Local Government Committee

18th Meeting, 2002

Tuesday 18 June 2002

The Committee will meet at 2.00 pm in Committee Room 2

1. **Items in Private:** The Committee will consider whether to take items 3 and 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—

   Community Planning Task Force:
   Professor Alice Brown, Chair, Vice Principal Edinburgh University
   Tom Divers, Member, CPTF
   Caroline Gardner, Member, CPTF
   Douglas Sinclair, Member, CPTF

   Scottish Trades Union Congress:
   Ian McKay, Assistant Secretary, Educational Institute of Scotland
   Alex McLuckie, Regional Industrial Organiser, GMB Scotland
   Jimmy Farrelly, Regional Organiser, T&G Scotland

   Society of Local Authority Lawyers and Administrators (SOLAR):
   Norman Grieve, Convener, SOLAR Local Government Modernisation Working Group
   Gordon Blair, Administration and Legal Manager, West Lothian Council
   John O’Hagan, Director of Administration, North Lanarkshire Council

   Scottish Council for Voluntary Organisations:
   Steven Maxwell, Associate Director
   Jim Jackson, Chief Executive, Alzheimer’s Scotland and Chair, Community Care Providers Scotland

   Association of Scottish Community Councils:
   Douglas Murray, Chairman

3. **Renewing Local Democracy - The Next Steps (Phase 1):** The Committee will consider a draft report.
4. **Renewing Local Democracy - Phase 2 Inquiry:** The Committee will consider details relating to the appointment of an adviser.

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 the Community Planning Task Force  
Submission from the Scottish Trade Union Congress [TO FOLLOW]  
Submission from the Society of Local Authority Lawyers and Administrators  
Submission from the Scottish Council for Voluntary Organisations [TO FOLLOW]  
Submission from the Association of Scottish Community Councils [TO FOLLOW]

**Agenda item 3**

Draft report on Renewing Local Democracy – The Next Steps (Phase 1) [PRIVATE]

**Agenda item 4**

Renewing Local Democracy – Phase 2 Inquiry: Details relating to the appointment of an Adviser [PRIVATE]
CPTF community planning task force

CPTF INTERIM RESPONSE TO THE LOCAL GOVERNMENT BILL (12.06.02) [CPTF PLENARY MEET ON WEDNESDAY 19th JUNE TO DISCUSS IN MORE DETAIL]

Introduction.

The Community Planning Task Force (CPTF) welcomes the main provisions in the Local Government Bill setting out a statutory framework for community planning, best value and a power of well-being.

The CPTF has itself played a significant role in advising the Scottish Executive on the Community Planning dimension in the Bill. This has been a challenging task in view of the diversity of the Task Force membership, but consensus has been achieved on the main issues. A similar consensus has been reached on the points presented in this briefing, although interests represented on the Task Force will no doubt wish to put their own emphasis on particular points in their own submissions.

The CPTF will continue to play a key role in the development of the guidance that will accompany the Bill. A draft of this guidance will be available for consultation within the next two weeks.

PART II: COMMUNITY PLANNING

1 Duty of Community Planning (clause 16)

1.1 Clause 16 sends out the very important message that community planning is not an option but essential to the delivery of better services and the achievement of overall community well being.

1.2 The CPTF particularly welcomes the statutory recognition accorded to community bodies, both formal and informal, in community planning processes. The effective engagement of communities is at the heart of community planning, not an add-on. The CPTF will continue to develop guidance and support and be working with community planning partnerships throughout Scotland to optimise their potential to engage communities effectively. Performance in this area - which in a number of cases has not always been of sufficient breadth or quality - also needs to be informed by good practice and be of a consistently high standard.

1.3 Anticipating the continued development of community planning partnerships, the CPTF is keen to ensure that the benefits of partnership working at the local level are put on a formal footing. The CPTF therefore wishes to explore further the option of Ministers being empowered under the Bill to make community planning partnerships legal entities, by granting them corporate status at an appropriate stage in their development and provided that the key community planning partners so agree. Corporate status would, for example, allow money for cross-cutting work - such as community regeneration, health improvement and sustainable development - to be channelled through a community planning partnership, rather than a multiplicity of agencies as at present.
2 Community planning: further provision (clause 17)

2.1 The CPTF supports the duty of community planning applying to the other bodies mentioned in the clause, having advised the Scottish Executive in this regard. The CPTF is largely satisfied that the duty as framed captures the key players and will put community planning on a firm and sustainable footing. There is however a consensus that Communities Scotland plays a key role in cross-cutting work, such as regeneration, the CPTF therefore believes that the duty should apply to this agency as well. Applying the duty to a range of other agencies, for example, in the private and voluntary sectors, is likely to give rise to difficulties, however, and the CPTF would accordingly wish to avoid too many categories of partner. While not wishing to discourage the case being made for inclusion of other agencies, the CPTF is content with the provision that exists in the Bill to extend the duty to other players if experience shows that this is necessary.

2.2 The clause could be strengthened by placing a duty on Ministers to issue statutory directions to all of the Executive agencies and Non Departmental Public Bodies they sponsor and requiring them to co-operate with and support community planning processes. The CPTF sees community planning as having a national dimension, and not only a local one. Analysis of the 32 community plans shows that many of them have been influenced by national priorities. The community planning process also acts as a bridge between national and local priorities and the supporting actions on the ground needed to deliver them.

3 Reports and information (clause 18)

3.1 There should be a clear link between reports on the implementation of community planning and reports on performance under clause 15.

3.2 There should be a commitment to publish reports at least once a year. The reports should deal with both processes and outcomes. While the CPTF accepts that the specification of outcomes is not appropriate in the Bill, it is worth drawing attention to work being conducted by the CPTF with Audit Scotland on outcomes and indicators to guide and support community planning partnerships and single partners in charting progress towards the achievement of community well being. The results of this work will be outlined in the associated guidance.

3.3 All community planning partners should be committed to contributing to the reporting process. The report should also be explicit about how partners and the community planning partnership as a whole have met their equal opportunity obligations.

4 Guidance (clause 19)

4.1 The CPTF has played a key role in the development of guidance on community planning, and shared some of its initial thinking about this at a seminar it held earlier this year. It will continue to play a major role in developing this guidance, not just the articulation of the duties but also in providing advice and guidance on some vital non-statutory aspects of community planning – for example, the importance of cultural change, leadership and the need to integrate and mainstream community planning within and not just between partner organisations.

4.2 The guidance should be kept under regular review in the light of emerging practice.
4.3 The CPTF sees community planning, best value and the power of well being as being closely inter-related: the community planning process and the best value framework should be seen as supporting the achievement of community well being. The potential of community planning to improve public services will be optimal when the best value framework is applied across public agencies. The guidance on community planning, best value and the power of well being will need to be consistent and integrated if these inter-relationships are to be maximised.

5 PART I: BEST VALUE AND ACCOUNTABILITY

The CPTF supports the principles in the Bill that delivery of best value should be based on maintaining an appropriate balance between cost and quality and should have regard to equal opportunities requirements.

6 PART IV: POWER TO ADVANCE WELL-BEING

6 Power to advance well being (clause 21 and 22)

6.1 The CPTF very much welcomes the proposed new power, which should give councils more freedom to develop with their community planning partners new approaches to service delivery. The link between this power and community planning should be made more manifest in the Bill by calling it a power of community well being.

6.2 The power should be seen as a power of first resort and give councils sufficient flexibility to enter into partnership arrangements that best meet the needs of their communities.

6.3 The meaning of well being should be framed through the guidance in the broadest possible terms and in a way that promotes an integrated approach to improving the economic, environmental, social and other aspects of the well being of an area.

6.4 The CPTF supports the power of Scottish Ministers to extend the meaning of well-being in the event that well being is interpreted (by the courts, example) in a way that limits the use of the power as intended.

7 INTERVENTION

The CPTF accepts that there needs to be an ultimate sanction on bodies failing to fulfil their duties. This sanction should cover a serious failure of a local authority or statutory partner to meet duties. It should however be a stage process, allowing for conciliation and consensus along the way. The CPTF will continue to support the Scottish Executive and Audit Scotland in advising on how a staged process might work in practice.

8 INTEGRATION

The CPTF is pleased that the Bill integrates community planning with best value and a power of well being. The Bill could however make this link more explicit, as indicated above, particularly in the area of reporting requirements, where it should be made clear that community planning forms an integral part of public performance reporting and does not stand alone from it.
RESOURCING

The financial memorandum to the Bill indicates that the Scottish Executive will assess whether some assistance will be required for the development of community planning, for example, to cover the development of systems for information sharing and measuring progress. While acknowledging that community planning can be resourced out of efficiency savings accruing from rationalisation of partnership activity, the CPTF are of the view that community planning will require – at least initially – additional funding to support the development costs of partnership working and capacity building. An analogy may be made with the development costs associated with health improvement, for which the Scottish Executive has committed money towards the funding of posts to support joint working between health agencies and local government.

CPTF secretariat
June 2002
Submission by STUC Delegation to Local Government Committee
Local Government in Scotland Bill
18 June 2002

The STUC welcomes the opportunity to give evidence to the Committee on this important Bill.

The trade unions we represent act on behalf of local authority workers, but those workers and their families are an important part of their local communities, and play their own role as citizens and members of these communities.

Trade Unions have supported the policies that form the three main elements of this Bill for many years.

For the STUC and affiliated trade unions, the principal area of interest dealt with in this Bill is that of Best Value. We have supported the introduction of Best Value in local authorities and have promoted best practice. With this in mind we look forward to scrutinising currently missing parts of the Bill which will introduce the necessary legislative changes to rid local government of the scourge of CCT, and we will examine those parts closely when they are available to us.

We welcome the explicit reference to quality in the proposed duty to secure Best Value. We believe that much of the early work to introduce Best Value was hindered by the continuation of elements of the CCT regime and in particular VFM auditing procedures, which placed undue emphasis on cheapness and saving money. It is important that Best Value is seen to be different in this respect.

We are critical that the Bill seeks to place too much emphasis on the role of auditors in Best Value at the expense of the role of policy makers and the Executive. As currently drafted, Sections 3 to 9 describe a regime where auditors are being placed in the position of making policy decisions and providing policy guidance rather than auditing expenditure in pursuit of those policies. This former role belongs properly to policy makers, and we believe that the Bill should be amended to clarify that guidance and policy in these areas should emerge from elected bodies and from nationally appointed structures established for this purpose – for example through an enhanced role for the Best Value Task Force or a similar representative body charged with oversight on Improvement.

We welcome Section 10 and the explicit relaxation of exclusion of non-commercial considerations in contracts and the supply of goods and services. This is again a long overdue move that should go some way to introduce a level playing field in tendering and ensure that the tendering process respects proper pay and employment conditions for those workers who deliver public services.

We welcome also the terms of Sections 11 and 12 in introducing greater freedom and flexibility for local authorities in terms of their trading operations and ability to work commercially. We share the concerns of others that certain of the restrictions and
additional accounting measures which it is proposed to introduce to accompany this
greater freedom and flexibility are unnecessary within the already stringent auditing
regime and should not be introduced. However, we would also ask that any advice
produced in this area made it clear that local authorities should ensure that in
exercising these new freedoms they must continue to respect the terms and conditions
of their employees.

The STUC welcomes the explicit reference to the need to meet equal opportunity
requirements as part of the duty on local authorities to secure Best Value. However,
we are disappointed that this point is not expanded on in this part of the Bill, and that
there is not more reference to equality issues elsewhere in the Bill. While we
recognise that the power to legislate on equality issues is a reserved matter, we
believe that more could be done to promote equality through this important legislative
measure. For example, we note the actions of the Welsh Assembly in promoting equal
pay audits, and believe that similar measures would sit well with the proposals here
on the tendering and contracting process. Again explicit references to the promotion
of equal opportunity policies are absent from the important sections of the Bill dealing
with Community Planning and the Power of Well-Being, and this should be corrected.

The STUC and individual affiliates have been long standing supporters of a Power of
General Competence for local government, in line with the European model. We
believe that such a power is long overdue and will allow local authorities to develop
their own work for their communities. We recognise that there has been much
discussion over what such a power should be called. Names are important, but it is
our view that the wording of the Bill should be clear in its description of a power of
general competence, whatever the nomenclature.

The STUC also welcomes the proposals for Community Planning. Government and
its agencies at all levels play a massively important role in our local communities –
both in terms of the work that they do and as employers. The resources and expertise
which such agencies bring to our communities must be subjected to a rigorous and co-
ordinated process of consultation and planning if it is to provide the maximum of
benefits for our local communities – and indeed best serve the interests of government
and agencies also. Trade unions have an important role to play here, both as
employees and representative organisations of large numbers of local citizens. In this
respect, we would wish it to be clear that local trade unions and their organisations
should be recognised as ‘community bodies’ as referred to in Section 16 of the Bill.
Additionally, we would advise the Committee that the ‘eligible’ public bodies referred
to in Section 17 of the Bill should include reference to local Enterprise Companies
and further and higher education institutions. These bodies make an important
contribution to public life and are important local employers. More pertinently, there
are few areas of public planning and resourcing which do not recognise a role for
education and training, and the pivotal role of such bodies should be specifically
recognised in the community planning process.

The detailed points in the miscellaneous section of the Bill seem to us to tidy up
necessary areas of concern, however we are happy to answer questions on this area, or
on other parts of this submission.
LOCAL GOVERNMENT COMMITTEE STAGE ONE SUBMISSION BY SOLAR
LOCAL GOVERNMENT IN SCOTLAND BILL

A  Why listen to us?
SOLAR is the Society of Local Authority Lawyers and Administrators in Scotland. We are the professional practitioners who, every day, advise Council Cabinets and Committees on law, procedure and best administrative practice. Local Government legislation and guidance are our stock in trade.
Our membership includes most of Scotland’s Monitoring Officers, who have a personal statutory duty to publicly report any actual or proposed illegality or maladministration to full Council. All governance is subject to the Rule of Law, with the Courts, often understandably, taking a restrictive interpretation of statutes if they doubt whether unusually wide powers have been unambiguously conferred on public bodies. We want to make sure that the wishes of the Scottish Parliament, and of Scottish Local Government, are positively enacted. The last thing we want to do is to tell our Members that, due to drafting difficulties or judicial practice, a proposal that would promote the well-being of the community, enhance community planning and deliver Best Value, is illegal. Or even worse, endorse the action proposed only to find it being judged improper or illegal, by either the Scottish Executive or the Courts after the event, with consequent penalties or claims for damages.

B  Policy
This stage of the Bill focuses on policy. So we will concentrate on our main policy concerns. While many other issues seem to us to cover points of detail that could be raised as Stage Two amendments, they are nevertheless important and some may even overlap with what others would consider to be policy matters. For the avoidance of doubt, we will raise these other issues as bullet points.

C  Main concerns: PWB
Like COSLA and SOLACE, SOLAR welcomes the integration of the three themes of the power of well-being (PWB), Community Planning and Best Value (BV), and the abolition of CCT. But if well-being is to be improved and proper community planning achieved under BV principles, it is fundamental that PWB is established robustly and unambiguously.
1. **Vires**  The Bill does not explicitly abolish the long-standing *ultra vires* doctrine. Thus the courts will interpret the Act as expanding Councils’ powers but in the overall context of the many and varied residual restrictions. SOLAR would prefer to see the express repeal of the principle that Councils can only do what a tailor-made statutory provision specifically says they can do. More positively, this could be achieved by making PWB promotion a core **duty** on Councils or at least describing it in the Bill as the **fundamental function** of all local authorities, creating a **statutory presumption** in favour of empowerment when interpreting all past and future legislation.
2. **Limitations** Failing this, at the very least the wording of clause 23(2)(a) should be tightened. The word “expressly” or “explicitly” should be inserted before both
“prohibits” and “prevents”. This is not to be pedantic, but simply to send a clear signal to the Courts that the PWB power should be read as widely and positively as possible. Although the existing wording in the Bill is an improvement on the English Local Government Act 2000, the surviving restrictions and the failure to underline the positive new direction appear to have stifled flexibility and innovation in using similar powers in England and Wales. Statutes often appear to give wide “catch-all” powers. Section 69 of the Local Government (Scotland) Act 1973 ("the 1973 Act"), and section 111 of the Local Government Act 1972 in England, state that “- - - a local authority shall have power to do anything - - - calculated to facilitate - - - the discharge of any of their functions” [emphasis added]. Yet Courts in Scotland and England invariably interpret these provisions narrowly to allow only very peripheral additional powers to be exercised by local authorities.

3. **Companies** Incorporation has caused so many legal difficulties that it should be specifically referred to in the Bill. For example, clause 21(2)(c) “enter into arrangements or agreements with any person” could be expanded by the words “including the formation of or participation in companies or any other form of association or vehicle for joint working”. Paragraph 57 of the Policy Memorandum which was published with the Bill confirms that PWB should allow Councils to form companies. But if this is to be put beyond doubt, the specific power should be included in the Bill itself.

4. **Duplication** There should be a statutory presumption that any duplication of another person’s function shall not be unreasonable if done with that person’s consent (within clause 23(4)).

5. **Charging** While accepting that charges should be “reasonable”, there is an argument that they sometimes should go beyond merely “defraying the costs” involved (clause 23(6)(b)), virtually on a penny for penny basis. For example, with scarce resources and existing pressures on staff, Councils might be discouraged from responding to public demand for non-statutory services even in areas where the private sector were neither geared up for nor interested in supplying that service. A reasonable margin should be permitted. Any fees which were clearly excessive or amounted to an abuse of a “monopoly” position would remain challengeable as “unreasonable”. The draft of the Bill issued on 19 March 2002 simply referred to Councils “imposing reasonable charges for services provided” and this earlier wording would be preferable.

6. **Tourists** It is understood that PWB should be exercised not only in favour of local inhabitants or businesses but also for the benefit of tourists, commuters, travellers, persons visiting the area for social or leisure purposes and the like. This should be clarified in the Bill (perhaps at the end of clause 23).

D **Other issues**

While focusing on PWB as our main policy concern, there are other issues including aspects of Community Planning and BV that we would like to flag up as bullet points meantime. Although these, along with concerns over unclear wording, general clarification and individual miscellaneous matters such as remote meetings, can be raised at Stage Two, SOLAR consider it safer to mention them briefly at this stage. We would request the opportunity to present evidence and become much more heavily involved in future detailed amendments. In summary, the issues are: -
• **LAGSA**  We would prefer to see the Local Authorities (Goods and Services) Act 1970 abolished outright with any surviving core restrictions specifically and clearly restated, instead of the heavily detailed amendments currently proposed with consequent conflicts between clauses 11 (LAGSA partial repeal re staff, goods, services and accommodation) and 21 (PWB)

• **Charities**  On balance, while PWB makes it appropriate to repeal section 83 of the 1973 Act, it would be safer to retain subsection (3) specifically giving Councils power to contribute to UK charities or disaster funds.

• **Intervention**  This should be expressed as a remedy of last resort, perhaps governed by a protocol between central and local government.

• **Community planning**  All partners should have a duty to engage in the process.

• **Restrictions**  Restrictions on joint working and delegation to joint bodies should be relaxed (by amending sections 56 and 57 of the 1973 Act so that committees where more than one third of the membership are non-Councillors can have delegated powers, and section 235(1) to allow non-Council bodies to become members of Joint Committees or Joint Boards) – otherwise, Councils will continue to have to ratify decisions made by outside partner organisations or joint working groups, slowing down the decision-making process and hampering any partnership’s ability to act quickly.

• **Best Value**  The BV system of performance indicators, performance reporting and general scrutiny should be radically streamlined to become meaningful to the public.

• **Trading accounts**  Trading accounts should be restricted to appropriate areas of activity and not be used to become an unwieldy bar on flexibility and innovation; there is great uncertainty over how “significant trading operations” will be interpreted and the “statutory limit” income cap applied (clauses 11 and 12).

• **Guidance**  Guidance should be minimal, consensual and positive to prevent the new regime being strangled in its infancy.
SCOTTISH COUNCIL FOR VOLUNTARY ORGANISATIONS/
COMMUNITY CARE PROVIDERS SCOTLAND

Submission to the Local Government Committee on the Local Government in Scotland Bill, June 18th 2002.

1. The Scottish Council for Voluntary Organisations is the main representative body for Scotland’s voluntary sector. Community Care Providers Scotland represents the majority of Scotland’s major voluntary sector community care providers, and works in partnership with a number of local provider forums covering many of the smaller service-providing organisations throughout the country.

2. Voluntary organisations, whether locally or nationally based, are major partners of local authorities across the range of local authority functions and interests and are steadily expanding their role as providers of local government services.

3. SCVO and CCPS welcome the main provisions of the Bill, particularly the provision of a statutory basis for Best Value and Community Planning and the creation of a power to promote well-being.

4. SCVO and CCPS note that the main provisions of the Bill are couched in very general terms. This gives added importance to the associated guidance, which is not yet available for comment. Some of the issues raised below could be dealt with on the face of the Bill, while some are more suitable for treatment in Guidance or regulations. We believe that it may be necessary for Scottish Ministers to issue mandatory regulations rather than guidance.

5. Best Value

We believe that if the Best Value process is to fulfil its potential to secure increased value for money the Bill should be strengthened in a number of ways.

Pt. 1, para. 1, (3)

‘Impact on the community’ should be added to the factors local authorities are required to consider in securing best value (quality of performance, cost to the authority, chargeable cost to the user).

This addition would require local authorities to take into account Added Value beyond the cost/quality balance in the unit of service.
It would reflect the strong community theme running through the Bill (Community Planning, power to provide well-being).

Pt.1, para. 1, (4)

‘Equitable treatment of providers or potential providers’ should be added to the factors which local authorities are required to take into account (efficiency, effectiveness, economy, equal opportunities).

This would clarify local authorities’ obligation to make a fair comparison of the costs and benefits of different forms of service provision and prohibit discrimination against external providers.

Pt. 1, para. 3-9, Enforcement

The duties and powers given to the Accounts Commission and Ministers by these clauses are all retrospective. An organisation which believes that a local authority is not fulfilling its Best Value duties under the Act should be able to seek emergency intervention. One possibility would be to add a clause providing that clause 231 of the Local Government (Scotland) Act 1973 applies to the Bill. Clause 231 gives any seven local government electors within a local authority area a power to apply to a sheriff to make directions to ensure that the provisions of the Act are properly applied to specific services or decisions.

Para. 15 Publication by local authorities of information about finance and performance

To secure maximum transparency a local authority should be required, either on the face of the Bill or in the regulations issued by Scottish Ministers, to report regularly on:

- The measures it has taken to assess the quality of its service
- The measures it has taken to ascertain the views of the users of its services
- The processes and criteria it has used to assess best value consistent with clause 1, sec. 3 (amended)
- The steps it has taken to ensure equitable treatment of all providers or potential providers consistent with clause 1, sec. 4 (amended)

Para. 10 Relaxation of exclusion of non-commercial considerations

SCVO and CCPS interpret this provision as removing the 1988 ban on social clauses in local authority contracts. They believe that the active management by local authorities of their local public service markets in order to achieve wider community benefit is a
proper function of local authorities. They believe that the case for introducing a Fair Wages provision, requiring local authorities to fund wages (below a certain threshold) for staff of external providers at the same level as comparable Council staff should also be considered.

Community Planning

The provisions on Community Planning are couched in very general terms. This makes the content of the Guidance particularly important. SCVO would wish to emphasise the importance of:

1) ensuring representation of voluntary sector interests alongside formal community representatives
2) providing and supporting community and voluntary sector representation from a base independent of the local authority and other public agencies
3) recognising the need for proper resourcing of community and voluntary sector representation
4) requiring local authorities to secure the preparation of local community plans, led by community and voluntary sector representatives, determining how the general objectives of the Council-wide Community Plan will be implemented at local level

The only amendment recommended for this Part of the Bill is at clause 18 Reports and Information, sec. 1: to replace the words from “time to time” with the words “regularly and in any event not less than once every two years”.

The purpose would be to tighten the very loose reporting requirement currently proposed.

Power to Advance Well-Being

SCVO welcomes this extension of the power of local authorities. The only change it would recommend is in clause 23 sec. 43 to delete the words “…which unreasonably duplicates anything [which] may or….”. This would limit the restriction on the local authority’s power to promote well-being to those cases where action would duplicate a clear statutory function of another body.