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**Review of Local Governance**

**Response by the Society of Local Authority Lawyers and**

**Administrators in Scotland (SOLAR)**

1. **Introduction**
	1. SOLAR welcomes this Review, the joint commitment of the Scottish Government and COSLA to take it forward and the opportunity to comment. The Review provides a unique opportunity to examine how powers, responsibilities and resources are shared across national and local spheres of government, and with communities.
	2. SOLAR, and its predecessor SODA has represented local government lawyers and administrators since 1975. Its objects include the promotion of sound administrative and legal practice within Scottish Local Authorities and to confer and take action on matters, effecting local government. As a body which has 16 Working Groups and over 700 members working at the coal face of governance, democracy and law, we are well placed to comment on the practical obstacles which the Review seeks to overcome.
	3. Given SOLAR’s area of expertise, we have focussed on identifying specific legislative change which is required to deliver the following:-
* A reduction in inequalities;
* Inclusive growth;
* Promotion of subsidiarity, empowerment (both of communities and local government) and participation;
* To encourage Partnership- of local authorities, community and business working together to develop and implement local priorities in a joined-up manner;
* To encourage prevention and early intervention.
1. **Background and Principles**

**2.1** SOLAR is a politically neutral organisation. Some of the points made in this response are robust, even strongly worded. However at the outset, we think it is important to commend the Scottish Government and COSLA for jointly launching this wide-ranging and open review. In particular, it is important to recognise the commitment to principles which are shared by both central and local government, (as more particularly detailed in 2.5.). It will take courage to implement a shared commitment to subsidiarity and local democracy, to strengthen local and community decision-making and to accept an increased variation in decision-making arrangements. At times it will seem like a step into the unknown. It will require not only Governments to let go, but also local authority and other Community Planning partners to do likewise. The hardest step is often the first one, and the importance of the Scottish Government and COSLA taking this step should not be underestimated.

**2.2** The review seeks to examine how powers, responsibilities and resources are shared across national and local spheres of government. At the outset this inevitably raises a question as to the boundary between local governance and central governance, and why change is necessary. In other words, when it comes to benefitting Scotland, what are the best roles for central government, local government and the other bodies which impact on the delivery of local services? In our view, if communities are to be empowered, local authorities needs to be empowered. The role of national Governments should be one of support, and setting minimum standards, not about prescribing how services should be delivered.

**2.3** It is SOLAR’s view that the principles advocated by the Christie Commission remain valid and should be the starting point for any review of local governance. There is wide consensus that these still provide the roadmap for the public sector in Scotland. In many ways this Review provides the first comprehensive opportunity to address the following issues identified by Christie:-

 “The public service system is often fragmented, complex and opaque, hampering the joint working between organisations which we consider to be essential. As a whole, the system can be 'top down' and unresponsive to the needs of individuals and communities. It lacks accountability and is often characterised by a short-termism that makes it difficult to prioritise preventative approaches.

 Addressing these systemic defects will require a fundamental overhaul of the relationships within and between those institutions and agencies - public, third sector and private - responsible for designing and delivering public services.”

**2.4** Lest we forget, Christie’s principles were:-

* Reforms must aim to empower individuals and communities receiving public services by involving them in the design and delivery of the services they use.
* Public service providers must be required to work much more closely in partnership, to integrate service provision and thus improve the outcomes they achieve.
* Priority given to expenditure on public services which prevents negative outcomes from arising.
* The whole system of public services - public, third and private sectors - must become more efficient by reducing duplication and sharing services wherever possible.
	1. It is refreshing to note that these principles are enshrined in the current Review themes, as detailed in the letter dated 22 June 2018 from Angela Constance MSP, John Swinney MSP and Councillor Alison Evison of COSLA. These are:-
* Local and national government’s shared commitment to subsidiarity and local democracy;
* To strengthen local and community decision-making and democratic governance in ways that improve outcomes in local communities, grow Scotland’s economy for everyone’s benefit, support communities to focus on their priorities, and help new ideas to flourish.
* An acceptance of increased variation in decision-making arrangements across the country: what is right for one place will not necessarily be right for another;
* Working creatively across traditional boundaries to deliver responsive services- how this can be strengthened and scaled up, whether there are new powers or other changes that are needed to make more progress and the benefits these would produce, and about opportunities to hardwire better local governance arrangements into the places we serve. How this landscape could be made to work better overall.
* Shared aspirations in light of the new National Performance Framework to tackle inequalities and drive inclusive growth.
	1. Against this background it is SOLAR’s view that the key outcomes which this Review must seek t0 deliver are:-
* To reduce inequalities;
* To drive inclusive growth;
* To promote subsidiarity, empowerment (both of communities and local government) and participation;
* To encourage Partnership- of local authorities, community and business working together to develop and implement local priorities in a joined-up manner;
* To encourage prevention and early intervention.

The specific proposals which are detailed in this paper aim to promote these principles.

* 1. It is expected that many respondents will fluently make the philosophical case for these principles, and the cultural changes which are required to give effect to them. Fewer will identify the specific legislative changes or other actions which are required to give effect to such principles. This is important if the Government proposes to bring forward legislation next year. As this is SOLAR’s area of expertise, the following response therefore focusses on specific changes, rather than principles and culture change. In the past SOLAR has supported both Government and COSLA in the formulation of major legislative change, such as the integration of health and social care. We are happy to do so again, and welcome an ongoing role in the development of specific legislative proposals.
1. **Communities. Community and Locality** **Planning**

**3.1.1** As the main focus in both the recommendations of the Christie Commission and the Review is on communities and as this is one of the most difficult areas to successfully deal with through legislative change, this is our starting point. There are a number of relevant themes which are:-

* A recognition that the public sector can no longer do everything and that communities will have to take a greater role. Otherwise the public sector will not be financially sustainable;
* That policies and proposals need to focus on the needs of individual communities. The focus should be on delivering outcomes for communities, not on inputs (e.g. counting teacher numbers);
* Participatory Democracy- That policies and proposals developed or co-produced with communities are better and more effective;
* Involvement of communities in shaping their future has huge benefits in terms of their confidence, future health, employability skills and supports early intervention and prevention;
* That all communities need to be in a position to meaningfully contribute. Community capacity is weak in some communities, particularly our more deprived communities and they will require support to build this capacity and ensure they are empowered;
* In order for communities to meaningfully contribute they will need to have access to information. Open government is a key component of this;
* All Community Planning Partners need to be part of this, not just Councils;
* Community wealth building – how to stop the wealth of a community leaking out and to build community wealth?
* Existing vehicles such as Schemes of Decentralisation, Community Councils or Council Area Committees address parts of this agenda but cumulatively have made no difference;
* While the principle of subsidiarity has broad agreement, it is hard in practice for organisations to take the first step to let go, whether this be the Scottish Government, Councils or Community Planning Partners. There still needs to be accountability, regardless of who is delivering a service.
* Where do Community Councils fit in any new landscape?

**3.1.2** Prior to making specific proposals it is helpful to examine why community participation is important. The European Commission identified that “Five principles underpin good governance…: openness, participation, accountability, effectiveness and coherence.” It follows that enablers such as participatory democracy and Open Government: public participation in government, must be an essential part of any future local governance. Its importance is in supporting the following:

* Complex problems can be addressed by drawing on untapped knowledge, experience and perspectives ;
* Co-production delivers better policies and community ‘buy-in’, ensuring effective implementation;
* Improved public sector design and delivery;
* Improved legitimacy and trust in public institutions;
* Development of citizen’s skills, confidence and ambition; and
* Enabling active citizens and communities.

**3.1.3** In terms of reform, the ultimate goal must be of Community Planning Partners and communities working in a co-ordinated manner towards commonly developed and agreed priorities. Different organisations and community groups have their own distinct role. However to use the bus analogy, it is about everyone sitting on the right seat on the bus, having jointly agreed where the bus is going. In turn the choice of destination needs information and genuine choice.

**3.1.4** Community Councils- This section examines the role of Community Councils and whether giving them greater powers would deliver the objectives set out in 1.3. It is generally accepted that some Community Councils suffer from the following disadvantages:-

* Many areas, particularly in more deprived communities do not have a Community Council
* The membership of community councils is not representative of Scottish society, and often comprises middle-class elderly people;
* Few Community Councils are elected;
* While the main purpose of Community Councils under section 51 of the Local Government(Scotland) Act 1973 “shall be to ascertain, co-ordinate and express to the local authorities for its area, and to public authorities, the views of the community which it represents, in relation to matters for which those authorities are responsible, and to take such action in the interests of that community as appears to it to be expedient and practicable” it is rarely evident how communities are consulted, or involved in co-production. In short, many of the criticisms which can be made of CPP and Councils can equally well be made of Community Councils;
* Community Councils are hugely variable in terms of their impact. Some are excellent, others focus on challenge and scrutiny and are reluctant to work in partnership with Councils and CPP;
* Community Councils possess few powers and possibly as a result, few take a strategic approach to dealing with the priorities of their area.

Current models of Community Councils do not deliver the aims set out in 1.3 and are unlikely to do so, even with greater powers. Nevertheless it is important not to lose sight of the role that Community Councils and community councillors play in community engagement. They are one of the few community organisations currently in existence. While they are not an appropriate building block to take forward the principles in 1.3, Community Councils can form part of the solution without huge changes to their role. While no significant change is recommended to the current remit of Community Councils, it would be helpful to clarify their legal status. For example, there is considerable legal doubt as to whether they can own land in their own right- see Kershaw and Others v Connel Community Council 2018 SCOH 111 where Lord Woolman struggled to identify the legal personality of Community Councils. This decision that Community Councils can be sued in their own right raises the further question of who ends up paying if there is no insurance in place. Does the community council just go bankrupt or is there any personal liability on office holders? The Scottish Law Commission have recommended a solution to this – having noted that some bodies had been treated as hybrid bodies or “quasi-corporations”, and that there was “no clear authority on the extent of liability of an association and its members to a third party in delict”, they recommended the creation of the Scottish Association with Legal Personality (SALP),

**3.1.5** Similarly, current models of Council Area Committees do not deliver the aims set out in 1.3 and are unlikely to do so. They are often seen as the bottom level of Council governance, focussing on local issues which are not important enough to be dealt with by Council or its committees. There can be little strategic consideration of the needs of a community and how these can be addressed through partnership working. If the big decisions effecting communities are still taken by Council and its main committees, Area Committees can give a false impression of community engagement and co-production. Moreover, Area Committees can be unrepresentative of the wider community, largely comprising local authority councillors. Even if they have delegated powers, or community or CPP representation, councillors generally have the majority of votes. While they can be a useful component of a Council’s governance arrangements, they do not necessarily support community engagement and participation. For that reason they are not an appropriate building block to take forward the principles in 1.3.

**3.1.6** Community planning fulfils the Christie objective of ensuring that partners work much more closely in partnership, to integrate service provision and thus improve the outcomes they achieve. It is also at the heart of the following main theme of the review:-“Working creatively across traditional boundaries to deliver responsive services- how this can be strengthened and scaled up, whether there are new powers or other changes that are needed to make more progress? Where Community Planning Partnerships (CPP) work well they are increasingly effective in agreeing shared priorities, coordinating resource, adopting preventative approaches and supporting communities. The caveats to this are:-

* The effectiveness of a CPP can depend on the strength of personal relationships;
* Even in the most effective CPPs it can be nigh on impossible to secure any financial resource from partners;
* How to best secure meaningful involvement of national agencies?
* The extent to which other CPP partners such as Health Boards can be locally responsive or are shackled by national targets, centralised procurement etc.?

**3.1.7** It is interesting to note that in the reform of Police and Fire, the need for a locality approach was embedded in the legislation, something currently absent from the NHS and other Community Planning Partners. In particular, chapter 7 and section 115 included specific duties to identify local priorities in consultation with the relevant local authority and to prepare a Local Plan. While the principle of centralisation may not have universal support, this legislation at least provides a helpful model for a locality based approach. Divisional Commanders and local senior officers often enjoy increasingly close working relationships with Council and other partners. Where issues have arisen these have generally been where the Police have attempted to impose a single Scotland-wide approach. The current example of this is in relation to the Police desire that a Temporary Traffic Regulation Order is always in place (regardless of whether required) prior to policing marches and parades. A legal duty to promote subsidiarity would help resolve some of these issues.

**3.1.8** In terms of how to best promote the principles in 1.3, the key aim is to ensure the work of Community Planning Partners and communities is aligned towards implementing agreed priorities. The development of Community and Locality Planning offers the best chance of success. The aims of Locality Planning are fairly straightforward:-

* To identify geographical localities which people feel they belong to- where are you from? For meaningful planning purposes these will probably need to be of a size greater than individual communities. The important point is that the locality hangs together in having a shared cultural, demographic and geographical focus. An example is in North Ayrshire (population 136,000) which has 6 localities of Irvine, Kilwinning, Three Towns, North Coast and Cumbrae, Garnock Valley and Arran.
* To involve all community planning partners and representatives of Community Councils and other representative community groups, particularly where Community Councils do not exist;
* To prepare demographic and statistical information to inform an evidence-led and objective approach to identifying priorities;
* To ensure that community engagement processes are inclusive, do not repeatedly involve certain groups and individuals rather than a cross-section of the relevant community, and do not simply replicate the power inequalities at play in communities. More affluent communities are likely to be empowered;
* Extensive engagement and consultation using the principles advocated by the Consultation Institute;
* To co-produce and agree key priorities for each Locality, not just those relating to inequality, islands, IJB Strategic Planning etc. Every Locality has needs which require to be identified;
* The work of Locality Partnerships is intended to be strategic and high level, coordinating the input of CPP and community partners to deliver the key priorities. If an issue only concerns one partner, that partner would normally take this forward outwith Locality Partnerships. Similarly, local issues which do not fit into the agreed priorities, would not be taken forward by Locality Partnerships. This minimises any danger of the Partnership becoming waylaid by parochial or political consideration. It maintains its focus on agreed priorities, the actions to deliver these and the Fairer Scotland Duty.
* Building a sense of community, to enable asset transfers, community empowerment, and to develop social capital is nurtured, needs investment through community development and associated professionals. Development of Locality websites can be part of this;
* Once priorities are agreed the aim should be for the Locality Partnership to determine actions and to identify which bodies, either from CPP or community are best placed to take these forward. A Locality Partnership is not a substitute for existing community bodies or community councils. Instead it enables them to have a meaningful role in co-producing priorities, links them with the work of other partners ,and empowers them to take forward specific actions;
* Delegation of increasing levels of resource through Participatory Budgeting, Community Investment Funds, and a participatory approach to service delivery can be surprisingly successful in supporting new projects, often from people who are unexpected. For examples, see <https://pbscotland.scot/> , These include a town with a population of 16,000 having a PB event which attracted 560 people. When last did we get that level of community engagement? A nearby participatory approach to streetscene services led to potatoes rather than flowers being planted in an area of deprivation.
* Delivery of CPP services on a Locality basis where possible. For example in some areas the Police have organised themselves on the Locality basis, the Licensing Overprovision assessment is based on the same localities, the IJB’s Locality Planning uses the same localities etc.;

**3.1.9** As regards specific legislative change which could support the development of such a model, this includes:-

1. A duty on all Community Planning Partners and Community Councils to support Locality Planning, which for Community Planning Partners must include financial support;
2. A legal duty on all public sector bodies to support and resource community participation;
3. A duty on Local authorities, in consultation with CPP and publicly, to divide their areas into Localities;
4. A duty on Local authorities, in consultation and with support from CPP to prepare a profile of each Locality to inform the development of priorities;
5. To replace current legislation which focuses on locality planning for specific groups (e.g inequality, islands, or IJB Locality Planning) to allow a focus on priorities for all Localities;
6. A duty on Councils to form a Locality Partnership for each Locality with representation from Community Planning Partners, Community Councils and other representative community organisations;
7. A duty on Community Planning Partners to deliver services with regard to Localities;
8. A duty on such Locality Partnerships, in consultation to identify key strategic priorities for such Localities and actions and support required to deliver such priorities
9. An overriding duty to engage with communities during this process;
10. A duty on all CPP partners to identify annual funds for Participatory Budgeting and to identify services which can be the subject of a participatory approach;
11. A legal duty on all public sector bodies to promote the principle of subsidiarity, that wherever possible power should be delegated to the lowest level closest to the community;
12. The duty in (k) would replace the duty to prepare Decentralisation Scheme in terms of section 23 of the Local Government etc. (Scotland) Act 1994 with Locality Planning;
13. Review of the ‘Following the Public Pound’ guidance in the light of community participation to provide clarity on accountability issues. Best Value would be a useful starting point for any such review.

**3.2** Open Government - Open Government is intrinsically linked to community participation and choice. Communities can only make informed decisions if they have the information to do so. Open data also encourages private sector innovation. Accordingly there should be a legal duty on all public sector bodies to support and resource open government.

3.3 Electoral law and boundaries - To support Locality Planning, Schedule 6 of the Local Government (Scotland) Act 1973 should be amended to prioritise local geographical considerations and community cohesion over electoral parity. Otherwise we will continue to have the situation of ward boundaries bearing little relationship to Localities. It is essential that in any Locality Planning process, councillor representation should align with Localities. To use the North Ayrshire example, currently one ward spans three separate Localities, purely to even up numbers to ensure a 3 or 4 Member ward. It should also be competent to allow island areas which form part of a mixed island/mainland authority to have a quota of electorate per Member which is based on the rurality/deprivation of that island rather than having a single quota based for the entire local authority area. This is particularly important for an authority such as North Ayrshire whose islands and mainland areas have quite different levels or rurality and deprivation, and where the quota will inevitably be driven by the much higher mainland population. In addition to this, two or five Member Local Government wards should be allowable where geographical or community factors warrant this.

**3.4** Community Wealth Building

**3.4.1** Community Wealth building aims to ensure that the economic system builds wealth and prosperity for everyone. It aligns with the principle of inclusive growth, but can also promote the other principles set out in 3.1. An important driver can be to ensure that wealth does not leak out of a local community. For example if local spend can be retained within an area, it will increase local economic growth, lead to business growth, more new businesses, greater employment, higher GDP, and much greater local resilience against global economic swings. While there are models of this in other countries, including Germany, Spain and the United States, Preston Council is the best known exponent of such an approach in the UK. Its results have been dramatic, seeing an increase of 12,000 in employment over a 3 year period and getting the PWC award for Most Improved city in the UK. There are a number of different components to the Preston approach:-

* All public sector anchor organisations (Council, Police, NHS, Higher Education sector and Pension Funds) focus on spending as much as possible locally;
* To encourage the private sector to buy locally- e.g. supermarkets;
* Local businesses to be supported and empowered to tender for contracts;
* Identification of areas of spend where there is no local supplier- with the right support this can be an opportunity for local businesses, local authority or co-operatives;
* Support for employee co-operatives. Again this keeps profit within the local community and provides resilience against national crises;
* Support for local Credit Unions and development of the community bank, either along the German or cooperative model- this provides resilience against global economic swings;
* Support for living wage employers.

**3.4.2** The vision of the Preston model has the following aims:-

* To simplify the process of procurement, in order to encourage a diversity of organisations to bid for opportunities;
* To actively reduce levels of spend leaking out of the Preston and Lancashire economies, with consideration given on an anchor to anchor basis as to the scale of this reduction;
* To understand the Preston and wider Lancashire business base in more detail, and collectively encourage businesses and social enterprises to bid for opportunities;
* To develop the capacity of Preston and Lancashire based businesses to bid for opportunities;
* To collectively raise awareness of procurement opportunities amongst Preston and Lancashire based businesses;
* To identify services where there is potential for cooperative models of delivery.

Community wealth building on the Preston model is particularly noteworthy as it has a track record of delivering on all, not merely some, of the principles set out in 1.3. More detail on the Preston model can be found at:

<https://www.centreforpublicimpact.org/case-study/the-preston-model-of-community-wealth-building-in-the-uk/?gclid=EAIaIQobChMIzOve3tGS3wIVk-R3Ch049AivEAAYASAAEgLJkvD_BwE>

and

<https://www.preston.gov.uk/thecouncil/the-preston-model>

**3.4.3** In terms of change required to support this, key barriers are:-

* Within Scotland, the extent to which procurement regimes of Government, NHS, Police and Fire, and to a lesser extent local authorities are centralised and outwith local control. This makes it very difficult to support local procurement or community wealth building. Centralised procurement inevitably focusses on securing the lowest price through economies of scale. The size of contracts and the complexity of the procurement process acts as a deterrent to local companies and most contracts go to larger companies based outside Scotland. Accordingly a starting point for community wealth building has to be the empowerment of local Health Boards, Divisional Commanders and Senior Managers to be able to procure locally.
* Secondly it is important that all public bodies engaged in procurement or local investment (e.g. pension funds) are able to identify where their contracts are let, or where their investment takes place;
* Thirdly it is essential that as part of a duty to promote inclusive growth, all public bodies engaged in procurement or local investment are supported to take community wealth factors into consideration when investing or procuring;
* The ability for local government to support the cooperative model (enabling this to fill local gaps in the market) would be enhanced through the introduction of a Power of General Competence and removal of trading restrictions as set out in section 4 of this report, and enhanced capital borrowing powers as set out in section 8;
* It is understood the Scottish and Welsh Governments are looking at a cooperative banking model, similar to that in use in Germany or the United States (e.g. North Dakota). Evidence from elsewhere shows that such a model provides a more accessible local service, a greater willingness to lend to local businesses, a model whose profits are retained locally (not in a tax haven), whose impact in terms of GDP is felt outwith the City of London and is resilient to global economic swings. It is understood such a bank needs a population size of approximately 3million, so this would be beyond any individual local authority area. The Scottish Government should actively support this.

**3.5** Community Benefits and non-commercial considerations- Sections 17 of the Local Government Act 1988 need to be repealed to enable local authorities to consider community benefits when awarding contracts. These sections place a duty upon every public authority to exercise any of its functions relating to public contracts without reference to matters which are defined in section 17(5)(a)-(h) of the Act as being “non-commercial matters. Therefore a Council cannot consider any of the defined non-commercial matters when awarding a contract. With the development of modern procurement law these sections are now obsolete. However a number of the matters included under s.17, such as (a) (terms and conditions of employment), (b) (terms of contractor’s sub-contracts) and (d) (involvement in industrial disputes) impede a Council from considering the delivery community benefits and training opportunities as part of any contract award.

1. **Embedding the Role of Local Government**

**4.1** As is apparent from section 1 of this response, the powers, functions and role of local government have often been at the mercy of a constitutional framework which prioritises the doctrine of the sovereignty of Parliament/tiers of government, rather than one which viewed Governments as operating in interlocking spheres. As the area of government best placed to support communities, if communities need to be empowered then local government needs to empowered and enabled to do so. The following legislative changes aim to empower local government to enable it to support communities.

4.2 Incorporation of the European Charter of Local Self- Government into law in Scotland.

There are a number of reasons why we believe that the European Charter must be incorporated into law is Scotland. These are set out in detail in Appendix 1. Incorporating the Charter of Local Self Government into law in Scotland will strengthen Scotland’s overall system of democracy and create the foundations for an enduring and progressive partnership between national government, local government and communities. It is key to building on local and national government’s joint commitment to improve outcomes and renew democratic participation across Scotland. In summary, the advantages are:-

* Firstly, doing so would strengthen local and national government’s ability to work jointly to improve outcomes in communities across Scotland.
* Secondly, it would strengthen Scotland’s democracy by ensuring that communities enjoy the same local democratic rights that are already commonplace across Europe and beyond.
* Thirdly, it would deliver the unfinished business of the Scottish Parliament by ensuring that for the first time this partnership between national and local government is built into Scotland’s system of democratic governance, and reflected in its day to day culture and practice.
* Fourthly, it would ensure that Scotland fully complies with international treaty obligations, and addresses outstanding issues that have previously been identified. It would also provide a springboard for the UK Government to similarly comply with its obligations. Failure to bring this into effect sends out the opposite message, that the Government never had any intention to comply the Charter.
	1. A ‘Reserved Matters’ Power for Local Government

**4.3.1.**One of the strengths of the Scottish devolution settlement is that the principle of subsidiarity is enshrined in the legislative provision; in other words that anything not reserved to the UK Parliament is delegated to the Scottish Parliament. This has been particularly effective in addressing the issue of sovereignty, that both Parliaments have distinct jobs to do that are set out in ‘competencies’, rather than depend on powers being handed down from ’higher’ levels of governance. This Review mirrors such language, in referring to how “powers, responsibilities and resources are shared across national and local spheres of government”

**4.3.2** It would be helpful to legislate for a similar provision for local government, that anything not reserved to the UK or Scottish Parliament or specifically delegated to another body, is within the competence of Scottish local authorities? As will be seen from the next paragraph, this is a point of real practical use. In spite of the good intentions of the Power of Wellbeing, its use has been steadily eroded by court decisions which rely on the principle of sovereignty- that all power remains with Parliament and local authorities can only act if there is absolutely clear delegation of powers to them. A ‘reserved matters’ power, allied to a Power of General Competence, would be hugely beneficial in terms of enabling local authorities to support their communities, address inequality and promote inclusive growth within communities.

* 1. A Power of General Competence
		1. Introduction of a Power of General Competence to replace the Power of Wellbeing is a necessity for a number of reasons. The current Power of Wellbeing is so hedged with restrictions that it verges on being unusable. It is certainly not the ‘power of first resort’ which was its initial aim. For example, it provides no power to save or generate monies to fund other services (see *London Authorities Mutual Limited and the Council of the London Borough of Harrow*), something which is increasingly an issue in a financial climate which expects local authorities to raise income. It was also the subject of withering judicial criticism in the Portobello School case mentioned later on. In a context of increasing financial restraint, where local authorities have to work across boundaries and be innovative, whether in the context of Growth Deals, dealing with inequality, providing statutory services, supporting local communities or market failure, it is essential that local authorities have adequate powers. The Power of General Competence already exists in England and would support all the high level themes detailed in 1.3. More detail on this is provided in Appendix 2.
		2. It is recommended that the Scottish Government repeal the Power of Wellbeing contained in the Local Government in Scotland Act 2003 and replace it by a Power of General Competence similar to the provision in the Localism Act 2011. It is recommended that a similar power is used to enable a consistent body of case law authority to be applied across the UK. However it is recommended that the following restrictions contained in the Localism Act 2011 should not be imposed:-
* To require the use of companies where income was generated. The political landscape in England is different to that in Scotland and in England the justification may have lain in a desire to move such services to a private model. It could also place barriers in development of the cooperative model;
* that charging should only be permitted for a discretionary service on a cost recovery basis;
* Local tax raising powers should be included as part of a Power of General Competence; and
* No bar on the creation of by-laws or enforcement activity.

**4.4.3** It is important that local authorities are able to use the new Power of General Competence in any way which supports the achievement of outcomes for communities. If further restrictions on trading activities are needed, these are already provided firstly, by Best Value (as introduced under Local Government in Scotland Act 2003), and the role of Audit Scotland which goes along with it. Secondly, the rules on State Aid and procurement provide further safeguards against the use of public resources to distort markets. For example, use of a local authority’s cheaper borrowing under PWLB could potentially distort a market and be State Aid.

* 1. Repeal of the restrictions in the Local Authorities (Goods and Services) Act 1970. This is closely linked to a Power of General Competence. Its restrictions are increasingly an obstacle to local authorities being able to deliver innovative services, being able to work across boundaries, whether in the context of Growth Deals, being able to deal with inequality, being able to support local communities, address market failure or drive inclusive growth, let alone generate income. It dates from an era which pre-dates Best Value, State Aid, Procurement (or any European legislation), let alone concepts such as community, subsidiarity and local outcomes. Best Value, State Aid and procurement rules provide an adequate replacement for its restrictions. In particular, the 1970 Act gives Local Authorities powers in relation to any “relevant trading operation carried on by the Authority” to enter into Agreements for the supply of goods or services. However, an Authority cannot enter into such a Trading Agreement if the outcome from that operation would exceed the statutory limit. The current statutory limit for the amount of commercial services income that can be generated is nil. Unless and until therefore the Scottish Ministers set a statutory limit for trading activities, it will not be possible to rely on the provisions of this legislation to justify the Council or its ALEOs trading to generate income to fund services, to address gaps in provision which the private sector are not filling, or to support communities. The fact this restriction exists means that the Power of Wellbeing cannot be used.
	2. Local authority jurisdiction to be extended to 12 miles offshore**.** This deals with the restrictions contained in the case of Argyll and Bute District Council v- Secretary of State for Scotland [(1976) SC 248]
1. **Subsidiarity, Local Democracy and Asymmetric approaches**
	1. This section examines legislative change which is required to give effect to the following themes identified in the letter dated 22 June 2018 from Angela Constance MSP, John Swinney MSP and Councillor Alison Evison, namely:-
* subsidiarity and local democracy;
* To strengthen local and community decision-making and democratic governance in ways that improve outcomes in local communities, grow Scotland’s economy for everyone’s benefit, support communities to focus on their priorities, and help new ideas to flourish.
* An acceptance of increased variation in decision-making arrangements across the country: what is right for one place will not necessarily be right for another;

**5.2.1** Power to request further powers:- In their letter of 22 June 2018, initiating Stage 2 of the Review, Angela Constance MSP, John Swinney MSP and Councillor Alison Evison identified that a main theme of the Review was “An acceptance of increased variation in decision-making arrangements across the country: what is right for one place will not necessarily be right for another”. Both COSLA and most local authorities support this principle of ‘Asymmetric” and “Permissive” approaches to governance, which recognise the diversity of communities and the importance of ensuring that public services can meet that diversity. Common to these is support for exploring potentially different models of governance for different communities. Proposed options for reform may vary accordingly, depending on whether an authority is looking to Growth Deal powers, city powers, islands governance, or single public authority models. Such variety requires enabling legislation.

* + 1. A model for such enabling legislation already exists in sections 15 and 21 of the Islands (Scotland) Act 2018 These powers currently only granted to island Councils should be rolled out to all Councils and CPP partners. These allow authorities to ask for more powers and for the Government not to unreasonably refuse such request. This would fit with the ‘asymmetric’ approach which recognises that different areas may require different governance arrangements.
	1. We have also identified a number of areas of Government control which are at odds with subsidiarity, local decision making and where there appears to be no overwhelming argument to justify a standard Scotland-wide approach. In our view the perpetual argument over a postcode lottery or one-size-fits-all is an easy one to resolve. Local variation of services is the natural result of targeting resource at the individual priorities of localities. Unless there is a clear and overwhelming necessity to have a Scotland-wide approach, local variation should be embraced. Government’s role should be to set minimum standards, not to control how services are delivered locally. In SOLAR’s view the following provisions run contrary to these principles and should either be repealed or amended.
	2. Repeal of section 124 of the 1973 Act which provides that half the members of an Education Committee shall be councillors, and also provides for religious representation. We are not advocating an end to religious representation merely that the decision on who sits on a Committee should be taken locally. Many local authorities will want to maintain religious representation and others will include representatives from other groups such as young people and unions. Variation we would suggest should be allowed
	3. Community Planning Partnerships- section 17 of the Community Empowerment (Scotland) Act 2014This section provides that on application, Scottish Ministers can agree to the formation of a CPP as a body corporate. It is recommended that the consent of Scottish Ministers is no longer required and this be a decision for CPPs, having regard to local considerations and outcomes
	4. Repeal of the Schools Consultation (Scotland) Act 2010 **-** School closures are difficult, taking into account issues such as the availability of education in communities, the impact on the community, the extent to which the building can remain in community use, occupancy rates, cost per pupil and using resources to best maximise attainment across the local authority area. Why, when there is a perfectly adequate consultation procedure which ensures that all relevant considerations can be taken into account, is it necessary for decisions to be taken centrally in Edinburgh? This is entirely contrary to the principle of subsidiarity, let alone community empowerment
	5. Planning Appeals - It is recommended that the right to appeal a decision to Ministers should be removed where the Planning Authority’s decision accords with the Local Development Plan.
	6. Removal of all ring-fencing and conditionality**,** including the Council Tax cap/freeze, Pupil Equity Fund, Attainment Fund, Pupil/Teacher ratio etc. This is more particularly covered in the section under Financial Empowerment.
1. **Enabling Partners to Work Together**

The following legislative changes are required to enable partners to more effectively work together.

* 1. Local Government (Scotland) Act 1973 Changes to Governance - As detailed in paragraph 2.1.(c) of this report, much of the governance of local authorities dates from the Local Government Acts 1988 and 1989. A number of specific changes are required to enable partnership working and working across boundaries. A good example of the sort of issues which currently arise relates to the arrangements for Councils and NHS Boards to form Health and Social Care Partnerships prior to the Public Bodies Joint Working (Scotland) Act 2015. In order to delegate powers, two separate committees required to be set up by the NHS and Council, the latter being a Council sub-committee (not a committee). They met at the same time with the same members and agenda, operated as one but in governance terms were two separate committees. At best such legislation is clunky and uncertain, at worst it is real impediment to partnership working. Specific changes which are required are:-
* Deletion of the provision in section 57(3) of the Local Government (Scotland) Act 1973 which restricts the number of non-councillor Members on a Committee (but not a sub-committee) to one third. This is an impediment to partnership working. Generally,(but not always) it can be simply avoided by calling the body a Sub-committee.
* Amendment of section 56 of the Local Government (Scotland) Act 1973 which currently only allows delegation of functions to committees, joint committees or officers. The aim should be to give power to allow Councils to delegate functions to other CPP partners or communities where desirable. Similar powers should be given to other Community Planning Partners. This would avoid the need to always seek consent of Ministers under the proposals detailed in 5.2;
* Repeal of sections 15 to 17 of the Local Government and Housing Act 1989 which relates to the duty to allocate seats on committees to political groups. These sections were never brought into force in Scotland and are unworkable in a modern cabinet or executive system. This could never work in a committee involving external representation, something which is increasingly essential for partnership working.
* Amendment of the requirement in section 62A of the Local Government (Scotland) Act 1973 to obtain the consent of Scottish Ministers to the incorporation of Joint Committees into Joint Boards. While a useful tool, this has been rarely used due to the bureaucracy and timescales in obtaining Ministerial consent. Those in the know comment that there is civil service resistance use of this power, to an extent that it is unusable. As a matter of principle this should be a decision for Councils, not Ministers. If Councils can form companies, why not Joint Boards?
	1. VAT is chargeable on contributions the NHS makes to Councils**.** As the NHS cannot recover VAT costs on contributions it makes to Councils, there is a disincentive for the NHS to transfer funds to Councils and financial impacts for Councils or the NHS. The NHS can make contributions to Councils in England & Wales without VAT implications. The suggested solution is to bring Scotland into line with England & Wales and allow NHS to recover VAT costs on contributions it makes to Councils.
	2. Data Protection - currently GDPR is an impediment to sharing of data between public sector organisations, something which is essential to shared services. It can also be an obstacle to analysis of data to inform needs and target resources. It is difficult to say how much of this is a product of the actual legislation or a risk adverse culture which has been driven by sanctions. It is also appreciated that as GDPR is driven by the ECHR right to privacy and European Directive that the Scottish Government has limited powers. However if public bodies and communities are to work seamlessly in future and avoid duplication, something will need to change.
	3. Freedom of Information (FOI) **-** This has supported transparency and since its introduction it has successfully transformed public sector culture into one of openness. However the processes are complex and costly and a drain on public sector resources. In particular the Scottish Information Commissioner has no power to screen and reject an appeal regardless of whether it is incompetent, has little chance of success or not in the public interest to pursue (unlike the Ombudsman or Standards Commission). It has to go through the full appeal process in all cases. There is also an inability to effectively deal with vexatious or obsessive complainers. Often on exhausting a complaints procedure/Ombudsman complainers will simply turn to repeated FOI requests. Each individual request requires proof it is vexatious, regardless of whether this happened on multiple occasions previously. The process of showing a complainer to be vexatious is so detailed (and provides no long term solution) that it is much quicker just to respond to the complaint This means that in practice such complainers simply go on making future FOI requests, sometimes with variants of the same request. It is respectfully suggested that the provision for charging is pitched at a more realistic level as at the present time the levels make charging uneconomic. A few key changes here could allow resources to be better utilised freeing up other resources to deliver core services.
1. **Other Changes Required to promote the Principles in 3.1**

**7.1** A legal duty on all public sector bodies to promote inclusive growth. While this is Scottish Government policy it is not always evident this is being consistently applied, even by Government and its agencies. As part of this it would be helpful to amend the duty to promote sustainable growth which appears in sections 4 and 5 of the Regulatory Reform (Scotland) Act 2014, to refer to inclusive growth.

**7.2.1** Common Good - While Common Good is an emotive subject, it is an increasingly archaic remnant of historic local government. We would welcome the opportunity for this Review to properly consider the future of Common Goods as part of the governance of a modern Scotland. As Common Goods are often misunderstood it is worth setting out what they are. Common Goods generally arise from three sources -a) property acquired by old Burghs which pre-dates their having specific statutory powers (including assets acquired by Royal Charter; b) assets gifted to be used for the benefit of a particular area, albeit not in trust and c) assets which were listed in the Common Good account of a Burgh in 1974, regardless of whether they met the criteria of being common good. An example of the latter was the attempt by Irvine Burgh Council to transfer all its assets into Irvine Common Good in 1973/4, presumably to ensure that its assets only benefitted that part of Irvine included in the Common Good, not the rest of Irvine or Cunninghame District. While legal advice stopped this, it gives a measure of how random category c) can be. Another widely held myth is that common goods are owned by the people. They are not. They are 100% owned by the Council. The only differences from the remainder of its property holding are that a) Common Goods can only benefit a restricted geographical area, sometimes forming only part of a modern town, as in the case of Irvine and b) there can be restrictions on disposal of certain assets.

**7.2.2** It will be obvious from the foregoing that, whether or not there is a common good and the amount of its assets can be a matter of historical accident. The only commonality is that rural areas or newer towns do not have common goods. The fact that one town benefits from extra assets which only they can distribute bears no relationship to issues of need. Often older and richer towns have a greater the likelihood of a substantial common good, so from that perspective they are more likely to widen inequality. Common Goods can also present an impediment to otherwise acceptable use of public land, such as the Portobello school case. While it took specific legislation to sort that problem the underlying problems of common goods remain. Indeed the existence of a common good might even be a barrier to community empowerment through asset transfer. SOLAR’s view is that there was little justification to preserve common goods in the 1975 local government reorganisation and they are a historical anachronism which should now be resolved. In our view Common Goods should simply form part of the normal Revenue and Capital accounts of local authorities. The planning process is quite capable of dealing with any issues of change of use.

**7.3** Single Planning Application **-** It is recommended that provisions should be introduced for a single application to cover all aspects of development including listed building and advertisement consent.

**7.4** Licensing Policy Statements (LPS) - An ouster clause should be introduced into the Licensing (Scotland Act 2005, similar to that in sections 237-238 of the Town and Country Planning (Scotland) Act 1997. This provides that the Local Development Plan (LDP) shall not be challenged after 6 weeks. To all intents and purposes the LPS is for licensing what the LDP is for planning. It sets out the Licensing Board’s policy for the next 4 years, and is the basis on which applications are granted. However unlike planning, the LPS can be challenged in any appeal on an individual application, sometimes years after the policy was adopted. A number of such policies have been overturned, often on a narrow set of circumstances, without consideration of the full consultation responses and data which informed the LPS when adopted. There is no certainty. Moreover as the only means by which the health objective of the 2005 Act can be taken forward is through policy (because it is never possible to make a causal link between individual premises and alcohol related health harms) this can fundamentally undermine the health objective.

**7.5** Best Value **-** For the sake of completeness we can advise that in our view the principle of Best Value contained in the Local Government in Scotland Act 2003 remains a sound one which should be retained in any governance structure. Best Value could usefully be expanded into other public bodies and could provide an answer to some of the accountability issues stemming from community participation. Similarly, Audit Scotland should continue to focus on Best Value in their audits

7.6 Ethical Standards and the Councillors Code of Conduct - We are aware that there is to be a review of the Councillors’ Code of Conduct. The Standards Commission regularly work with stakeholders, including SOLAR on any issues and we are happy to contribute to any review.

**7.7** Local Government Reorganisation - SOLAR does not support another wholesale reorganisation of local government, although we support the right of different areas and CPPs to develop asymmetric solutions targeted at their own needs.

* 1. City and Growth Deals - There has been surprisingly little analysis of the role of such Deals as part of the governance of Scotland, presumably because they are viewed as new money or additionality. It is important that their relationship to this Review is not overlooked. In practice they are a means of ring-fencing monies into projects which are expected to deliver growth or Gross Value Add (GVA). Issues include the following, a number of which were identified by the Joseph Rowantree Foundation briefing [https://www.jrf.org.uk/report/inclusive-growth-and-city-deals-briefing:-](https://www.jrf.org.uk/report/inclusive-growth-and-city-deals-briefing%3A-)
* In theory city deals should promote the UK Government’s Industrial Strategy and the Scottish Government’s inclusive growth strategy. In practice political considerations often seem to drive the UK Government;
* They are widely seen to be brokered in secret, certainly with no community participation;
* Will City Deals balance strengthening the economies of central areas within a city region whilst also underpinning growth in peripheral locations? For instance, from an inclusive growth perspective, what are the implications of strengthening the economic base of Edinburgh if that has little impact or even adverse consequences for the economic base of, for example, Penicuik or Livingston?
* Do the growth and devolution deals that are in place in England – a stage of decentralisation yet to reach Wales and Scotland – provide potential opportunities to further pursue an inclusive growth agenda?

**7.9** PPP/PFI/SFT- The original desire was to move public debt out of the public sector balance sheet, linked to the UK government’s policy of limiting the availability of public sector finance. The EU later introduced a requirement that all listed companies must produce accounts which were compliant with International Financial Reporting Standards (IFRS) from 2005. The UK Government has required all public sector bodies to comply with IFRS since 2009. Under IFRS the concept of “Substance over Form” has required public bodies to recognise both the assets procured under PPP and their associated liabilities on their Balance Sheets. If this is the case, why is there still a driver to use this model? The matter would repay further review.

**7.10** Local authority prosecution powers - a continuing concern is that the Procurator Fiscal can be reluctant to prosecute offences, particularly in relation to complex areas of local authority law with which they may be less familiar. The solution would be to enable local authorities to themselves prosecute more offences. This happens in England and indeed, until recently it was common-place for local authorities to prosecute the offence of failing to send a child to school.

* 1. Amendment of section 35 of the 1973 Act which provides that if a councillor fails throughout a period of six consecutive months to attend any meeting of the authority, he shall, unless the failure was due to some reason approved by the authority, cease to be a member of the authority. Often a decision on whether to extend the 6 month period will depend on political considerations such as chances of success in a by-election. The provision needs looked at as there are potential equalities impacts in terms of disability, age and maternity. At the very least there needs to be provision for leave of absence for maternity or paternity purposes.
	2. **Planning Bill-** Will any of the reforms allow communities to better fund the infrastructure requirements required for their expansion, such as roads, schools etc**.**?
1. **Financial Empowerment – Specific Changes Required**

**8.1** It is significant that the Review is taking place against a background of increasing demand for services, a history of central constraints on local financial flexibility (e.g. ring-fencing, the Council tax freeze etc.), and recurring reductions in grant. The clear message from Audit Scotland and others is that after 10 years of austerity it is no longer a realistic option for the public sector to target ‘efficiency’ savings or salami-slice.

* 1. It is also important to recognise the Review seeks to address how resources are shared across national and local spheres of government. What matters is not just the total sum available for public expenditure but how it is allocated. For example, the contrasting position of local authorities in England and Scotland and between public authorities in Scotland is illuminating. Research by Cambridge University published in October 2018 showed that local authorities in England had suffered an average spending cut of almost 24% since 2010, compared to 12% in Wales and 11.5% in Scotland. The authorities facing the deepest cuts were those with the weakest local economies, who were most reliant on Government grant, with lower property values and fewer other funding sources. In other words, more deprived communities had borne the burden of austerity. While Scottish cuts to local authority budgets have so far avoided a similar pattern, the impact of austerity across the public sector has not been uniform. Local authorities have borne the brunt of cuts and 90% of public sector job losses have been in local authorities.
	2. This Review provides an opportunity to re-open the debate on Government funding priorities. To what extent is Government funding directed to need and prevention and early intervention? For example, while crime is steadily reducing, Police spending has been largely protected, crime is steadily reducing. Evidence from Divisional Commanders is that 80% of the Police’s work now relates to vulnerable individuals and 20% to crime. Similarly, Scottish Fire and Rescue’s preventative approach has been so successful that their core duty of fighting fires has been significantly reduced. Against this background, SFRS’s current and wide review helpfully examines the issue of how spare capacity can be used to support partners. However one cannot help but ask the broader question of whether the resource which Police and Fire are now devoting to vulnerable people would be better diverted to the core services who are able to take a preventative approach to such vulnerabilities?
	3. Almost 85% of a council’s income is decided and allocated by the Scottish Government through the Scottish Parliament. How a council spends, and what it spends on, is also subject to substantial external direction and scrutiny. Some of the income allocated by the Scottish Government is “ring-fenced” for particular purposes prescribed by Scottish Government (e.g. pupil equity funding; attainment challenge funding). Broader conditionalities are also periodically attached to national grant allocations, e.g. an obligation to maintain teacher/pupil ratios at an agreed level. Put simply, how can we encourage meaningful community involvement if neither communities nor local authorities can determine how money is spent? If together Education and Social Services form 70% of a local authority’s budget, and one is subject to government control and the other to chronic underfunding which leads to overspends, how long can the remaining 30% of local authority services withstand further cuts? A further message from England, is that local authorities will increasingly have to generate income to support public services. Currently there is no clear power to do so in Scotland and greater powers are required. The Power of General Competence proposed in paragraph 3.2 would address this last point.
	4. Accordingly there is a need for a consultative and comprehensive review of local authority funding designed to ensure that at least 60% of local authority expenditure is within the control of local authorities. It is recognised that in order to ensure that funds are targeted towards areas of need rather than each authority retaining all the income it generates, it will be necessary to have a certain amount of central pooling and redistribution of the remaining 30-40%. The review should include widening the tax base with particular emphasis on an ability to raise a Transient Visitor Tax and other local taxes such as increasing rates for out-of-town shops, levies on town centre business parking etc. If the current system of Council tax is to be preserved it should be within the ability of local authorities to vary the % chargeable by each Band. It should also examine powers to pay a basic income, centrally funded, as a means of reducing regional inequalities.
	5. Local tax raising powers should be included as part of a Power of General Competence.
	6. There is a significant problem regarding fees set nationally by Government for locally delivered services. A ‘one size fits all’ fee has no regard to the costs of delivering the service, which will vary according to an authority’s degree of rurality or size/economies of scale. Usually such fees are set at a level which does is not self-funding, with an expectation that local authorities will somehow fund the difference. Thereafter our experience is that it is nigh on impossible to persuade Government to increase fees in any reasonable timescale, let alone keep pace with inflation. Experience is that civil servants’ main concern can be to insulate Ministers from any bad publicity which might ensue, with little appreciation of the impact of the underfunding. An example was the recent ‘review’ of the Personal Licence fee for liquor licensing, set in 2007 at £50. It was inadequate in 2007, additional duties have been added to the application process and even with inflation it would have been £64. However it was simply kept at £50 without any explanation why. Accordingly a commitment is required from Government that (a) there is a presumption that all local government fees should be set locally to reflect the costs of delivering the service, rather than set by Government, and (b) legislation which currently provides for the setting of local authority fees by Government will be amended to repatriate the setting of such fees back to local authorities;
	7. Removal of all ring-fencing and conditionality:- While this might appear radical in the current climate, it is notable that as recently as 2007 the Scottish Government committed in its Concordat with local government to the removal of ring-fencing. This should include removal of both ring-fencing and conditionality including the Council Tax cap/freeze, Pupil Equity Fund, Attainment Fund, Pupil/Teacher ratio etc. If it is not appropriate for the UK Government to use such measures to control how the Scottish Government prioritise spend, then it is equally not appropriate for the Scottish Government to impose this on local authorities.
	8. Councils have to pay Stamp Duty Land Tax, charities and Scottish Government do not.
	9. Statutory Adverts in Newspapers – a large number of pieces of legislation provide for statutory adverts to be placed in newspapers, sometimes in consecutive weeks. Newspapers have an increasingly small readership, and on-line adverts increasingly reach a wider readership. A legislative provision should be introduced to provide that any advert which must be advertised in a newspaper can now be advertised on-line. It is noted that the Scottish Government previously rejected this due to the financial impact on newspapers. However if there was a justification for maintaining newspaper adverts as a means of subsidising newspapers, in light of financial pressures on the public sector and the increasing role of on-line in a modern society, this is no longer the case. The decision whether to subsidise a local paper should be a local and transparent one.
	10. Capital Powers - the Local Authority (Capital Financing and Accounting) (Scotland) Regulations 2016 identified the purposes for which a local authority may borrow. Borrowing for any other purpose can only be made with the consent of the Scottish Ministers. While this is a considerable improvement on the pre-2016 position, it is important that this is further expanded to allow borrowing without Ministerial consent to support capital expenditure under a Power of General Competence. The Council’s inability to borrow for ALEOs also results in higher borrowing costs to the ALEOs because the favourable rates the Council could receive from Public Works Loan Board cannot be utilised. There may also be a cost to the Council if it has to guarantee the loan. The proposed solution is to allow the Council to borrow for others, including ALEOs as long as Best Value and State Aid can be satisfied.
	11. Audit- we support the role of Audit Scotland in focussing on Best Value audits and appreciate the work they have done since 2008 to streamline and coordinate the overall audit process. Local Area Networks and risk-based inspections continue to be a useful model. However it is also important that they continue to oversee audit by other regulators to ensure that it provides genuine added value and does not become a burden.
1. **A Work in Progress- Further Work Required**

**9.1** This section looks at further work which is required to take forward the principles set out in 3.1

**9.2** Firstly a concordat is required with the Scottish Governmentwhich commits to:

* A review of the key statutory roles and responsibilities of local government, the resources required to deliver this
* The principle of subsidiarity, that powers should be delegated to the lowest possible level. This includes powers disaggregated from the UK Government post-Brexit;
* A three year budget settlement where possible;
* A recognition that as local authorities are democratically accountable to their electorate for delivery of services, the role of Government is to set minimum outcome standards, not to determine how services should be run or interfere in operational management;
* A commitment not to restrict local discretion through the use of ring-fencing, council tax freezes, financial penalties etc. All Government monies should form part of the general settlement; and
* A commitment that any new legislative duties imposed on local authorities must be properly funded.
	1. Secondly, we suggesta review of how democratic accountability works for local delivery of services. A key issue is whether our democratic processes encourage community involvement, particularly from females and minorities? Are our democratic processes based on a Westminster Victorian model, which was inevitably a white, male and privileged one? Does this combative model discourage involvement by women, minority and ethnic groups? While accepting that adversarial politics has an essential scrutiny role, to what extent can this be rebalanced by a greater focus on the value of consensus in addressing shared priorities? Is the time now ripe for a high-level review of such issues?
	2. There should be a presumption against national input targets for any body delivering local services. These run contrary to the Christie principle of focussing on outcomes not inputs
	3. Review of legislation and guidance which impedes Integration Joint Boards from comprising more than one local authority area (e.g. IJBs based on a Health Board area). While the Public Bodies Joint Working (Scotland) Act 2015 provides for this, senior civil servants view this as a backstop and are not supportive of any review of an Integration Scheme which would propose this. Given that Health Board areas inevitably comprise more than one local authority area, that lead IJBs already deliver services across an entire Health Board area it is difficult to see any rationale for this position.
	4. Democratic Accountability- Consideration needs to be given of the link between local authority councillors and their communities**.** Currently Scotland has the fewest locally elected representatives per head of population anywhere in Europe. If we are serious about having empowered communities, do we need more councillors? The current basic salaries for councillors are not good and tend to result in a high proportion of retired councillors or councillors who are juggling their duties with another job. How well is the multi-member ward system is understood or is another proportional representational system worth looking at?
	5. Further work needs to be urgently done to look at the longer term financial issues facing Integration Joint Boards. How can resources be moved into social care to reduce the burden on acute NHS services? A number of these issues were flagged up in the recent Audit Scotland report at <http://www.audit-scotland.gov.uk/report/health-and-social-care-integration-update-on-progress>
	6. An integrated, cross- agency approach is needed to deal with issues of health inequality, educational attainment and other areas of inequality. Attempts to tackle individual areas in isolation (e.g. Pupil Equity Fund) are inevitably doomed to failure and may in fact increase inequality
	7. The opportunity should be taken to look at a consolidation of local government legislation to make it fit for a modern Scotland. Currently we have a confusing mix of statutes. As part of this there needs to be consideration of the balance of responsibilities between Central Government, local authorities and communities. This is key to achieving the Review aim of examining “how powers, responsibilities and resources are shared across national and local spheres of government and with communities. A historical perspective is helpful to examine the extent to which powers have been shared across national and local spheres of government. As previously detailed, our Victorian forefathers were at the forefront of innovative public health advances, bringing water and sanitation to our cities to eradicate cholera and disease, forming municipal enterprises to deliver transport, gas and electricity, ensuring decent housing etc. The 1833 Burgh Police (Scotland) Act embodied the liberal notion that the inhabitants of a community should be free to identify local priorities, and to decide, through elected representatives, how to pay for these. If local government needed to intervene to meet a community need or to support a community, it had the powers to do so.
	8. Roll forward to 2018 and we find that over 85% of local government’s revenue is directly controlled by central government. Government exercises further control on how services are delivered, whether through removal of services to central control (Police and Fire), ring-fencing, conditionality (such the Council tax freeze/cap and the teacher/pupil ratio), or selective grants such as the City Deals. Arguably local democratic accountability for services such as Health is even less visible.
	9. Lest it is thought this is a criticism of the current Scottish Government, a quick review of the last 40 years shows that regardless of political Administration, the dominant theme has been of centralisation of power and central control over local delivery of services. It is helpful to look at the main themes over the last 30 years and at attempts to re-focus local/central relations. In particular:-
* The 2008 Concordat with the new Scottish Government was hailed as the beginning of a new relationship between Government and local authorities. In return for signing up to key Government priorities, ring-fencing would end and the audit regime streamlined. At that time the perception was that the multiplicity of audit regimes, each doing things in a different way without any coordination, added little or no value. Arguably this was the result of a model which saw local government as the delivery arm of central government- government told local authorities what to do and audited performance against Best Value.
* 1998- 2002- Go back 10 years and the new UK Government’s introduction of Best Value was hailed as delivering a new relationship, freeing local authorities from compulsory competitive tendering and the previous model of ‘public bad, private good’, aimed at engineering the outsourcing of public services (with inevitable loss of local control).
* 1994-96- The reorganisation of Scottish local government by the UK Government had little, if any regard to the views of local government or the wider public sector and absolutely no regard to the views of communities.
* 1988-1989- If compulsory competitive tendering was bad, relationships were worse some 10 years earlier, with national legislation aimed at controlling what the Government saw as untoward political activism by Councils.

**9.12** As is noted earlier in this response, this historical legacy is still with us. Best Value has proved to be a resilient concept which is of value, almost certainly because it was co-produced by local and central government. Less satisfactorily, parts of the governance of local authorities still dates from the Local Government Acts 1988 and 1989, arguably the nadir of central and local government relations.

* 1. Advocates of a more centralised approach to power will point out that Governments are elected to deliver their manifesto. How can governments deliver that manifesto if they do not hold the reins of power? The traditional constitutional model of the sovereignty of Parliament supports this view. Against this background, is central government control such a bad thing? This usually depends on perspective. The UK Government might complain about EU control, the Scottish Government complain about Westminster control, Scottish local authorities complain about Holyrood control and communities complain about control by everyone. Those in the middle, such as the Scottish Government have, it appears, seen nothing wrong with exercising control through ring-fencing, conditionality and the removal of local services, but complain bitterly at any perceived ‘power grab’ by the UK Government.
	2. The key test is whether the current balance works, and what have been the outcomes? As noted by the Commission on Strengthening Local Democracy, “50 years of centralisation has not tackled the biggest problems that Scotland faces”. More crucially, central control places barriers in the way of the public sector reform principles advocated by the Christie Commission. For example, if local government is only allowed to control 15% of its spend, what is the point of community involvement if only central government can influence spend, and that spend is already ring-fenced to national priorities, not those determined locally?



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*14 December 2018*