Local Government Committee

16th Meeting, 2002

Wednesday 5 June 2002

The Committee will meet at 2.00 pm in Committee Room 1

1. **Item in private:** The Committee will consider whether to take item 4 in private.

2. **Local Government in Scotland Bill:** The Committee will take evidence on the general principles of the Bill at Stage 1 from—

   Scottish Executive:
   Leslie Evans, Head of Division, Local Government Constitution and Governance Division
   Ian Mitchell, Head of Branch, Local Government Constitution and Governance Division
   Mary Newman, Head of Branch, Local Government Finance and Performance Division
   Gillian Russell, Senior Principal Legal Officer, Office of the Solicitor to the Scottish Executive

   COSLA / Society of Local Authority Chief Executives and Senior Managers (SOLACE):
   Councillor Corrie McChord, Leader, Stirling Council
   Jon Harris, Director of Policy and Legislation, COSLA
   Tom Aitchison, Chairman of SOLACE and Chief Executive, City of Edinburgh Council
   Douglas Sinclair, Vice Chairman of SOLACE and Chief Executive, Fife Council
   Peter Daniels, Chief Executive, East Renfrewshire Council.

3. **Renewing Local Democracy - The Next Steps (Phase 1):** The Committee will take evidence on the White Paper from—

   Society of Local Authority Chief Executives and Senior Managers (SOLACE):
   Tom Aitchison, Chairman of SOLACE and Chief Executive, City of Edinburgh Council
   Douglas Sinclair, Vice Chairman of SOLACE and Chief Executive, Fife Council
   Peter Daniels, Chief Executive, East Renfrewshire Council
4. **Renewing Local Democracy - Phase 2 Inquiry:** The Committee will consider proposals for external research and civic participation.

Eugene Windsor  
Clerk to the Committee  
Room 2.05, Committee Chambers  
85217  
e mail: eugene.windsor@scottish.parliament.uk  

The following papers are attached for this meeting:

**Agenda item 2**
Submission from COSLA and SOLACE  
LG/02/16/1

**Agenda item 3**
Submission from SOLACE  
LG/02/16/2
Submission from the City of Edinburgh Council  
LG/02/16/3

**Agenda item 4**
Proposal for Committee Bids to Civic Participation and External Research Funds [PRIVATE]  
LG/02/16/4
COSLA / SOLACE Response to the Local Government in Scotland Bill.

1. INTRODUCTION AND SUMMARY

1.1 COSLA and SOLACE welcome the Bill which provides a statutory framework for Best Value and Community Planning and a power of well-being. We believe that these three elements of the Bill should be inextricably linked. We would have preferred the Power of well-being to have appeared as Part 1 to emphasise that this is the Key objective of councils and their community planning partners. The community planning process and the Best Value framework should be seen as supporting the outcome of improving and promoting the well-being of communities.

1.2 We welcome the repeal of CCT. Whilst CCT did deliver a more business – like approach, the disadvantages outweighed these benefits – a focus on price and not on quality, a culture of blame rather than continuous improvement, an agenda which was centrally driven and not locally owned and a regime whose accounting rigidity ran counter to integrated service delivery.

1.3 We believe that the underpinning ethos of the Bill is the planning of integrated services within a community planning framework so as to deliver improved public services that reflects the particular needs and circumstances of the different communities across Scotland. That is the essence of good local governance and the title of the Bill should have been the “Local Governance in Scotland Bill” which would have better reflected what it seeks to achieve.

1.4 We welcome the commitment of the First Minister to extend Best Value across the public sector. We believe that, rather than using Ministers’ existing powers of direction to public bodies, this would be better achieved by extending the duty of Best Value to all public bodies.

1.5 We are pleased to note the proposals to streamline and rationalise the existing audit and inspection frameworks to reduce the administrative burden on councils. Whilst this is being developed on the basis of agreement between the Accounts Commission and the various Inspectorates, we believe that this needs to be supported by a change in the statutory framework. Given the growth of joint working arrangements between public sector bodies, our goal must eventually be a single audit/inspection framework and intervention regime across the public sector.

1.6 We welcome the provision in the Bill to place a duty on a number of public bodies to participate in community planning. We believe that the list should be extended to include Communities Scotland and Scottish Water. We would also wish that a duty should be placed on Ministers to ensure the effective participation of all the public bodies they sponsor in the community planning process.

1.7 SOLACE would support a power being given to Ministers to incorporate Community Planning Partnerships provided all the partners agreed. This would allow money for cross-cutting themes to be allocated to community planning partnerships rather than individual partners. Examples would be the Health Improvement Fund and the fund for Social Inclusion Partnerships.
2. PART 1 BEST VALUE AND ACCOUNTABILITY

Clauses 1 and 2 - Duty of Best Value

2.1 We welcome the duty of Best Value set out in clause 1 with its emphasis on quality of service as well as cost and the recognition given to meeting equal opportunity requirements in achieving Best Value.

2.2 We welcome the commitment of the First Minister to extend Best Value across the public sector. It is intended that this will be achieved by Ministers’ using existing powers of direction and placing a requirement on the accounting officers of other public sector bodies to achieve Best Value. If this is achieved this will ensure a consistent approach across the public service and help realise the potential for community planning to deliver improved public services. This hope is reflected in COSLA’s response to the Executive’s consultation which stated that

“ It will be vital that all public agencies engaged in the Community Planning process are operating under exactly the same expectations. While the present Best Value regime encourages councils to think innovatively about solutions to their unique problems, the public agencies who are our partners in the delivery of public service must also be challenged to think creatively in the future if the potential benefits of both Community Planning and Best Value are to be maximised. The expected power of community initiative will provide a very clear stimulus to councils and their partners to examine their service delivery arrangements and spur councils on to look for more innovative solutions to make better use of scarce resources in meeting the needs of their communities.”

2.3 We do, however, feel that rather than using Ministers’ existing powers of direction to public bodies, this would be better achieved by extending the duty of Best Value to all public bodies under clause 1 of the Bill. This would ensure that all public bodies would have to secure the same duty of Best Value and have regard to the same guidance.

2.4 Reference is made in the Scottish Executive’s proposals to the provision of guidance to support stewardship and performance management arrangements under Best Value. It may be that the scope of this guidance should be less tightly drawn especially given the need to ensure consistency with guidance on community planning. Councils also recognise the need to engage with citizens as part of the decision-making process in the course of achieving Best Value and would expect this to be included within the scope of guidance. We believe that guidance should be, as far as possible, non-prescriptive and should be developed on the basis of the same partnership approach as has existed since the Best Value Task Group was first established.

Clauses 3-7 Enforcement.

2.5 We support the proposals for scrutiny and audit arrangements as well as the proposal to set out a streamlined and integrated process in the Bill for enforcement and intervention. In our response to earlier consultation papers we argued for a new system of intervention based on the following principles: -
• Formal intervention in the running of the council would be seen as an act of last resort (guidance and clarification should be provided on what is meant by “substantial harm” in clause 6 (1) (b));

• The emphasis should be on correction of under performance rather than the imposition of sanctions and the council should have been given adequate opportunity to rectify failures;

• The level of intervention should be appropriate to the failure identified;

• That prior to an intervention decision being taken by the Executive, it would be a requirement that the council concerned be given a formal opportunity to make representations as to why intervention should not take place with a right of appeal; and

• There should be a requirement for an affirmatory resolution in the Parliament, prior to any action taking effect.

We also made the case for the development of an “intervention protocol” based on these principles and which would be in keeping with co-operative methods which have emerged and the permissive approach to the legislative requirements for Scotland.

2.6 We would favour all existing powers being integrated into this one approach or repealed if this is not possible. We believe, for example, that the powers of intervention under the Housing (Scotland) Act 2001 are no longer necessary and moreover are not consistent with the approach adopted in these proposals and we would therefore advocate the specific repeal of the relevant sections of this Act. We have similar concerns in relation to the Community Care and Health (Scotland) Act 2002.

2.7 The Ministerial intervention powers provided under this Bill should be common to all public sector agencies thus reinforcing the need to ensure that the statutory duties of Best Value and Community Planning are applied across the public sector and again reflecting the desirability that the scope of this Bill reflects local governance arrangements rather than being limited to local councils.

Clauses 8 and 9 – Other provisions about best value

2.8 We are pleased to note the proposals to streamline and rationalise the existing audit and inspection frameworks to reduce the administrative burden on councils. Whilst this is being developed on the basis of an agreement between the Accounts Commission and the individual inspectorates, we believe that this needs to be supported by a change in the statutory framework. Given the growth of joint working arrangements between public sector bodies, our goal must be a single audit and inspection framework in the public sector.

Clause 10 -12 - Relaxation of rules about contracts and supply of goods and services

2.9 We are pleased to note the intention to relax some of the non-commercial considerations relating to contractors’ workforce and employment considerations in clause 10 but can see no good reason for retaining the remainder of Part 2 of the Local Government Act 1988.
2.10 Procurement is critical to the performance of local government functions and whilst we are in favour of the relaxation of the restrictions on the supply of goods and services as set out clause 11, we would have liked the Bill to have gone further in its application. We can see no continued justification for the separate treatment of new build construction works or any other category of activity undertaken by Councils. If there is going to be real change in the powers of local authorities to work with Community Planning partners, PPP Companies and Housing Partnerships then the prohibition on undertaking new build works in conjunction with these organisations is a key issue which must be addressed in the Bill.

2.11 More clarification is required on the likely level of the statutory limit or threshold referred to in clause 11(2) and on what the procedure would be for seeking agreement to exceed the maximum, what the timescale would be for such an agreement to be in place, and what powers of annulment Ministers would have and under what circumstances. Local authorities would wish a rapid decision as to whether they could exceed the maximum and would require to know prior to entering into an agreement that Ministers would not veto the agreement after it was signed giving rise to the potential of breach of contract with third parties.

2.12 Clarification should also be sought of (1B)(C) of the Bill – i.e. as to what would constitute “a body which, not being a public body, has functions of a public nature or engages in activities of that nature”. Clarification is also needed of the meaning of 1B(d) and the cross-reference to (1J) of clause 11(2), since these two clauses simply appear to refer to each other and have a circular effect.

2.13 Guidance is also required in relation to (1F) as to how the statutory maximums will be calculated for different cases or classes of case. In relation to (1l), the obligation of Ministers to consult before setting maximums should be made more onerous in that there should be an obligation that they shall consult with local authorities and may consult with any other person they think fit.

Clause 14 and 15 – Accounts, finance and performance accountability

2.14 Clarification is essential of the weight to be attached to the views of Professional Accounting Bodies as to the interpretation of proper accounting practice and we would be concerned if the Minister could use power under clause 14(2)(b) to override professional standards.

2.15 We note the power of Ministers to make regulations on the form, content and frequency of reporting and the need to consult under clause 15(5). We believe that the detail of what may be included in these regulations in clause 15(6) should not be included on the face of the Bill but should be subject to consultation.

PART 2 - COMMUNITY PLANNING.

Clause 16 – Community planning

3.1 We welcome the new duty on Councils to initiate and facilitate the community planning process. This duty provides the parliamentary affirmation of Councils’ community leadership role. We also believe that the duty is much stronger than a symbolic power and
provides a clear signal about the role of community planning as an essential vehicle for achieving better services and community well-being.

3.2 Community Planning at the strategic level is the shared vision to improve communities and quality of life agreed by Community Planning Partners within a Council area. Local Community Planning is about the delivery of that shared vision, in tangible improvements which meet the needs and aspirations of local communities. But Community Planning also has a national dimension. An analysis of the 32 Community Plans shows a real recognition of national priorities. Community Planning has the capacity both as a planning and delivery mechanism to co-join national priorities on the one hand and local priorities on the other hand, provided, firstly, that the number of the national priorities is limited – if everything is a priority, nothing is a priority. And, secondly, there is space for Community Planning Partners to ensure the delivery of their shared vision. Community Planning has the capacity to link the national to the neighbourhood. Moreover to facilitate this COSLA in partnership with SOLACE, is developing a model outcome agreement between Community Planning partnerships and the Executive similar to the Policy Agreements being developed in Wales.

**Clause 17 Further Provisions**

3.3 Councils do not see their community leadership role as an optional extra but as a core function that sits alongside their statutory responsibility for key public services. We, therefore welcome the provision in the Bill to place a duty on other key public bodies to participate in the process. We would wish to see the list of bodies extended further to include Communities Scotland, and Scottish Water.

3.4 We believe that this could be strengthened by placing a duty on Ministers to give statutory direction to all Executive agencies and the Non-Departmental Public Bodies which they sponsor. We believe that ministerial directions and performance measures to reflect active engagement in the community planning process are appropriate ways of expressing the expected performance of their contribution to the delivery of national priorities on cross-cutting issues. Another advantage of setting performance standards in this way is that it will ensure that sponsoring departments within the Executive monitor their agencies contributions to the community planning process as well as bringing this aspect of performance within the framework of external audit.

3.5 Whilst acknowledging that bodies with non-devolved functions, such as the Department for Work and Pensions, cannot be the subject of ministerial direction under the terms of the Bill, we believe serious consideration should be given to making provision in the proposed non-statutory guidance to ways of engaging them where their functions are likely to have a significant impact on community planning. In particular we would wish appropriate provision for these agencies to engage in the community planning process to be built in to the Memorandum of Understanding between Westminster and the devolved Scottish Parliament.

**Clause 18. Reports and information**

3.6 We welcome the provision for the reporting of what has been done by way of community planning and there needs to be a clear link made to the reporting of performance under
clause 15 of the Bill. We also believe that there should be a clear commitment by all community planning partners to contributing to this process.

Clause 19. Guidance

3.7 We welcome the provision for guidance in the Bill and the fact that this is being drafted by the Community Planning Task Force. As with the guidance on Best Value we expect that it will be non-prescriptive and that these two sets of guidance will be fully consistent with each other.

PART 4- POWER OF WELL-BEING


4.1 We welcome the ‘power to promote and improve well-being’ and what the new power will allow councils to do. We agree that the new power should not be seen as a reserve power. We would see it as a power of first resort not last resort. We are pleased that earlier representations have been taken into account when drafting this section of the Bill, in particular relating to issues of interpretation and lessons learned from the English legislation.

4.2 It would be helpful to extend the specific powers as detailed clause 21 (2) as follows:-

- The equivalent power to clause 21(2)(e) in England and Wales allows councils to take on the functions currently undertaken by other service providers with their agreement. This approach provides greater scope to councils and their community planning partners to determine how to discharge their functions in a way that delivers Best Value to the communities they serve. It also allows Councils to take forward the Joint Futures agenda of more integrated working between public bodies. A similar interpretation could be provided in this Bill if the words “with their consent” were added. We believe that this would also remove the need for clause 23(4).

- We would also wish to see an express power granted to Councils to form or participate in companies or other bodies in furtherance of the well-being of their communities. This would avoid any possible uncertainty surrounding the legality of the true extent of existing powers to enter into such arrangements.

Clause 22 -Guidance.

4.3 We would see the associated guidance as describing ‘well-being’ in its broadest sense of sustainable development and promoting an integrated approach to improving the economic, social and environmental well-being of an area. We have a concern about Ministers having the power to issue statutory guidance on what should be taken into account in offering the various kinds of assistance using the new power. We would not want this guidance being used to limit the scope of the power.

Clause 23 –Limits on Power.
4.4 We welcome the fact that the power is qualified only by existing express statutory prohibitions or limitations rather than being limited also by implied statutory restrictions.

PART 5- MISCELLANEOUS

5.1 We are broadly in favour of the provisions included in this part of the Bill. This Bill provides an opportunity to address a number of other important concerns which local government faces in its daily business. These include the following:

- Amendment of the composition of membership of Education Committees under s.124 of the Local Government (Scotland) Act 1973 to allow Councils that have adopted a cabinet style of Committee structure discretion as to whether religious representatives should sit on the cabinet or the relevant scrutiny committee.
- New powers to allow councils to offer surplus places on school transport to non-entitled pupils at a charge.
- In order to broaden out participation within the democratic process, we would wish: (i) provision to be made to enable school children over the age of 16 years to be members of Education Committees; and (ii) s.29 of the Local Government (Scotland) Act 1973 to be amended to allow persons of 18 years to qualify to hold office as a member of a local authority.

PART 6 – GENERAL

Clause 31 – Power to modify enactments

6.1 We are pleased to note that a general power will be available to Scottish Ministers to modify enactments which might hinder the progress of Best Value or Community Planning or the proper and effective exercise of the power of well-being. We recognise that the purpose of the Bill is to enable councils to be innovative in perhaps new and unforeseen ways and we support the proposal to give Ministers the power, by order, to amend, repeal, revoke or disapply existing legislation which hinders councils in achieving this end. COSLA would see itself having a role in supporting applications for the use of this power from its member councils as well as being consulted by Ministers on their proposals to use this power.

Clause 32. Equal Opportunities

6.2 We support the reference to Equalities been seen as a key ‘horizontal’ theme of the Bill and recognises the important role that guidance will play in supporting the mainstreaming of equalities in the implementation of the legislation. In this latter respect we would hope that we could build upon COSLA’s existing guidance on equalities and Best Value. We are pleased to note that these equalities requirements are also to apply to the application of the new duties in respect of community planning and the power of well-being.

Clause 33- Repeals.
6.3 We welcome the repeal of CCT. Whilst CCT did deliver a more business-like approach, the disadvantages outweighed these benefits – a focus on price and not on quality, a culture of blame rather than continuous improvement, an agenda that was centrally driven and not locally owned and a regime whose accounting rigidity ran counter to integrated service delivery.

6.4 Sections 150 (Power to Allow Charges), 151 (Power to amend Provisions about Charges) and 152 (Interpretation, Consultation and Commencement of sections 150 and 151) of the Local Government and Housing Act 1989 should be included in the repeals referred to in clause 33 of the Bill. The three Sections are intended to grant local authorities the right to make charges in respect of such services or acts performed by local authorities as are prescribed in regulations by Scottish Ministers. They do not sit well however with clause 23(6)(b) of the Bill which appears to be to give local authorities the power to make reasonable charges for defraying the costs incurred by them in supplying goods or providing services.
1. SOLACE recognises the significant steps which the Executive has taken or will take to strengthen both the capacity and role of local government. Firstly, the 3 year financial framework and the abolition of spending guidelines and a four year term of office for Councillors makes planning and decision making both more sensible and considered. Secondly, the replacement of CCT by Best Value places responsibility for continuous improvement where it properly should be – with Councils themselves. Finally, the proposal to give a Power of Community Wellbeing and a Duty of Community Planning underscores the primacy of the community leadership role of Scotland's Councils.

2. These are important improvements and SOLACE’s comments on this White Paper need to be seen in that context. Indeed the Paper contains many proposals which will be widely and positively welcomed; not least the commitment to “no further review of Councils’ boundaries or a reduction in the number of Councils in the foreseeable future”; that will provide reassurance to local government. It is right that the emphasis by the Executive is on encouraging and incentivising partnership working across Councils (and with their Community Plan Partners); another structural reform, at this point in time, would be disempowering and disabling. Similarly SOLACE welcomes the proposal to abolish the existing system of capital consents and place responsibility for capital expenditure in the form of a direct relationship between Councils and their electorate without the intermediary role of the Scottish Executive. The present system confuses accountability. On the one hand Councils will complain about the inadequacy of their Section 94 Consents determined by Ministers; Ministers, on the other hand, will point to the fact that it is a matter for Councils to determine their priorities within their overall
Consent; and the public – in the middle – are confused and bemused. Equally welcome is the pragmatic approach taking forward the work of the Leadership Advisory Panel which contrasts sharply with the directive approach adopted in England. Finally, SOLACE welcomes the proposal to allow young people to stand as a Councillor at the age of 18.

3. These are welcome innovations but, in our view, the consultation is both short on overall vision and unduly conservative in a number of areas. Firstly, we find the Paper short on vision because it articulates a view of local government which is essentially related to service delivery. That role is important and is fundamental to local government’s credibility but it does not distinguish local government; what distinguishes local government is its capacity for community leadership because of its democratic legitimacy – through Community Planning – to work with its Community Planning Partners to plan together, to work together and to deliver together to build stronger, more sustainable communities in Scotland. The conservatism of the Scottish Paper, in our view, contrasts sharply with the Policy Statement from the Welsh Assembly Government: “Freedom and Responsibility in Local Government”. Its starting point is a vision for local government which states “our vision for local government is of local authorities which

- provide clear leadership for their communities.
- deliver and secure high quality services for the local communities
- are open, accessible and accountable”

4. We also find the Consultation Paper unduly conservative in a number of areas where we would have expected firm proposals for action and not simply a rehearsal of old arguments. For example, the statement “Ministers would, therefore, like to know whether respondents agree that the current system of allowances need to be overhauled” hardly deserves an answer. That case for change has been made by COSLA, by McIntosh and was taken forward by Kerley; it does not need to be made again.
Chapter 1 - Introduction

5. The introduction to Chapter 1 states “local government delivers vital public services across Scotland”. In part that is true but there is no mention of the reality that increasingly Councils are dependent on or with others for the delivery of services. Wheatley’s concept of the “standalone Council” directly delivering all services has been replaced by a possible model of a Council where, for example, all its secondary schools have been provided under a public private partnership; where community care is provided jointly between the Council and the local NHS Board, where leisure facilities are operated under a Trust; economic development is a joint venture with Local Enterprise Company; where the housing stock has been transferred and where the Council is in partnership with a major ICT provider to provide a customer relations management service. The changing world of local government is not recognised in the Paper; and nor what that might mean either for the number or roles of Councillors or the new skills that may be required of them or of Council managers.

6. Equally, the proposal in Chapter 1 that “Ministers have concluded that they do not wish to make a wholesale reduction in the number of Councillors at this time” seems, to say the least, to be arbitrary. No reason is given for rejecting Kerley’s argument of a minimum number of 19 members for a Council or a maximum number of not more than 53 members or of the statement by Kerley “this echoes views expressed to us by Councillors and officials”. And to suggest that “if however individual Councils wish to bring forward proposals for reduction in the number of Councillors in their own areas, Ministers would be willing to consider these sympathetically” ignores – or more realistically pretends to ignore – the political realities inside each of Scotland’s Councils. This is an issue for national determination not local discretion.

Chapter 2 – Removing Barriers

7. SOLACE finds this chapter disappointing in its lack of ambition. This territory has already been extensively ploughed. The recommendation that the Executive intends to discuss with COSLA, local authorities and other bodies ways in which progress can be
stimulated in this area is hardly revolutionary. There is a need for emphasis on action not on more discussion. And the issue is more complex than simply the reorganisation of Council business, important though that is. There are difficulties in accessing carer/childcare support. But in terms of representativeness of local government, adequate time off from employment is a major barrier across all of the country’s underrepresented sectors. In its evidence to the McIntosh Commission, COSLA said “we believe this is a particular problem in the 21-45 age group who are usually developing their career paths in raising young families. Whilst many would probably want to become Councillors they may feel that they would have to sacrifice their careers and some of their income as well. They also lose out on family because of the amount of evening and weekend work that a committed Councillor has to give. We need to develop some system which should allow younger people to have a career break. This would mean that their employers would have to agree to take them back or else a system of secondment could be developed.” COSLA said that ideally the removal of such barriers to participation should be achieved through a non-statutory route. SOLACE endorses that view but we also believe – as COSLA said that serious consideration should be given to form of citizenship legislation which would require employers to give time off to their employees who wish to serve in local government. If it is right that there is a statutory requirement on employers to give employees time off to participate in the work of the Children’s Hearing system then that principle should equally apply to participation in the work of local government. Indeed, paragraph 46 of the Paper states “Ministers believe that the majority of Council positions should be capable of being occupied by people who choose to undertake Council work whilst having other responsibilities”. If that is the wish of Ministers then they must will the means.

Chapter 3 – Electoral Reform

8. Our starting point is based on two issues of principle; firstly we accept the need for local government to be as representative as possible of all its communities and that genuine electoral competition will, more often than not, serve as a spur to better governance. Second, we believe that it is a pre-requisite to the introduction of any system of
proportional representation in local government that it retains a strong identifiable and
direct link between the Councillor and his/her constituents. In 1999 in our response to
McIntosh’s second round of consultation, we said that we agreed “with the criteria put
forward by the Commission as a basis for choosing a system for election.” We went on
to say that “There is a case for maintaining consistency between voting systems for
different elected bodies. However, the counter argument, that the Scottish, Westminster
and European Parliaments all differ from each other and from local government, and
require voting arrangements which reflect their particular circumstances seems to be
more persuasive.”

9. We remain of this view. While consistency is a virtue, it is more important that electoral
systems are chosen so that they are fit for purpose. We would therefore be against the
imposition of AMS on local government solely on the grounds that this is the system for
election to the Scottish Parliament.

10. In 1999 we also said that “it would seem prudent to undertake an evaluation” of AMS
“before rushing too quickly into any alternative approaches.” We believe that this
remains the case. The report of the Scottish Constitutional Convention also called for an
evaluation of the application of AMS “in order to establish its success in fulfilling the
objectives of the Convention, especially in achieving equality of representation between
men and women and a more proportional result.” While AMS has produced a broadly
proportional result in terms of the major parties it continues to under-represent smaller
parties and did not achieve proportional representation of women or black and ethic
minority populations.

11. However there is another aspect of AMS which does not appear to have been widely
anticipated that we believe would require to be included in any review and that is the
role of list MSPs. The present arrangements are confusing both for Councils and for the
public. A Council can and does receive complaints about the same constituent issues
from an MSP, from list MSPs covering the Council area and, on occasion, from list
MSPs outwith the Council area. It must be questioned whether this represents Best
Value in the use of public resources. There is a pressing need for a protocol amongst
MSPs (and, indeed, between MPs and MSPs). To impose AMS on Councils without these issues being addressed would be simply to replicate the problems in terms of potential confusion about the role of Ward Councillors as opposed to Council-wide Councillors.

Chapter 4 – Remuneration

12. The commitments are welcome but given the degree of past debate on these issues and indeed consensus – a more assertive approach would have been appropriate – the extent of the rehash of previous arguments is, to say the least, surprising. It seems to SOLACE that a number of principles have already been broadly accepted in respect of which there is a general consensus.

(a) The basic allowance is inadequate in relation to the worth of the job of Councillor.

(b) The inadequacy of the basic allowance is underscored by the fact that two-thirds of Scotland’s Councillors receive SRAs. Whilst that is excusable in practice because of the inadequacy of the basic allowance, it is not right in principle. Special Allowances mean by definition that they are held by a minority not by a majority. It is naïve of the White Paper to suggest, as it does in paragraph 61, “the real difficulty would be in determining which Councillors should receive additional salary elements, inevitably there would be a danger that some Councillors who currently receive significant amounts of SRAs could lose out financially”. That is a logical and inevitable consequence of a new system which provides a sensible and appropriate basic allowance for the many and additional responsibilities for the few. Moreover the statement in the White Paper does not sit easily with the statement in paragraph 87 which states "Ministers wish to do what they can to encourage Councils to maintain this process of self-review". And the Leadership Advisory Panel in its report made the telling point that “change in
the system of remuneration is required in order to garner the full fruits of structural modernisation”.

(c) Remuneration should be set nationally and independently.

(d) Pensions and severance arrangements must be included.

13. Again the caution of the Scottish Paper is in sharp contrast to the boldness of the Welsh Paper which states “a major barrier to increasing the diversity of Councillors has been the level and nature of Councillors’ allowances. The Welsh Assembly Government, therefore, commissioned the University of Birmingham’s Institute of Local Government to examine this issue. In the light of the INLOGOV report: Recognising Councillors’ Worth - we are introducing new guidelines on allowances for County Councils to ensure that elected members are fairly rewarded for the valuable role they perform. This new system of allowances will help to encourage those who may have been previously reluctant to stand for public office because of care commitments or because they simply could not afford to. We will introduce revised regulations to reflect these guidelines and to enable Councils to pay additional allowances to members with caring responsibility”.

14. SOLACE also believes that the White Paper makes far too much of the link between remuneration and “streamlined decision making”. In our view, irrespective of the way in which a Council is structured, there is a logical limit to the number of posts of responsibility in any Council having regard to its population and budget. And whilst Kerley might be criticised in that his proposals for the number of Councillors who should receive allowances for significant responsibilities was, inevitably, to an extent arbitrary; in our view, they are a useful starting point for debate and have the benefit, in the case of remuneration for Council Leaders, of linking them to the salaries for MSPs and for banding them using the population bandings and financial turnover used for determining Chief Executives’ salaries.

15. The paper concludes that Ministers prefer the concept of role descriptions to job descriptions. Yet, no attention is given to how Councillors discharge these roles as
opposed to what their roles are. Let us consider, for example, the first role described in Appendix B of the paper. That of a councillor representing his or her constituents. It is clear that practice varies enormously. Some Councillors will represent a constituent with a complaint from the outset, whereas other Councillors will only intervene once the constituent has exhausted the Council’s internal complaints procedures. How Councillors discharge their jobs has a direct bearing on how much time they spend as Councillors. Yet this is left entirely to the discretion and judgement of the individual Councillor rather than having in place any broad time parameters which would be regarded as standard for Councillors (with an additional standard for Councillors with special responsibilities). This contrasts with an individual seeking appointment, for example, to a Local Enterprise Company where the time commitment is laid out in advance. Nor is the issue simply the most effective way for a Councillor to discharge his or her roles but, equally, what is the most appropriate support that a Council can provide to Councillors in discharging their role, particularly their constituency role. Whilst it would not be feasible to provide each Councillor with individual support as in the case of MSPs, the concept of support for a group of Councillors is clearly worthy of consideration. These are important issues because they have a direct relationship on the issues raised in Chapter 2 about removing the barriers which inhibit people from standing for Council – and clearly time commitment is a major factor – as well as the stated objective of Ministers in paragraph 59, “that more Councillors should be able to take on other non-Council responsibilities in future and that the number of Councillors spending most of their time on Council business should decrease”.

16. Finally we find paragraphs 65 and 66 in relation to severance both disappointing and contradictory. The Welsh Paper reveals a poll for Councillors in Wales which shows that 72% were male with an average age of 58. “To address this imbalance …… the Welsh Assembly Government intends that long standing Councillors will be rewarded for their service and encouraged to make way for younger representatives through the introduction of a one-off severance scheme for Councillors aged 60 or over who have served for more than one term and who decide not to stand for re-election in 2004. We will consult on the detail of the scheme on the basis that would offer £750 per year of service up to a maximum of 20 years service”. Yet in broad terms the same situation
applies in Scotland. A 1999 survey by the Scottish Local Government Information Unit found 77.4% of Councillors were male, with an average age of 53 (80% of Councillors were 45 and over in 1999). Furthermore, the proportion of Councillors in employment fell from 63% in 1983 to 59% in 1995 to 53% in 1999. This indicates that fewer and fewer Councillors will be entitled to work-related pensions when they retire. We think it appropriate that long-standing Councillors should be rewarded for their service and compensated for their lack of pension.

17. The situations in Wales and Scotland are comparable and the issue of severance cannot be divorced from the issue of the appropriate number of Councillors which we have referred to earlier. Nor does it follow that there is any need to “enter into an open-ended arrangement which could be very expensive for the taxpayer”. As in Wales this could be a one-off payment proportional to personal circumstances including length of service, age and whether or not the individual is entitled to work-related pension. The severance scheme could, indeed, be linked to the introduction of electoral reform.

Chapter 5 – Powers, Resources and Structures

18. We have already welcomed the proposals in relation to the abolition of the existing system of Capital Consent however we see no reason for Capital Controls in Housing to remain. This decision seems arbitrary, it limits options Councils have for improving this service and runs contrary to Best Value.

19. Our remaining comments on this section relate to the issue of “supporting improvement”. The Paper states “Ministers see a strong case for the development of a new service which would support improvement” and the question is posed “where there is an obvious lead body (or bodies) to provide an improvement service”. Our answer is simple – that lead body must be local government. Local government must take ownership of the improvement agenda. Others like the Executive have an input but local government must own it. Local government must view the improvement of the

---

1 According to SLGIU, 45% of Councillors in employment are employed by the public sector and 45% by the private sector. It would be inappropriate to compensate Councillors who hold a public sector pension and who have therefore already been effectively compensated by the public purse for their service.
skills of its Councillors, managers and employees as essential to its core business. The role of the Executive is to encourage that to happen. That means additional resources. It would be interesting to compare the investment in the skills development, for example, within the NHS with the volume of money expended on skills development in local government. Local government consumes not far short of half the public expenditure in Scotland. Yet, for example, there is no local government equivalent to the Tulliallan Police College or to the Improvement and Development Agency in England which has an annual budget of £22m (the proportionate spend in Scotland if such an Agency existed would be in the order of £2m). For too long the investment in skills development in local government which is described in this paper as “key to Scotland’s success” has not been adequate.

20. Despite that the performance of Scottish local government continues to improve year on year as was demonstrated by the Controller of Audit’s last Overview Report in analysing the performance of Scotland’s Councils in relation performance indicators over the 3-year period 1998/99-2000/01. But against a background of ever-increasing public expectations, for which there will never be sufficient resources, the commitment to an agenda of continuous improvement is paramount. That commitment has been given an added impetus in the proposed duty on Councils to secure Best Value in the local Government Scotland Bill: indeed Best Value is properly described as continuous improvement in the performance of the authorities functions. Thus, the context for any proposed Improvement Agency is firmly and squarely that of Best Value. The issues raised in the consultation paper raise a number of important questions:

- What should be the remit of any proposed Improvement Agency? Should its role be limited to acting as a resource/information point or should it play a more proactive role in directly supporting improvement in Councils? We believe that Councils have a mutual and common interest in improving their collective performance and that where a Council’s performance shows that it needs support and assistance, that it must be preferable for that to be provided from within the local government community rather than the failure and solution being identified and secured externally.
• The links any such Agency might have with existing organisations working in this area.

• The link between the skills needs in local government and in other parts of the public sector, particularly in the context of Community Planning.

SOLACE is currently working on these issues with COSLA and other interested parties and we will submit our proposals as part of our final response to the White Paper.

**Links with communities**

21. SOLACE believes that one of the most challenging aspects of improving public services is securing meaningful engagement with the communities they serve. While it is relatively straightforward to involve organised community interests it those who are excluded that it is most difficult to engage. In 1999 in our response to McIntosh, SOLACE argued that democratic renewal, the role of community councils and boosting participative democracy had to be seen in the round as an interlinked set of issues. We argued that where community councils were established they could be an important forum, but that they were inadequate as representatives of the whole community. Furthermore we argued that strengthening democracy was not just about increasing turnout at the ballot box (significant though that is) and that “it is about increasing participation between elections, engaging in dialogue with local people and taking local government closer to individual communities.”

22. This is not an inspiring section; in particular the lack of reference that either the requirement placed on Councils by the 1995 reorganisation to publish schemes of decentralisation or the current engagement of Councils with their Community Planning Partners in seeking to implement Community Planning at the level of local communities is to say the least, surprising. Decentralisation and Community Planning are the obvious context for the work which Councils across Scotland are currently actively undertaking. SOLACE intends to undertake research into community engagement by Councils in order to establish the breadth and width of what Councils are currently doing in this important area.
RENEWING LOCAL DEMOCRACY: THE NEXT STEPS

SUBMISSION BY T N AITCHISON, CHIEF EXECUTIVE,
CITY OF EDINBURGH COUNCIL

Remuneration - Chapter 4

In its submissions to the McIntosh Commission, the City of Edinburgh Council has previously called for:

- recognition of the full-time nature of many councillors’ jobs, especially those who hold positions of responsibility;
- proper remuneration and pension opportunities
- proper support services both for ward work and council-wide duties
- childcare support systems
- time-off/leave of absence from paid employment and/or flexible hours.

The Council will therefore welcome the Ministers’ commitment to changing the current system of allowances for councillors.

The Council has yet to consider formally its response to the detailed questions raised in the White Paper. I will be suggesting to the Council that they should be urging the Executive to come to an early decision on these matters as they have been outstanding for several years now. The basis of my general advice to the Council will be as follows.

The present system of allowances should be replaced, not with a different system of allowances, but with the payment of a standard basic salary for all councillors across Scotland with one or more higher levels for councillors with significant, additional responsibilities. To attempt to combine allowances and salaries in a single system is likely to lead to confusion. The remuneration arrangements should be as simple as possible, so that they can be easily understood not just by councillors but by the community at large.

The Kerley Group recommended a basic salary level of £12,000 per annum. It is my personal view that, even when uprated for inflation, this is at the lower end of a reasonable salary level for councillors.

A higher salary should be payable to the Lord Provost, the Leader of the Council and councillors in Executive positions. In a Council such as Edinburgh, the salaries of the Lord Provost and the Leader of the Council should be aligned with the salaries paid to MSPs. Salaries of those in Executive positions should be expressed as a percentage of these.

Once established, salary levels should be increased annually based on awards agreed for local government employees.
Ultimately, decisions on the level of remuneration for councillors should be taken independently of Councils by a national remuneration committee. The committee should establish broad parameters within which Councils would submit for approval a scheme based on their local circumstances. However, it is vital that the committee is allowed to operate flexibly, in recognition of the diverse nature of Councils in Scotland, their differences in size, political composition and political management structure. There cannot be a “one-size fits all” national scheme. In particular, there should not be a quota system for the higher level salaries as recommended by the Kerley Group.

All councillors should be able to make a pension provision for themselves. However, proposals being considered in England and Wales, for the admission to the Local Government Pension Scheme (LGPS) of those councillors with higher level responsibilities, are divisive. The LGPS is not well suited to benefit councillors who only serve for a short period. For these reasons, councillors’ salaries should include an element to enable them to make the type of provision most suited to their personal circumstances.

Current councillors with long service have not been in the position to make adequate pension provision for themselves once they have left the Council. To recognise their public service and compensate them for this, a time limited severance scheme should be introduced for councillors with the longest service (eg. 12 years). This would also provide an incentive for older councillors to make way for younger. The Welsh Assembly Government is currently consulting on a scheme for councillors of 60 or over who have served more than one term and who decide not to stand for re-election in 2004. Following the introduction of salaries for councillors, an entitlement to severance pay should be based on the statutory arrangements for any salaried employment.
Electoral Reform - Chapter 3

In its submissions to the McIntosh Commission, the Council noted that, while the reasons why people vote or not are complex, proportional voting systems elsewhere had tended to increase turnout by around 7%. It seemed unlikely that the first past the post (FPTP) system for local government elections would continue. However the Council believed that it was important to retain a strong link between local communities and local elected representatives in the local government voting system.

Following the publication of the Kerley Report, the Council commissioned Professor John Curtice of Strathclyde University to undertake research on the possible outcomes of the introduction of different voting systems in Edinburgh. His report was submitted to Council in November 2000. Professor Curtice constructed hypothetical wards in the City for

- STV based on 3, 4 and 5 seats per ward
- AMS based on ratios of 57:43 and 75:25 ward councillors to list councillors

He applied the 1999 local elections results to these. Amongst the outcomes of this analysis were:

- the main beneficiary under all the variants was the Scottish National Party, with an increase in seats from 1.7% to 20%.
- Labour was short of an overall majority in all of the variants, needing the support of one, but only one, of the other parties
- the percentage of seats won was closest to the percentage share of the vote under the AMS 57:43 variant
- none of the three STV variants secured a match between percentage of seats and percentage of votes which was significantly closer than the other two.

Nevertheless, it is important to read these outcomes in the context of the whole report and the assumptions underlying the research methodology. Perhaps the most crucial assumption is that voters will vote the same way in a proportional system as they have in the FPTP system.

A leading Labour Councillor is active in the campaign to promote PR for local government. A leading Conservative Councillor, who was a member of the Kerley Group, disagreed with the majority view supporting STV and recorded her support for AMS. The Liberal Democrat Group on the Council has unsuccessfully urged the Council to give support to the STV system on a number of occasions. However the Council has not yet adopted a formal position between proportional representation and FPTP or on a preferred system of proportional representation.

It is likely that the Council would agree with the key factors which Ministers propose to take into account in considering the introduction of a new electoral system in paras 32.1-4 of the consultation paper, which embody the McIntosh and Kerley criteria, with particular emphasis on the retention of the councillor-ward link.

Careful consideration needs to be given to the implications of AMS, in the light of experience of the Scottish Parliament. What will be the impact of two kinds of councillor – ward and list – with different accountabilities and interests?