

REPORT TO: POLICY AND RESOURCES COMMITTEE – 19 FEBRUARY 2001

REPORT ON: SCOTTISH EXECUTIVE GREEN PAPER “A POWER OF COMMUNITY INITIATIVE, COMMUNITY PLANNING, POLITICAL RESTRICTIONS ON COUNCIL EMPLOYEES”

REPORT BY: DIRECTOR OF CORPORATE PLANNING

REPORT NO: 77-2001

1. PURPOSE OF REPORT

To advise Committee of the proposals contained in the Scottish Executive's Green Paper on “A Power of Community Initiative, Community Planning, Political Restrictions on Council employees” and to consider the Council's response to a number of questions on which the Scottish Executive has invited comments.

2. RECOMMENDATIONS

2.1 To agree the comments detailed in Appendix One to this report as the basis for the Council's response to the questions on which the Scottish Executive has invited comments.

3. FINANCIAL IMPLICATIONS

3.1 This report has no financial implications

4. LOCAL AGENDA 21 IMPLICATIONS

4.1 The contents of this report are consistent with key Local Agenda 21 themes including.

- local needs are met locally
- all sections of the community are empowered to participate in decision making
- local distinctiveness is valued and promoted

5. EQUAL OPPORTUNITIES

The contents of this report are consistent with the Council's Equal Opportunities Policy.

6. BACKGROUND

6.1 In June 2001 the Minister for Communities announced the Scottish Executive's intention to legislate “...to enable local government to play a full and vital role in the renewal of our communities”. The green paper seeks views on how this legislation should be framed.

6.2 The three main aspects of the proposed legislation to be introduced respond to the recommendations outlined in key reports on the future of local government.

- 6.2.1 The McIntosh Report by the **Commission on Local Government and the Scottish Parliament** recommended that legislation should be introduced to provide Councils with a statutory power of general competence. (described as the Power of Community Initiative in the Green Paper). A further recommendation agreed that, subject to appropriate safeguards, employees other than the most senior and those in politically sensitive posts should be permitted to stand for election and serve as elected members.
- 6.2.2 The report of the **Scottish Office/COSLA Community Planning Working Group** recommended that community planning should be adopted across Scotland and supported by the Scottish Office at the time.
- 6.3 Following consultation with local authorities and others the Scottish Executive addresses each element of the proposed legislation and poses a series of questions on the detailed aspects of each one.

7. **SUMMARY OF GREEN PAPER**

7.1 The Executive's proposals consider how local government can be best equipped to develop a community leadership role by bringing together all the key local partners to forge a strategic vision for each community. It proposes

- A statutory power of community initiative for local government
- A statutory basis for community planning
- to widen access to council membership as a vital strand in the Executive's efforts to renew local democracy

7.2 **The Power of Community Initiative**

7.2.1 Introducing a statutory power of community initiative will change the legal framework within which local authorities operate. Local authorities currently may only do those things which they are empowered to do by specific statutory powers, duties and functions (such as delivering education, social services and so on). A statutory power of community initiative will change the legal basis by empowering local authorities to do anything which promotes the economic, social and environmental wellbeing of their communities unless specifically prohibited from doing so by statute.

It should be noted, however, that while the proposals would make a significant difference to the current legal restrictions on the Council's powers, it would not be the case that the Council would be effectively free from any limits or constraints. The Council and its officers would still require to act in accordance with all other limiting legislation, and ensure that proposals for projects would be within its powers.

7.2.2 Comments have been invited on the Power of Community Initiative on the lifting of statutory limitations or prohibitions to facilitate the exercise of the power; provisions to ensure that the power is used to the maximum benefit of communities, and the relationship between the power of Community Initiative and the functions of other statutory bodies.

7.3 **The Power of Community Planning**

7.3.1 The Scottish Executive recognises that community planning is being developed across Scotland led by local authorities. To support this process it has established a national community planning task force comprising representatives from key partners in the community planning, including the Executive, local authorities, the NHS, the Police, the local enterprise network and community interests. It also intends to introduce a statutory underpinning for community planning.

7.3.2 The Green Paper describes Community Planning as providing "... a process through which a local authority and other local partners, including community and voluntary sector groups, come together to develop and implement a shared provision for promoting the well-being of their area. This is expressed in a jointly agreed strategy called a community plan".

7.3.3 Four key concepts upon which community planning are based are outlined as follows:

- **Community leadership** – a recognition that councils, as democratically elected bodies, have a community leadership role and will have a key role in facilitating the Community Planning process.
- **Preparation of a strategic vision for the whole area** – a process through which the council and its public sector partners can agree a strategic vision for their area and the action each partner will take to implement that vision.
- **Community involvement** – a process through which communities themselves participate to ensure that the shared vision reflects their needs and aspirations. It should involve the genuine participation of the many constituencies which exist in the community and respond to the needs of local community and voluntary interests.
- **Partnership working**- this should be at the heart of Community Planning. To be effective it requires commitment from all the partners, not just through agreement to a strategic vision, but also through action on the ground. It goes much wider than the delivery of local authority services – it applies across a whole range of other local services delivered by the NHS, the local enterprise companies, the Police, Scottish Homes, Tourist Boards, Scottish Natural Heritage and bodies covering the voluntary, community and private sectors.

7.3.4 Comments have been invited on a range of issues including whether there should be a statutory power or a statutory duty of community planning; whether the statutory provision should go wider than local authorities to key public sector partners; and whether the statute should be framed in terms of producing a strategy or in terms of facilitating the preparation of a strategy

7.4 **Political Restrictions on Council Employees**

7.4.1 Employees of local authorities are currently restricted from engaging in a range of political activities, and in particular cannot serve as elected members to the council which employs them and in some cases, any local authority. These restrictions can discourage many local government officers, with the skills and abilities to make excellent councillors, from standing for election.

The proposed legislation will relax the statutory restrictions which currently apply, but it is proposed to maintain the ban on employees also being councillors in their employing council. However, a change in the rules is envisaged so that an employee would only be obliged to resign his/her post on election to the council.

On the designation of 'politically restricted posts' the Executive have decided to abolish the use of the salary threshold (currently £28,104), which is an ineffective way to determine the sensitivity of a post. The nature of each post will therefore become the sole determinant of political restriction. The paper suggests that there is now a need over and above the abolition of the salary threshold, to examine the types of post designated as 'politically restricted' in current legislation to decide whether they require any amendment.

7.4.2 Comments have been invited on the relaxation of existing restrictions relating to the need for employees to resign before standing for election to council and the designation of politically restricted jobs.

7.5 it is recommended that the detailed comments set out in Appendix 1 to this report be agreed as the basis for the Council's response to the questions set out in the Green Paper. These comments are based partly on submissions made in response to previous consultation papers including those made to the McIntosh Commission.

8. **CONSULTATION**

8.1 The Directors of all departments have been consulted on the contents of this report.

9. **BACKGROUND PAPERS**

(1) Scottish Executive Green Paper, "A Power of Community Initiative, Community Planning, Political Restrictions on Council Employees".

Signed Date

Dundee City Council response to the Scottish Executive Green Paper “ A Power of Community Initiative, Community Planning, Political Restrictions on Council Employees”.

1. A STATUTORY UNDERPINNING FOR A POWER OF COMMUNITY INITIATIVE

a) **What, if any, existing statutory limitations or prohibitions might be lifted or relaxed to facilitate the exercise of a power of community initiative, a statutory duty of Best Value or a statutory underpinning for community planning?**

Dundee City Council welcomes this opportunity to review limitations or prohibitions. To fully facilitate the community planning process it will be necessary to also review limitations or prohibitions affecting all the public sector partners to community planning.

It is our view that all such limitations should be repealed unless the case can be made that they remain necessary.

A major change would see the Goods & Services Act amended to allow Direct Labour Organisations to operate in the private sector perhaps as part of a factoring scheme, a PFI project or as part of stock transfer models.

While it is important to review existing legislation, care should be taken to ensure that no further limitations or restrictions are being created or reinforced by new or emerging legislation such as the new Housing Bill.

b) **What provisions, if any, should the statute include to ensure that the power is used to the maximum benefit of communities?**

Dundee City Council accepts that it is reasonable to place certain limitations on the power of councils to raise money. We also accept that there may be justification for a reserved power of ministerial intervention. However, it should be made fundamentally clear that this would be used only as a last resort and that any intervention would be subject to parliamentary approval. Any new power should be considered following a review of all existing powers to intervene in the running of local councils. Any power to intervene should be based on the following principles:

- formal intervention in the running of the Council would be seen as an act of last resort
- 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 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, and
- there should be a role for the parliament in the scrutiny of intervention proposals

Finally, any intervention should be reasonable only when a Council is unwilling to address an identified problem.

- c) **How should local authorities' exercise of the power of community initiative relate to the functions of other statutory bodies?**

Dundee City Council agrees that it is natural that local authorities take on the community leadership role within the framework of community planning. However, it should be made clear to all public sector organisations that the community planning process is the key strategic and decision making process within a local authority area. This means that other planning or strategic processes should fit within or underneath the community planning umbrella. Examples of this include local economic forums and health partnerships.

- d) **Would there be merit in drawing up statutory (or non-statutory) guidance for councils on the exercise of the power of community initiative?**

Dundee City Council supports the principle of non statutory guidance for councils on the exercise of the power of community initiative.

2. A STATUTORY UNDERPINNING FOR COMMUNITY PLANNING

- a) **Should there be a statutory power or a statutory duty of community planning?**

Dundee City Council believes that to invest appropriate importance in community planning it should be framed as a statutory duty on local authorities and to other public sector partners. This will ensure that it is taken seriously by all partners and confirm that participation in the process of community planning is not optional. The statutory duty as framed in statute should make clear that community planning relates to the economic and social and environmental wellbeing of a local authority area and as such is consistent with the principles of Local Agenda 21. Although these categories are broad they do not explicitly refer to key areas for local authorities such as education.

- b) **Should statutory provision for community planning go wider than local authorities?**

As stated above the Council believes that community planning will only be fully realised where partners are committed to the process. This could be ensured through placing a statutory duty on public sector organisations such as Health Boards and Police Forces to participate fully in community planning. To support this an emphasis on community planning should be introduced as part of the performance monitoring of these organisations. If it is not then community planning will continue to be an "add on" and not part of the main service priorities of organisations.

- c) **Should the statute be framed in terms of producing a strategy, or in terms of facilitating the preparation of a strategy?**

Dundee City Council agrees that the statutory duty of community planning should focus on facilitating the preparation with partners of a joint strategy with clear outcomes rather than concentrating on the production of a single document. This is reflected in Annex A where it is stated that "complimentary top-down and bottom-up processes are called for if genuine involvement of the community is to be achieved". One aspect of this process of facilitation not sufficiently addressed at present is the promotion of capacity building or, so called, social capital. From the Council's perspective this aspect has experienced a reduction in investment over the past five years particularly in areas of community based literacy/numeracy work, work with young people and adult learning. Instead this work has been taken forward largely through fixed term external funding strategies such as SIPs, European Funding and the National Charities Lottery Board as opposed to mainstream longer term resourcing. It is difficult to see how local authorities can

advance their crucial role in the field of community leadership without due regard to the investment in the development of skills, knowledge and confidence/motivation of local people. Consideration should be given to encouraging local authorities to address this issue by inviting the submission of practical plans with declared target outcomes assuming that the appropriate resources can be allocated to councils to implement these.

d) **Should there be guidance (statutory or non-statutory) on localities' exercise of a statutory duty/power of community planning?**

The councils preference is that any guidance should be non-prescriptive and framed on a non-statutory basis.

e) **If there were to be a statutory duty of community planning what, if any, arrangements should there be for monitoring its implementation?**

The parallel with Best Value should be recognised and the Best Value regime should be extended to all the public agencies engaged in Community Planning. A Best Value approach could then be taken to monitoring and evaluation based on self-assessment against a set of explicit performance indicators framed by the Community Planning Task Force and endorsed by the Scottish Executive. There will be a need to develop effective information collection and sharing to facilitate this process.

Community Planning is about delivering results on behalf of communities, so there should be an obligation to report progress publicly on an annual basis.

f) **Should the statute include powers to remove or amend existing statutory constraints or statutory requirements which are unreasonable obstacles to the effective exercise of a power/statutory duty of community planning?**

The greatest obstacle or constraint to effective community planning is the lack of co-terminous boundaries between public sector organisations. Community Plans must be based on local authority boundaries. Other organisations with boundaries covering more than one local authority should be directed to plan strategies and activities at the level of each authority and to provide all relevant information to the local authority area. Without this degree of local focus, community planning will not succeed.

It is essential that any statutory limitations which constrain partners from working on a genuine partnership basis to deliver a joined up, high quality service to the city, are removed.

g) **Would there be merit in making arrangements to help streamline and rationalise the number of new strategies, plans and/or partnerships which impact on communities?**

One of the most important aspects of community planning is the development of partnership working, trust and collaborative practice. This cultural shift cannot be forced and it can be made more problematic if regular demands are made from the centre to form new partnerships, and develop new initiatives in very short timescales in response to, for example, invitations to bid for challenge funding. Measures to promote joined up government and cross cutting practice at the Scottish Executive would be a helpful development. Similarly, an effort to make the use of budgets across Executive departments more flexible would support inter-agency working at a local level.

3. POLITICAL RESTRICTIONS AFFECTING COUNCIL EMPLOYEES

a) **Relaxation of the current legislation**

Dundee City Council endorses the proposal to retain the ban which prohibits employees becoming councillors in their employing authority and also the relaxed rules in relation to:

- allowing Council employees other than those in politically restricted posts to stand for election to the Council which employs them without first having to resign on selection or nomination as a candidate. If successfully elected, the individual would instead be required to resign their employment the day after polling day.
- waiving any normal period of notice for successful candidates without detriment to the individual's pension entitlement or other benefits of his or her Council employment.
- giving an unsuccessful individual the right to remain in the Council's employment without detriment to grade, pay, pension or other terms and conditions of service.

While fully supporting the value of Council employees participating in the local democratic process, it is our view that the key principle is one of equity of candidates as supported by the Renewing Local Democracy Working Group. Giving Council employees time off, paid or unpaid, for the ten working days up to and including polling day would give them an unfair advantage over other individuals who are unlikely to receive equal support from other employers. However, the authority would look favourably on employees using annual leave entitlement during this period.

b) **Treatment of unsuccessful candidates who retain employment in their employing council.**

We would support the ongoing use of the existing approach to potential conflicts of interests which are based on internal management arrangements facilitated by the heads of paid service in line with the proposals in the consultation document.

c) **The designation of politically restricted posts**

The council supports the proposal to abolish the use of the salary threshold and agrees that the nature of each post should be the sole determinant of political restriction. We believe that the existing designation of restricted posts based on providing regular policy advice or representing the authority to the media is sufficiently broad to identify the appropriate posts. Consequently there would no need to incorporate an additional term and condition into the employment contracts as politically restricted employees are already bound to comply with the regulations by law.