme to support Best Value as it would be subjective and divisive.

38. The Executive’s specific proposals on Best Value were consulted on between December 2001 and February 2002. The proposals were broadly welcomed although clarification was sought on some issues. The main issues and points raised were:

- It was re-emphasised that the duty of Best Value should be applied across the public sector and not just on local government.

- The proposals on commercial and trading activity seemed to some to risk being too restrictive and thereby too similar to existing CCT legislation. There were particular concerns over the continued demands that local authorities keep trading accounts for certain activities and meet financial targets set by the Scottish Ministers.

- There were concerns that the proposals on intervention are insufficiently focused on helping rather than punishing those local authorities perceived to be in difficulty. A number of respondents called for the intervention process to be governed by a protocol with local government while some thought it should be subject to direct Parliamentary authority.

- Guidance on Best Value should be developed through partnership with key organisations and a Best Value advisory group should be established to co-ordinate the research.

**Alternative approaches**

39. The alternative approaches are:

- **Maintain the current statutory position.** As a consequence of the commitment by local government to implement the Best Value framework on a voluntary basis the Scottish Executive (then Scottish Office) agreed to suspend elements of the existing Compulsory Competitive Tendering (CCT) legislation. Although suspended, this legislation remains in force. There is a broad consensus that this aspect of the statutory framework for local government is now outdated. The CCT regime is considered by most key stakeholders to be inflexible, overly prescriptive, and incompatible with the desire to promote quality in service provision. The Executive is clear, as is local government, that these deficiencies mean that re-imposing the CCT regime cannot be considered a viable option. Equally, the Executive is clear that it cannot maintain or extend the existing transitional arrangements involving the periodic suspension of CCT legislation by statutory instrument and a voluntary
commitment to Best Value. While the voluntary commitment to Best Value has worked it is clear to all that the existing transitional framework is unstable and that a statutory foundation is needed. On that basis the Executive stands by its commitment to repeal all relevant parts of the CCT regime and to introduce a statutory Best Value framework.

• Follow the English and Welsh model of Best Value. The Local Government Act 1999 placed English and Welsh local authorities (including police, fire, transport, and National Park authorities) under a duty of Best Value. The duty came into effect on 1 April 2000. The 1999 Act sets out a series of requirements to support the duty of Best Value. These include: (1) a power for the Secretary of State to extend or disapply the duty of Best Value as necessary; (2) a power for the Secretary of State after consultation to set performance indicators and associated targets in relation to Best Value (in addition to those set by the Audit Commission); (3) a duty on Best Value authorities to conduct Best Value reviews of their services to a timetable and programme set by the Secretary of State; (4) a duty on Best Value authorities to produce a Best Value performance plan to a specification and timetable set by the Secretary of State; (5) powers for the Audit Commission to audit Best Value performance plans, to carry out Best Value inspections, and to publish reports on findings from each authority. There is clear evidence that this more heavily prescribed approach to Best Value has encountered difficulties. On 1 October 2001 the Secretary of State announced a three-month fundamental review of Best Value which led to a White Paper for England Strong Local Leadership – Quality Public Services in which some of the basic principles of Best Value were modified to allow for a greater degree of flexibility. Late in 2001 the Minister for Finance, Local Government and Communities for the National Assembly for Wales announced that from 1 April 2002 the Best Value framework was to be replaced by the Wales Programme for Improvement. The development of Best Value in Scotland has already taken a quite different path from that in both England and Wales. In Scotland Best Value has been developed and implemented gradually through effective partnership working between central and local government without the need for statutory backing. The system that has developed is distinctive in its flexibility and its responsiveness to the needs of both local authorities and their communities. As the Executive’s extensive consultation has made clear, provisions (1) to (5) as set out in the 1999 Act with their focus on the prescriptive powers of the Secretary of State and the heavy burden of audited performance plans and inspections do not suit the needs of Scottish local government. The provisions laid out in this Bill present a clear and radical alternative.

• Provide a single statutory basis for Best Value across the public sector. Responses to consultation on Best Value showed a clear preference for extending the principles and practicalities of Best Value across the entire Scottish public sector. The Scottish Ministers have since accepted this call and announced that steps would be taken to achieve this objective. Many respondents assumed that the most effective means would be new primary legislation. The Executive has concluded, however, that the powers already provided in the Public Finance and Accountability (Scotland) Act 2000 offer the most effective means of ensuring that Best Value is introduced to what is a less than homogenous group of public bodies.
COMMUNITY PLANNING (PART 2, SECTIONS 16 TO 19)

Policy objectives

40. The essence of Community Planning is a recognition that the needs of individuals and communities – if they are to be successfully addressed – must be addressed collectively, not separately. Community Planning is about involving communities themselves in agreeing priorities and how those priorities can be delivered. Community Planning is also about bodies, groups and partnerships working together more effectively to improve services such as health, education, jobs, homes, transportation and the environment. Community Planning is increasingly seen as a key mechanism to make better connections between the national and local priorities. It is also about placing responsibility for delivering change with those agencies and service providers most able to respond.

41. Agencies and communities have worked well together in developing joint visions and agreeing on joint objectives through the Community Planning process. There is however a need to ensure the effective delivery of these shared objectives through on-going co-operation. The benefits to be gained from effective Community Planning are too great to allow it to be optional. The statutory underpinning will be valuable in ensuring the on-going engagement of key participants and for maintaining the momentum and supporting difficult decisions which will need to be taken to improve the planning and delivery of services. The Executive recognises however that a statutory basis to Community Planning will not in itself ensure its success and guidance to underpin the Bill which can evolve over time will be a valuable resource.

42. The Executive will give local authorities should have a duty to initiate, maintain and facilitate the Community Planning process. Local authorities have a democratic accountability and have a broad range of responsibilities that significantly impact upon people and communities. They have up to now been the key players in initiating and co-ordinating the Community Planning process in their respective areas. The new power to promote and improve the well-being of the area will offer local authorities greater scope and flexibility in undertaking their community leadership role. One of the key ingredients for the development of Community Planning will revolve around the leadership skills of councils in facilitating the process.

43. The Executive recognises that for Community Planning to work effectively the involvement of the community itself is central. This includes organisations and bodies that are representative of the community – for example, a wide range of voluntary organisations, Community Councils, and particular sections of the community such as Trade Unions or representatives of businesses in an area. It is also important that communities of interest, such as bodies or groups concerned with promoting equalities or business interests, are engaged alongside communities of place. As a key component of the duty on local authorities to facilitate the Community Planning process, the Bill provides for the local authority to consult and cooperate with community bodies but will allow for local needs and circumstances to determine which bodies are most relevant to a particular area.

44. The consultation process, reinforced by discussions within the Community Planning Taskforce, favoured the application of a specific duty to particular bodies key to the Community Planning process – the Police, the Health Boards and the Enterprise Networks. This will ensure
that solid foundations exist within key areas of public sector service delivery to build a successful Community Planning partnership in every part of Scotland.

45. Enterprise, health and the police have been three areas consistently represented on local partnerships throughout Scotland. The level of resources they deploy and the existence of clear local structures suggests a statutory basis to their on-going engagement in the process. Their inclusion is certainly not intended to lead to an exclusive partnership. Commitment to Community Planning should extend beyond those three key players as it does in many parts of Scotland at present. The nature and degree of engagement by different agencies may also vary between areas of Scotland, for example between urban and rural, and the Executive’s policy is to allow local Community Planning partnerships to secure the means of engagement suited to their particular circumstances. In addition, the Bill will give Strathclyde Passenger Transport Authority (SPTA) and Fire Joint Boards a duty to participate in Community Planning. In the case of SPTA, this recognises that the Authority carries out transport functions in the west of Scotland that are the responsibility of local authorities in other parts of Scotland and it is expected that they will play a full part in Community Planning processes within their area of operation. The Fire Service is in similar position in that its engagement will be secured throughout Scotland irrespective of which administrative arrangements apply.

46. Engagement from a wide range of public, private and voluntary bodies will be necessary to make Community Planning a success. Many agencies are already participating in Community Planning at the local level covering a broad spectrum of policy interests. Some are long term commitments, some may be more time limited for example in relation to a specific project. As a supplement to the duties proposed for key bodies in the Bill, the Executive has a range of measures available to it which can encourage participation should it not be forthcoming, for example through sponsorship arrangements and through conditions to grant funding.

47. The Executive is confident that the means already exist to ensure an on-going participation by other bodies or agencies. However, in the light of experience of Community Planning in operation, it may be that bodies should be given a specific statutory duty in the future. For that reason, it is also proposed that provision should be made to allow modification of the list of bodies with a duty to engage in Community Planning. This measure recognises the long-term nature of Community Planning and the fact that the roles and responsibilities of the various public bodies in Scotland could change over time.

48. The Executive expects that the range of bodies participating in Community Planning Partnerships will be committed to on-going engagement. Decisions in a Community Planning context will be taken by consensus of the partnership. However, the partnership will need to strike a balance between appropriate local and regional or national strategies, priorities and programmes. Every effort should be made to secure a consensus but in view of potentially difficult decisions the planning and provision of services in any given area there will inevitably be occasions where consensus proves elusive. Individual agencies will be expected to fully engage in and respect the Community Planning process but will ultimately be responsible for their individual actions within this context.

49. The Bill will place a requirement on local authorities to publish reports on implementation of the duty of Community Planning and what has been done by way of
Community Planning in their area. Such reports will contain a description of how equal opportunities has been promoted as part of the process. The provision will allow local authorities to decide when and how often such reports should be produced. These reports can be integrated into the wider provision placing local authorities under a duty to make effective arrangements to report publicly on their performance. The emphasis will be on reporting to communities and guidance will assist in setting a framework for what is expected. This provision will also allow Ministers to require a report or other information relating to the duty of Community Planning from a local authority (as facilitator of the Community Planning Partnership) should this be needed, for example, if Ministers had concerns about the progress of a particular Community Planning Partnership. In the case of serious failure to adhere to the duty of Community Planning, the Controller of Audit may make a report to the Accounts Commission. This report may, if the issue is not resolved, initiate enforcement procedures as described in paragraph 27. In practice, a report is likely to highlight a collective failure in community planning, the procedure for which will be set out by a protocol established by Audit Scotland after consultation with all the key Community Planning partners.

50. The Executive has provided for the Scottish Ministers to issue guidance relating to Community Planning after consultation with such representatives of local government and other persons they consider appropriate. The purpose of the guidance will be to set a clear framework to which Community Planning will operate in Scotland but will allow local circumstances and discretion to determine how it will be carried through. Local authorities and their Community Planning partners should be required to have regard to guidance given by the Scottish Ministers on how to implement their respective duties and powers relating to Community Planning. Draft guidance is being developed alongside the Bill with the active involvement of the Community Planning Taskforce and will be available in draft to assist the Parliament’s scrutiny of the Bill.

Consultation

51. The Executive’s policy on Community Planning stemmed from the work of 5 “pathfinders” which started in 1998. The work done by these pathfinders was evaluated by the School of Public Policy at the University of Birmingham. These pathfinders or “pilots” demonstrated the effectiveness of Community Planning and highlighted that the value of Community Planning in Scotland was beyond doubt. The positive outcome of the work of the pathfinders influenced the Executive’s desire to ensure long-term commitment to Community Planning. The consultation paper in November 2000 outlined detailed proposals to provide a statutory underpinning for Community Planning to ensure long-term commitment to the process and the consultation paper in December 2001 set out options for providing a statutory basis for Community Planning. The key issues arising from these consultation exercises were:

- There should be a statutory duty of community planning for local authorities, although some bodies questioned the need for a “duty” as Community Planning was already happening in many parts of Scotland.

- A duty of community planning should extend to other key public sector partners and suggestions of a duty to give direction to Non-Departmental Public Bodies, and agencies within the Scottish Executive’s remit should be placed on Ministers.

- An emphasis should be placed on facilitating a joint strategy with clear outcomes rather than necessitating the production of a plan in itself.
The use of guidance to facilitate the process was welcome so long as it did not restrict local innovation and flexibility. Most local authority respondents saw an important role for the Community Planning Taskforce in drafting guidance.

There was a recognition that Community Planning should be monitored and evaluated but such evaluation should fit in with existing structures and procedures.

There was an acceptance that councils had the democratic mandate to take on a community leadership role but it was important that the respective roles and responsibilities of other partners were made clear, particularly those with a remit beyond the local authority area.

It was important to recognise the contribution the private sector can play.

52. The Community Planning Taskforce, since April 2001, has been instrumental in conducting research and seeking views from a range of people with an interest in Community Planning. More recently, the Taskforce held a participative conference attended by a wide range of agencies. The findings of this have been valuable in the preparation of the Bill and the ongoing development of associated guidance.

Alternative approaches

53. The alternative approaches are:

- **More widespread application of duties.** Community Planning is a process that requires commitment and engagement from a wide range of agencies and groups and it can be argued that a “duty of Community Planning” should apply to them all. However, the commitment to such a broadly defined process could be limitless and many of these agencies where a legislative commitment is sought fall outwith the competence of the Scottish Parliament – notably bodies that are the responsibility of the UK Government or companies which have an important role to play in the fabric of an area. In addition, a statutory duty could not be applied to key players such as the voluntary sector or community representatives. It is also recognised that the nature of engagement may also differ in emphasis throughout Scotland with some bodies having particular geographical interests. The application of duties is an important tool but is a means to an end. There are several other means of committing bodies to the process short of a statutory duty and they will be utilised by the Executive if required. Rather than create complex tiers of partners, the Executive considers it more appropriate to limit application of duties at this stage but make provision for the list of bodies under a duty to be modified as necessary at a later date.

- **No legislation.** Community Planning is already happening in all local authority areas on a voluntary basis. It can be argued that Community Planning should be allowed to evolve voluntarily on that basis that effective partnership working cannot be forced. A voluntary approach would not however ensure long-term commitment to the process and would not provide any measures to guard against the process breaking down when difficult decisions needed to be taken, for example, in agreeing joint working or on a clearer division of responsibilities. While the Executive’s intention is to provide a framework for effective Community Planning there is also a need to ensure certain common standards of commitment and approach throughout
Scotland. The Executive sees the benefits to communities arising from effective application of Community Planning as too important to allow a non-legislative approach.

POWER TO ADVANCE WELL-BEING (PART 4, SECTIONS 21 TO 25)

Policy objectives

54. The Scottish Executive believes that local authorities should be given greater scope to work in a way that allows them better to respond to the needs of their communities and recognises their local democratic accountability and community leadership role. Local authorities play a vital role in delivering public services in Scotland but are too often constrained by the current legislative framework in which they must operate. The legislative basis for local government in Scotland has been built up over a number of years and the application of case law has led to a degree of uncertainty about the extent to which local authorities can undertake activities beyond prescribed functions. The power to advance well-being is intended to give local authorities the necessary responsibility and scope to work in genuine partnership with others to improve the communities they serve. The Executive also envisages the introduction of the new power acting as a catalyst that will encourage local authorities to think about what they can do rather than what they cannot do in pursuit of delivering better services. In tandem with the statutory basis for Community Planning, this would give a strong incentive for local authorities to work effectively with other partners – public, private and voluntary – in meeting the needs of communities.

55. The Bill will introduce a general power for local authorities to promote or improve the well-being of their area and persons in it. This reflects the Executive’s commitment to give local authorities the tools needed to work in a more innovative and creative way. With the aim of delivering better services through responding to the needs of their communities and working effectively with their partners, local authorities will be able to be pro-active in considering what they are empowered to do rather than what they cannot do.

56. The power to promote and improve well-being is deliberately drafted in a broad sense to ensure it encompasses a wider range of actions which might contribute to the well-being of an area. Such actions would be for the local authority to determine but for example they may encompass the promotion or improvement of economic well-being, social well-being and environmental well-being of their area. Guidance will expand on the potential for using the power but will not seek to further define the power.

57. The Bill also gives examples of what the power may be used to do. Activities entered into by local authorities involve agreements (contractual or non-contractual); the provision of goods and services; the formation of companies, joint ventures, trusts and partnerships; the provision of funding such as grants, loans and indemnities; or the secondment of staff. This list is not intended to be exhaustive or read as restricting the power to advance well-being. Rather, it is intended to put beyond doubt that the power may be used to undertake these activities and is designed to encourage local authorities to think proactively about potential uses. Associated guidance will set out a framework for use of the power expanding on the potential for using the
power and having regard to the safeguards and accountability mechanisms in using the power to advance well-being.

58. The power is also intended to allow local authorities flexibility in how it may be used to promote or improve the well-being of their area and persons in it. The power can be used in relation to the whole local authority area or any part of it (e.g. a specific town or community), or all or some of the persons within it. In addition, the power may be used outwith a local authority’s area if its use is likely to promote or improve the well-being of the area itself or persons in it. This provision emphasises the Executive’s policy that local authorities should be able to use the power in a flexible way. It is designed to encourage more collaborative working within local authorities and partnerships in the use of the power. It also allows joint initiatives that do not recognise geographical boundaries – for example, the provision of regional facilities that serve an area beyond the immediate area of a local authority.

59. The Bill gives the Scottish Ministers power to extend the meaning of well-being for the purposes of section 21. This provision is intended to provide a mechanism to define “well-being” should, for example, a court of law define “well-being” in a way that limits use of the power as intended.

Safeguards

60. The main safeguards will be that the power will not supersede provisions set out expressly in existing legislation. While the power to advance well-being is intended to facilitate innovative action by local authorities, the Scottish Executive does not intend that the power should interfere with the existing statutory regimes designed to support local authorities in carrying out their functions where these are working effectively. Local authorities will not be able to use the power to advance well-being where there are restrictions, prohibitions and limitations which are expressly stated in other legislation. However, use of the power is not subject to limitations, restrictions or prohibitions that are implied by existing legislation or where legislation is silent. This will remove much of the ambiguity from the current legislative framework. Local authorities will continue to be able to use other accompanying powers unless specifically repealed.

61. The power to advance well-being must not be used in a way that unreasonably duplicates the functions of another body. While Community Planning will be an invaluable process in agreeing joint visions and joint or shared action, the Executive wants to guard against a clear duplication of an activity by a local authority which falls within the statutory competence of another public body where this was against the judgement of that body. The Best Value process and particularly the options appraisal will play an important role in guiding use of the power and the Executive expects the Community Planning process to be the main vehicle for agreeing working arrangements between bodies.

62. The power to advance well-being does not enable a local authority to raise money by levying any form of tax or charge. This provision does not however prevent a local authority from setting and determining amounts of council tax as at present or from imposing reasonable charges for services provided (where the charge indicates a direct relationship with the service provided). In terms of what may be deemed reasonable in this context, it is the Executive’s
intention that councils should be allowed the flexibility to recover costs on a range of services provided unless otherwise expressly controlled through existing legislation. It is not the Executive’s intention that councils will set out wholly or mainly with the aim of raising money. Services where the income received is greater than the costs of providing that service will be deemed as commercial activity and would be subject to provisions set out in Part 1 of the Bill.

63. The power to advance well-being does not allow local authorities to promote economic development outside the United Kingdom without the prior consent of the Scottish Ministers. This is a safeguard currently set out in legislation relating to local authorities’ role in economic development which will be repealed. The arrangements have worked well to date and are intended to provide a sensible safeguard to ensure that the promotion and improvement of economic development of all parts of Scotland is properly co-ordinated at a national level.

64. Provision is made for the Scottish Ministers to issue guidance relating to the power to advance well-being. Given the broad nature of the power, coupled with the prevailing culture of caution within local authorities, the Executive considers that such guidance will provide a useful framework to help local authorities use the power to advance well-being. Local authorities are required to have regard to guidance given by the Scottish Ministers before exercising the power and the Scottish Ministers are required to consult before issuing such guidance. Guidance is being developed alongside the Bill and will be available in draft for Parliamentary scrutiny.

Consultation

65. The broad question of whether local authorities should have a general power (initially referred to as a “power of general competence”) was raised in the Executive’s paper in September 1999 that responded to the McIntosh report. The vast majority of respondents commented that a general power should be introduced. The key supporting arguments were that such a power would underpin the role of local authorities as democratically elected leaders of their communities and symbolise greater trust between central and local government. A general power was seen as enabling local authorities to shift from an “ultra vires” culture which inhibited innovation to an “intra vires” approach which would promote more of a “can-do” culture. Many respondents also stressed the degree to which a legal framework supportive of partnership working and the development of cross-cutting approaches would assist local authorities in better responding to the needs of their communities. The majority of respondents accepted that certain safeguards would be needed to guard against irresponsible use of the power to advance well-being.

66. The consultation paper issued in November 2000 examined the various options for a general power in more detail. The key points arising from that consultation process were:

- There was a need to ensure that the power was drafted in a way that supported an integrated approach, recognising that economic, social and environmental concerns were inter-related and could not be promoted separately to improve the well-being of an area.

- The power should not allow local authorities to raise local taxes, although some respondents commented that local authorities should have the capacity to be more financially innovative, but with appropriate safeguards.
There should be a power of Ministerial intervention but it should only be used as a last resort provision and should be appropriate to the failure identified. Many respondents supported a clear process that would need to be completed before a power of intervention was used, including an adequate opportunity for a local authority to rectify failures and to review a decision.

Local authorities should be able to use the power outwith their geographic boundaries where such use was likely to benefit their area.

67. The final consultation paper and series of consultation meetings between December 2001 and February 2002 provided an opportunity to comment on the detailed proposals for the Bill. Key issues raised during that consultation exercise were:

- The importance of the power not being constrained by restrictions, prohibitions and limitations which were “implied” and thus open to differing interpretation (as opposed to restrictions, prohibitions and limitations which are expressly stated).
- That guidance should not unduly limit the scope of the power to promote and improve well-being.
- The need for clarity in respect of charging for services, in particular the flexibility to charge for discretionary services.
- Concern that power to advance well-being may allow local authorities to compete unfairly with the private sector to the detriment of business development.

**Alternative approaches**

68. The alternative approaches are:

- *Introduce a power that is not subject to safeguards.* Some bodies have argued that the power to advance well-being is not a true “power of general competence” given the safeguards which accompany it. The definition of a “power of general competence” is open to interpretation, and one literal meaning could imply a wide-ranging general power that is not subject to any restrictions, limitations or prohibitions. This has never been the Executive’s policy intention. The recent history of local government legislation however has been of prescription and direction. The Executive wants to move away from such an approach and recognises the democratic legitimacy of local government in Scotland; however it does recognise the need for local authorities to act within the existing legislative framework for local government which has been established following consultation and Parliamentary scrutiny. It is not the Executive’s intention to supersede this framework, but rather to provide a power to encourage a can-do approach while providing greater legislative clarity and assurance for councils. The Executive, backed by the consensus from the consultations, does not consider that such a wide-ranging power should be introduced without sensible safeguards such as the recognition of the roles of other agencies and bodies to guard against misuse at some later date.

- *Maintain the current position.* The current position is that local authorities may only do those things which they are empowered to do by specific statutory powers, duties and functions. They deliver services as permitted and required by these provisions.
which are described partly in the various Local Government Acts and partly in legislation dealing with specific functions – for example, education and social work. This legal framework is sufficient to allow local authorities to deliver specific services but does not allow them sufficient clarity to develop the broader, more innovative community leadership role the Executive would like to see. This is partly down to the case law which has built up around the use of current powers and has restricted councils’ ability to act. The Executive does not believe that the current framework is entirely supportive of the flexibility required to deliver more responsive public services.

MISCELLANEOUS PROVISIONS (PART 5, SECTIONS 26 TO 30)

69. The miscellaneous provisions proposed relate to the role of local authorities and the Executive considers it appropriate to use this Bill to progress these issues. These measures do not necessarily relate to the core elements of the Bill but are complementary to the Executive’s local government modernisation agenda.

Remote participation in and calling of local authority meetings

70. Current legislation requires that council members have to be present at council meetings in order to be able to take part (therefore precluding the use of video and teleconferencing facilities) and that summons to meetings have to be left at or posted to individual members’ addresses (therefore precluding the use of e-mail and fax). Both the Renewing Local Democracy Working Group and Leadership Advisory Panel reports have highlighted that this prevents the modernisation and streamlining of certain aspects of council business and recommended that legislation be amended to lift current restrictions on procedures for council business.

71. These provisions are designed to amend existing legislation to allow councils more flexibility in carrying out council business. These changes will complement other changes introduced by councils to modernise their working practices and will be of considerable practical assistance, particularly to those councils covering remote areas.

Travel concessions

72. This provision is designed to equalise for both men and women the age of eligibility for concessionary travel at 60. Current legislation links the entitlement of elderly people to travel concessions to pensionable age as defined in the Pensions Act 1995, that is 60 for women but 65 for men. Schedule 4 to the Pensions Act 1995 provides for pensionable age to be equalised at 65 for both men and women by 2020, with transitional arrangements from 2010. The purpose of this policy is to equalise the age at which men and women become entitled to travel concessions at an earlier date. The Bill will make men entitled to travel concessions at the same age as women – at age 60.
Parliamentary procedure for regulations about vehicles used as taxis and private hire cars

73. This provision is designed to remove the anomaly in the parliamentary procedure for Ministers introducing regulations under their powers in section 20 of the Civic Government (Scotland) Act 1982 in relation to the licensing of taxi and private hire vehicles and their drivers.

74. Section 20(1) (as amended by Schedule 7 to the Transport Act 1985) allows Ministers to prescribe by regulations certain conditions which licensing authorities must attach, or are prohibited from attaching, to the licences of taxi and private hire cars and their drivers. Section 20(2) allows Ministers to prescribe by regulations the types, sizes and designs of vehicles that licensing authorities must allow to be used as taxis or private hire cars in their area. Section 20(2A) (inserted by section 39 of the Disability Discrimination Act 1995) empowers Ministers to introduce regulations (under Executive Devolution Procedure) to improve the accessibility of taxis to people with disabilities.

75. Section 20(3) currently requires that any regulations made under section 20(1) are subject to negative resolution procedure but no parliamentary procedure is specified for any regulations made under section 20(2). While it is not clear why this is the case, in the interests of democracy, and to ensure that the Parliament has the appropriate scrutiny powers, it is proposed that all regulations made under section 20 should be subject to the negative resolution procedure.

Suspension of requirement to advertise principal teacher posts

76. The policy intention of this provision is to suspend the legislation contained in section 87A of the Education (Scotland) Act 1980, to provide for the successful and timely implementation of the agreement “A Teaching Profession for the 21st Century”. Current legislation requires that all principal teacher (PT) posts are advertised nationally.

77. The agreement “A Teaching Profession for the 21st Century” reached among the Scottish Executive, education authorities and teachers’ representatives aims to provide an improved and simplified career structure for the teaching profession. Part of the new structure will require the restructuring of the principal teacher grade through a job-sizing exercise.

78. The Executive wishes to remove any impediment which could have an adverse effect on the job-sizing exercise by suspending the current appointment procedures for principal teachers for the duration of the job-sizing exercise. This exercise is a necessary and agreed step in making the transfer from the current range of teacher posts to the new slim-lined grade structure. The job-sizing exercise is scheduled for completion by August 2003.

Qualification of and assistance for Accounts Commission auditors

79. The Public Finance and Accountability (Scotland) Act 2000 set out the rules governing the auditing of public bodies by the Auditor General for Scotland. One of the rules set out in that Act concerned what qualifications are needed to be considered for appointment as an auditor. As a consequence of this change the rules on qualifications for local authority and other public sector auditors now diverge. The Executive want to take this opportunity to bring the rules on
qualifications for local authority auditors back into line with those for the rest of the public sector.

80. In addition there is currently no provision in Scottish legislation to allow local authority auditors to delegate their functions to other suitably-qualified persons; this is known as a “scheme of delegation”. This unduly restricts the carrying out of the audit of local authorities. Provision for a scheme of delegation was made in England and Wales in the Audit Commission Act 1998. In line with advice from the Accounts Commission for Scotland, the Executive accepts the argument for the introduction of a scheme of delegation which brings Scotland into line with England and Wales.

GENERAL (PART 6, SECTIONS 31 TO 35)

Power to modify enactments

81. The provisions in the Bill will transform fundamentally the way local authorities are able to exercise their functions. These provisions however will have to integrate with an already complicated existing statutory framework. To ensure that this integration process is as smooth as possible the Bill makes provision for the Scottish Ministers to amend, repeal, revoke or disapply any enactment that they consider prevents local authorities from complying with their duties of Best Value and Community Planning or exercising the power to advance well-being. This provision recognises that such hindering legislation may not be identified until after the duties and power have been tested and provides for a secondary legislation procedure to facilitate modification. The Executive would encourage local authorities to make use of this mechanism to highlight genuine barriers to the implementation of the new framework. Provision is also proposed to allow the Scottish Ministers flexibility in the use of the power to modify enactments.

Repeals

82. As a direct consequence of the introduction of Best Value the Executive recognise the need to repeal the existing provisions that make up the CCT regime. The wholesale repeal of CCT has been and remains an essential part of the Executive’s commitment to Best Value and the modernisation agenda more generally.


84. It is important that the power to advance well-being is not unnecessarily hampered by a crowded field of duplicating legislation. To ensure a greater degree of clarity, the Bill contains three specific repeals in this legislation as follows.

85. It repeals section 83 of the Local Government (Scotland) Act 1973 (general power of local authorities to incur expenditure) which is incompatible with the provisions in this Bill; section 122A (duty of local authorities to use resources efficiently) of the same Act which is made redundant by the introduction of Best Value; and section 171A (promotion by local
This document relates to the Local Government in Scotland Bill (SP Bill 53) as introduced in the Scottish Parliament on 16 May 2002

authorities of economic development of its area) of the same Act which is effectively made redundant by the broader application of its former powers in this Bill.

EFFECTS ON EQUAL OPPORTUNITIES

86. The provisions in this Bill will ensure that equalities considerations continue to play a central role in the statutory framework for local government in Scotland. This is achieved through the following measures in particular:

- ensuring that the discharge of all functions in the Bill under Best Value, power to advance well-being; and Community Planning encourage equal opportunities and observe equal opportunities requirements;
- local authorities having to observe their equal opportunities requirements in pursuit of Best Value;
- a requirement that local authorities will report publicly on their progress and achievements in relation to equalities issues under Best Value and Community Planning;
- guidance prepared in support of the Bill will provide a framework for specific actions and behaviours expected in relation to equalities issues.

87. Scottish local authorities, of course, already have a series of statutory obligations in relation to equal opportunities as a consequence of existing legislation, including the Race Relations (Amendment) Act 2000, the Disability Discrimination Act 1995 and the Sex Discrimination Act 1975. Whilst legislation on equal opportunities is generally a reserved matter, the Scotland Act allows the Scottish Parliament to give guidance on equal opportunities, to support the spread of best practice, to require Scottish public bodies (including local government) to adopt equal opportunities policies and monitor the effectiveness of those policies.

88. It is essential that the Executive in partnership with local government takes the opportunity offered by the Scotland Act to ensure not only that the vital importance of existing commitments is stressed but that adequate and effective guidance is produced to support these commitments.

Best Value

89. Best Value is comprehensive: it covers all local authority services from housing to education to roads, and all policies from social justice to the environment. The Executive think it essential therefore that all policies and strategies developed by local authorities in furtherance of Best Value should respect the importance of equalities issues. This commitment is reflected through the reference to equal opportunities in the basic duty of Best Value. This means that to secure continuous improvement and therefore Best Value, local authorities will now be expected to have explicit regard to their equal opportunities requirements in the exercise of any and all of their functions. (This is, of course, in addition to their existing obligation to both promote and report on racial equality issues.) This provides a clear incentive for local authorities to mainstream equalities issues into policy planning, consultation, decision making, and
implementation. Crucially, as part of Best Value, the Executive would expect these issues to be reflected in the processes in place internally to monitor and review services.

90. The Bill places local authorities under a duty to report publicly on their performance. To fulfil this duty local authorities will have to be proactive in engaging and consulting with their communities. It is vital that local authorities recognise that this means consulting and engaging with the whole community including those groups or individuals that are often marginalised from the democratic process. This should affect the kinds of questions and issues raised with the community: are the benefits of Best Value reaching all members of the community; is there “fair access” to all services? This is one of the issues that will be addressed directly in the guidance issued by the Executive and Best Value Task Force to support Best Value.

91. One of the most important ways in which Best Value will impact on equalities issues is in relation to local authority contractual practice. The Executive’s proposals to amend the Local Government Act 1988 will allow a wider range of issues to be considered in contractual negotiations for the delivery or procurement of goods and services. This will mean that local authorities can follow and develop a broader fair employment agenda that benefits every part of their workforce.

92. In its Final Report the Best Value Task Force identified consideration and action on equalities issues as an essential element of Best Value. This commitment was reflected in guidance issued by the Convention of Scottish Local Authorities in association with the Equal Opportunities Commission, the Council for Racial Equality and Disability Scotland. This guidance – Guidance on Best Value and Equalities; and Mainstreaming: Integrating Equality into all Council Activities – made clear to councils where the pressure points are on equality issues and where more work needs to be done. These issues were subsequently taken up and further developed in the work done by Audit Scotland (on behalf of the Accounts Commission for Scotland) to develop the Best Value audit framework to give councils positive support in their efforts to integrate equality issues into their activities.

93. The Executive has announced that the Best Value Task Force will be re-convened to help co-ordinate and develop guidance to support Best Value. Equalities will be one of the issues that the Task Force will consider to see not only how existing guidance on equalities can be developed but that any further guidance adequately reflects equalities concerns.

94. The Joint Scrutiny Forum was established to bring together the Inspectorates in Scotland to discuss and deliver the integration of Best Value into the various audit and inspection regimes (for Police, Fire, Education, etc.). The Forum has sought to concentrate on some of the key issues surrounding Best Value. An issue of particular concern has been the integration of equalities considerations into the scrutiny framework. The Executive has worked as part of the Forum to ensure an effective dialogue on this issue and has committed itself to co-ordinate the development of a code of practice on inspecting for equality issues.

**Community Planning**

95. Community Planning will be an inclusive process that will place partnership working on a statutory footing and require consultation and co-operation from a wide-range of interests.
Community Planning is about securing effective engagement to ensure that plans and policies and the provision of services meet the needs of those using them. In doing so, Community Planning partnerships will need to reach out to socially excluded and equalities groups. They will also need to ensure that the process does not discriminate against people with disabilities or from ethnic minorities or discriminate on the grounds of sexual orientation. They should also seek to involve other groups, such as young people or single parents, who are often under-represented in more traditional forms of consultation. Practical considerations, such as access to child care, public transport costs, disabled access and interpretation services, would need to be taken into account in developing particular approaches.

96. The Bill places a requirement on local authorities to consult and co-operate with community bodies and other persons or bodies in exercising their duty of Community Planning. Community bodies will include equality bodies. The Bill and associated guidance will be clear that this includes “communities of interest” as well as “communities of place”. Furthermore, guidance to the Bill will emphasise the need to mainstream equalities, including the commitments above, into the various planning and service delivery functions of a local authority.

97. Consultation with equalities bodies in the preparation of the Bill will continue into the preparation of guidance and the Community Planning Taskforce, with the support of the Equalities Co-ordinating Group, will assist in drafting sections which will provide a framework on how equal opportunities are mainstreamed into the Community Planning process. This will supplement the duties themselves through the use of good practice examples.

98. The reporting of progress on Community Planning will include a requirement for local authorities, as facilitators of the process, to demonstrate how equal opportunity requirements have been met and how equal opportunities are being promoted. The focus of this reporting will be integrated into public performance reporting.

Power to advance well-being

99. It is envisaged that the power to advance well-being will have a positive effect on equalities. The nature of the power is such that the Scottish Executive would not wish to be prescriptive to councils in how it is used. However, associated guidance will set out an illustration of how it may be used including as a means to be more flexible and innovative in promoting equal opportunities. This may entail working with groups, nationally or locally, to promote or encourage equal opportunities through joint working. The Bill in allowing for more joint working across local authorities will better allow for the transfer of good practice.

Equalisation of age eligibility for concessionary travel

100. Equalising the age at which men and women become eligible for concessionary travel at the pension age for women, currently aged 60, demonstrates the Executive’s desire to promote equalities.
EFFECTS ON RURAL AND ISLAND COMMUNITIES

101. The Executive considers that the provisions in this Bill will be valuable in responding to the particular needs and circumstances in rural and islands communities. In particular, the Executive’s provisions for power to advance well-being and Community Planning will allow the innovation and partnership working that is necessary to deliver high quality services in such areas. It is sometimes the case that sharing infrastructure, premises and other facilities is a necessity in more remote communities. In addition, the miscellaneous provisions relating to use of Information and Communications Technology for council business are important in this respect as they will allow use of video conference for council meetings, thus reducing the need for lengthy journeys to a local authority HQ.

EFFECTS ON HUMAN RIGHTS

102. The Scottish Executive considers that the provisions in the Bill are consistent with the European Convention on Human Rights. Complaints under the European Convention on Human Rights can only be brought by a “person, non-governmental organisation or group of individuals claiming to be the victim of a violation” of a convention right by virtue of Article 34 of ECHR. While “non-governmental organisations” and “groups of individuals” are wide terms they do not cover local government organisations.

103. The Bill is, in the main, concerned with making provision in relation to local authority functions. As local authorities have no locus to bring complaints under the ECHR the Executive does not consider that the provisions of the Bill as they relate to local authorities have any effect on human rights.

EFFECTS ON SUSTAINABLE DEVELOPMENT

104. Sustainable development is about pursuing social justice and economic development in ways which do not harm the environment or squander natural resources. Local authorities play an important role in working towards a more sustainable Scotland, and the powers in this Bill will help authorities to play their part.

105. In working to secure Best Value, local authorities will want to consider the impact on sustainable development. The Scottish Executive priorities for sustainable development – making best use of resources and minimising waste, reducing energy use and reducing the need to travel – are all relevant to securing continuous improvement in the performance of local authority functions. The Executive will want to look at how best to integrate sustainable development principles into guidance to local authorities on Best Value.

106. The wide-ranging nature of the power to advance well-being and the statutory underpinning for the Community Planning process means that local authorities and their partners will be better able to work in a more holistic way that supports sustainable development. The provision of high-quality well-targeted and responsive services encouraged by this Bill will help to build strong and sustainable communities.
107. Community Planning offers a valuable opportunity to link national, regional and local policies and priorities. Sustainable development depends on taking a holistic view of economic development, social policy and environmental impact. Community Planning is a natural vehicle to help co-ordinate and deliver this kind of integrated approach at the local authority level and below. Community Planning builds on the Local Agenda 21 process established at the Rio Earth Summit in 1992 with the aim of encouraging action at community level on sustainable development. Community Planning meets the same aim by ensuring that local communities are actively engaged in planning for the future of their area.

108. The power to advance well-being will include the commitment to sustainable development and promoting environmental justice. This will be illustrated in associated guidance. Guidance will encourage local authorities to consider how the power to advance well-being can promote the sustainable development of its area by delivering integrated action in key areas – for example, improving environmental quality; tackling social exclusion; and reducing health inequalities. Guidance will also encourage local authorities to consider how the power to advance well-being can help them contribute to shared national priorities – for example, action to combat climate change and the promotion of biodiversity.
LOCAL GOVERNMENT IN SCOTLAND BILL

POLICY MEMORANDUM

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Printed in the United Kingdom by The Stationery Office Limited

£3.70

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