

**Independence from the centre:
does local government's freedom lie
in a formal acknowledgement of devolution?**



Introduction

Sir Merrick Cockell

Dear readers,

Reforming our democratic constitution is right at the forefront of the political debate, with changes to the House of Lords being actively discussed and a planned Scottish independence referendum in 2014.

I hope that you too will get involved in this vital debate about the future of our democracy.

Local councils are elected to oversee a range of vital services for residents – such as care for the elderly, housing and children’s services – meaning that their role in our democracy is also a key part of the constitutional debate.

The LGA and Graham Allen MP have launched a public discussion looking into the merits of constitutional reform to make the roles of Whitehall and councils clearer to local residents.

For too long local people have been left out of the loop on who is running their public services, with it being unclear as to who is accountable for what. It’s time this changed.

The Political and Constitutional Reform Select Committee in Parliament has been holding a consultation on their website looking at how to clarify the relationship between central and local government.

I urge those concerned about our democracy to respond directly to their consultation.

We will also be releasing an LGA discussion paper on this shortly and holding a number of events, so please do keep an eye on www.local.gov.uk for more information.

In the meantime, I do hope you enjoy reading this pamphlet. It contains opinions from MPs and councillors from across the political spectrum as well as some of the detail behind the ideas.

Best wishes,



Cllr Sir Merrick Cockell
Chairman of the LGA



Graham Allen MP

While debates about devolution and independence rage, local government has been reduced over recent decades to little more than an agent of central government. We need to have the ambition and leadership to set ourselves free from the chains of Whitehall, become an equal partner, and enjoy the same independence as it has in most western democracies.

Such a proposal would amount to the largest denationalisation ever undertaken and the restoration to the public of their ownership of their own local government. The way the UK – and England especially – governs itself is stuck, Brezhnev-like, in command politics: the last country in the empire. Petty interference from the centre must be denied any legal or financial basis and local government given unchallengeable legitimacy in two ways.

Firstly, local authorities must be created in law as **independent and sovereign entities and their duties codified**. They would be free to undertake as of right all those duties for which they are elected locally and which subsidiarity recognises as being local.

Local government, like any other public body, would have to perform its duties within a legitimate inspection regime and within the context of human rights legislation and so could be held to account by any citizen.

Ahead of any written constitution this independence must be entrenched and protected from easy repeal, perhaps by including an amendment to the 1911 Parliament Act, which would allow the Second Chamber to veto legislation that threatened the rights of local government.

Secondly, political independence for councils would mean nothing without **financial independence**. Central government must be removed from financing local councils. This dependency culture must end.

To do so a radical new settlement needs to be implemented on taxation with HMRC sending half the national income tax take back to local councils via an independent redistribution commission, without central government interference.

Central government could continue to be free to assist councils with time limited funding on particular problems, just as the federal government do elsewhere.

The bulk of their expenditure secure, local councils should then be free to raise the remaining part of their income however they and their electorates decided, from a menu of revenue raising powers, ranging from property rates to sales taxes or local bond issues.

In a mature democracy, local councils would be confident and competent enough to raise and spend what they decide is appropriate.

Citizens knowing what they pay and why they pay it and holding their own local representatives to account will constitute a firmer discipline and stronger bulwark against central interference than any statute.

Local authorities already have a record of financial expertise and economic management which outshines that of the central government that so often wishes to lecture them.

Throwing away the crutch of central government will be a frightening as well as an exciting challenge. However, devoted public service has always characterised local councillors of all parties, and they will respond to their liberty.

Let local people decide on their spending, their services, on their electoral system or the use of direct democracy.

After the high tide of localism, do we watch its steady default back to Whitehall or do we have the vision, the will and the audacity to create our own independence?

Best wishes,



Graham Allen MP



What leading councillors say

Cllr Gary Porter, Leader, LGA Conservative Group

The recently enacted Localism Act gives effect to the Government's ambitions to decentralise power away from Whitehall and down to local councils, communities and individuals in order that they can act on local priorities.

The Act covers a whole range of key policy areas, including major housing and planning reforms. However, within the context of a discussion on 'Independent Local Government' it is particularly appropriate to note the provision for a 'power of general competence.'

This is something that the LGA has long argued for and it essentially gives councils the same broad powers as an individual to do anything unless it is prohibited by statute. In doing so I believe that Parliament signalled its intention to give councils the freedom to be creative and entrepreneurial, acting directly on behalf of their communities and in their own financial interest without the concern that they are acting beyond their legal powers, or *ultra vires*.

However, notwithstanding the very welcome shift that the Localism Act brings about in the relationship between central and local government it remains a fact that local government in this country is exceptional in having no standing or protection embedded in a codified constitution or document.

Legally, our system of local government could be abolished completely at any time by a Government piloting through Parliament a Local Government Abolition Bill.

Of course, nobody is suggesting that this is going to happen but the fact that such a move remains legally possible does at least serve to highlight the constitutional weakness of local government within our system of governance.

As such, I believe that the work of the Political and Constitutional Reform Committee and the Local Government Association around Independent Local Government provides a very useful opportunity to thoroughly examine the relationship between central and local government and I look forward to contributing to the discussions that will take place over the coming months.

Cllr David Sparks OBE, Leader, LGA Labour Group

We are unique in the Western world for even considering the need to debate whether localism should be formally acknowledged – in the US and across Europe devolved government is the norm. In fact, during the course of our own history, the concept of 'shires' and emerging urban areas governing themselves is as much, if not a greater, part of the foundation of our democracy as Parliament.

It is only relatively recently that the status of local government has diminished – financial reforms of the 1980s significantly reduced the autonomy of local authorities and consolidated the power of central government. Local government has never really recovered from this and is today viewed by the centre as a junior, administrative partner to be commanded and patronised. The inevitability of bureaucracy is a feature of all centralised states, producing rules and regulations that are self-perpetuating and reinforcing. That local government must break free from this strangle-hold is self-evident. There is a crisis of legitimacy in our present democracy – too many people view Westminster and Whitehall as controlled by distant elites who serve their own interests. This democratic deficit can be addressed by creating strong, accountable local governance that by definition will be responsive to the needs of communities in the way services are delivered.

Only a new constitutional settlement will ensure that devolution of responsibility to local government allows for local variation within a wider national framework of minimum standards. People need clarity about what they can expect from which tier of government, in order to hold their elected representatives to account effectively.

This issue will increasingly be thrown into sharp focus as Scotland debates its own independence. Combined with increasing financial pressures, this will inevitably open questions about governance south of the border. Greater formal devolution to English local authorities in the form of strong, independent local government holds a powerful answer, and one which we must pursue vigorously.

Cllr Gerald Vernon-Jackson, Leader, LGA Liberal Democrat Group

Passport to...where exactly?

It is now over 60 years since the classic Ealing comedy “Passport to Pimlico” was released. In it, local residents declare their area to be an independent state complete with border controls, sending Whitehall into a state of consternation.

Fast forward to the real world, post the Localism Act 2011, and what is changing?

The government is taking some steps towards freeing local councils and communities, such as reform of business rates and neighbourhood plans. But there are still many other areas where Whitehall needs to take a step back.

Take housing for instance. In Portsmouth, we have been building council housing for the first time in decades. But the government are looking afresh at their right to buy policies.

They are looking at the level of discount that councils should give tenants who want to exercise their right to buy their own home. But has anyone in DCLG not stopped to think the obvious – why are we telling councils how to do this at all?

And the recent announcement from the Secretary of State for Communities and Local Government over £250 million for weekly collections of bins and organic waste shows that Whitehall still hasn't learnt to let go of the purse strings when it comes to one of the most basic functions of local government – emptying the bins.

Then there is the need to protect a genuinely diverse range of shops and services in our high streets. A simple change in the law so councils can say “no” to yet another supermarket or betting shop would mean real local control. Will the law be strengthened to allow this?

So, we now have encouragement to travel. But who will be on duty at the border control post? If a Whitehall stamp is on the passports then how many will really want to make the journey?

Cllr Marianne Overton, Leader, LGA Independent Group

The government has made a clear intention of the move towards localism so that decisions on public money are taken locally, at levels closer to the people and thus increase accountability at the ballot box. However, public organisations have been combining into bigger units in order to gain economies of scale. Thus making localism happen at the same time as reducing funds is a tough call.

Added to this the need for services, either commissioned or provided by local government, continue to escalate as we have more vulnerable people and rising unemployment.

Hastening the trend of local government towards standing more “on its own two feet”, would mean gaining substantial resources locally, which is proving difficult in the current economic climate.

There is also the natural inclination for some national politicians to make statements of policy which local government will be expected to implement. There is some centralised commissioning, in the name of efficiency, but never-the-less stepping away from local influence. Thus we see a conflict of approach between the desire to let local councils run their own show with their own resources, yet to submit to sometimes rather sudden edicts.

Hence it is exactly the right time to be considering the relationship between local and national government. Local councillors do have a democratic mandate and need to be able to use it to really influence the things that matter in their locality. It is a great time to create a ‘Magna Carta’. I hope the public will rise up to call for a proper influence on local government and for that influence to be worth having.

Moving towards more local powers, secured in a simple formal document will need debate to gain support. I look forward to hearing your voices!



What national politicians say

James Morris MP

The government has made much progress in driving forwards its localism agenda. The Localism Bill has now received Royal Assent and provides local government and local communities with additional powers to shape their local area whether through the General Power of Competence or in such measures as the community right to challenge.

However significant barriers remain to achieving a genuine decentralisation of power in Britain. Central government still exerts its power through bureaucratic inertia. Some government departments are not really interested in decentralising power and view local government with suspicion. The experiment with community budgets has shown how difficult it is for Whitehall to work with local government and local communities to pool resources and budgets.

So despite the success of the government so far in pushing localism to the heart of its domestic agenda more needs to be done to drive this agenda forward. The government's constitutional reform agenda might present an opportunity. The government is already proposing Direct Elected Mayors for Britain's major cities and is proposing major reforms of the House of Lords. The time could, therefore, be ripe for the relationship of central and local government do be put on a formal codified footing.

For too long local government has been seen a merely the delivery arm of central government and this needs to change.

The codification of the relationship would allow local government to be set free in a way which would lock in localism into the heart of Britain's governing philosophy. It would help overcome the profound cultural resistance which exists in central government and place the idea of a truly decentralised system of government on a constitutional basis. Up to now the idea has been one of interest only to academics but now is the right time for the debate to enter the mainstream.

Clive Betts MP

The Communities and Local Government Select Committee has produced two reports on the balance of power between central and local government and on localism. Unsurprisingly we found that Britain was one of the most centralised countries in Western Europe.

To develop a democracy where localities and communities have more say over their own affairs; where different needs are met with different solutions; and where new ideas and original thinking can flourish and then be taken up elsewhere, the powers and status of local government have to be enhanced.

There is a need for councils to control more of their budget, for a change to the culture among politicians, the public and the media, all of whom demand or expect Secretaries of State to be held accountable for everything. Ultimately we need to determine the constitutional relationship between Parliament, the Executive and elected councils.

One of the proposals to achieve consistency and ensure localist approaches was a joint committee of both Houses of Parliament to scrutinise all legislation and government proposals for localising or centralising intent. The Political and Constitutional Reform Select Committee has now agreed to develop a code setting out central/local government relationships which a joint committee could use as a benchmark to monitor against.

I would like to go further. The changes in Scotland and Wales already mean that decentralisation will not be symmetrical in the UK. A menu of optional powers and responsibilities could therefore be drawn up, along with the code, which local communities could choose from. This would be a system of requested rather than earned autonomy, the only requirement being that agreement was secured from voters in a referendum.

Such a vote would lock in devolution in a way which central government could always theoretically seek to reverse, but which in practice as with the Scottish Parliament or Welsh Assembly powers no significant change could come about without a further vote from those affected. This would be real local democracy with people locally deciding what powers their elected representatives would exercise on their behalf.

Stephen Williams MP

In 1993 I was elected to Avon County Council for Cabot ward, which covers the city centre of Bristol. I proposed a motion to full council, calling for the UK to sign the European Charter on Local Self Government. The council passed the motion but shortly afterwards John Major's government abolished the council.

This tale from the start of my time in politics tells you all you need to know about the relationship between central and local government in Britain. The very existence of elected councils is at the indulgence of Westminster. As the MP for Bristol West I have seen both sides of the relationship.

The Coalition Government is giving councils in England a pretty big shake up. The Localism Act 2011 starts off well, with a general power of competence for councils. But power can't really be exercised without control of finances or the ability to decide how to make decisions.

The government is localising business rates. Some transport budgets will be devolved. But only MPs get to approve the Local Government Finance Settlement for 2012/13, with its pages of tables and complicated underlying formulae. We are obliging Bristol to hold a referendum on a city mayor. This is still very much a top down process.

The public are well aware of this imbalance of power. Like all MPs, my post bag bulges with complaints about buses, housing transfers, planning applications and school places – matters really for their local councillor. But the public know where the power actually lies.

The unwritten British Constitution is no help, either to the public or their politicians. There is no map of the relationships that exist nor is there a guide to powers and responsibilities. Local councils would have much to gain from a codification of their relationship to Westminster. But the real winners would be the public, strengthening their ability to hold their MPs and their councillors to account.

The view from Europe

It is helpful to consider this debate in the context of how relationships between central and local government have been delineated elsewhere in Europe.

The Council of Europe Charter on Local Self Government was first agreed in 1985 and now has 43 signatories. The UK government signed the convention unconditionally in 1998, in a move that was widely welcomed by commentators within and beyond local government, including, for example, by former Prime Minister Sir Edward Heath.

Among the commitments the UK government made in signing up to the convention were:

- to reflect the principle of local self-government in legislation;
- to generally allocate public responsibilities to those public authorities which are closest to the citizen;
- to give local authorities the ability to regulate and manage “a substantial share of public affairs” autonomously;
- to allow local authorities to determine the rate of local taxes, and to have a diversified and buoyant resource base that keeps pace with the cost of carrying out their responsibilities;
- to limit central supervision of councils to a proportionate extent.

A glance at the constitutions of other European countries shows that these provisions are generally reflected in ways that are more clearly anchored in the Charter than they are in the UK. France, Germany, Italy, Spain and Sweden, for example, set out the principle of local self-government in their constitutions. Italy’s constitution goes so far as to attribute all the functions of government to local councils unless they are explicitly attributed elsewhere for a limited number of reasons.

A number of reviews of the European Charter have concluded that the UK has not fully implemented its provisions, especially those on finance which have generally been held to be inconsistent with either the capping regime or the low proportion of locally-raised revenue in the UK system. A 2006 Council of Europe report assessed the extent to which control or supervision by central authorities is increasing, decreasing, a mixed picture or static. Of the 28 countries assessed, the UK was ranked as one of seven countries, including Azerbaijan, where central control or supervision is increasing.

The French Senate

There is a system of indirect election of Senators in France's second house, the Senate. The 1958 Constitution entrusts it to represent local bodies of the Republic -municipalities, départements, regions and overseas territories and citizens. They are elected by an Electoral College numbering some 150,000 members. Of these, 142,000 (around 95 per cent) represent municipal councils, 4,000 represent department councils, 1,870 regional councils, and 577 being members of the lower house.

Currently there are 348 senators. Since they are elected by councillors, they also become the mouthpiece of these local authorities. Many mayors are members of the Senate, for example Bertrand Delanoë, mayor of Paris since 2001, also served on the French Senate as secretary of the Committee on Foreign Affairs and Defence. Senators are elected in halves every three years for a six-year mandate.

Source: the full text of the charter can be found at <http://tinyurl.com/coecharter>



How to have your say:

consultation on a draft code for central and local government

Graham Allen MP, Chair of the Political and Constitutional Reform Select Committee

Is local government capable of being independent? Parliament's Political and Constitutional Reform Select Committee, which I Chair, has been inquiring into the relationship between local and central government. Lots of the people we've spoken to over the last year have raised concern that over many decades, centralisation has eroded local government autonomy, leaving people with less say in how their communities are run. Most western democracies enshrine and entrench the rights of local government in their constitutions, but the UK's unwritten Constitution provides no such protection for councils and councillors.

We asked an academic witness, Professor Colin Copus of de Montfort University, to draw up an illustrative draft code governing the relationship between central government and local authorities in England. The resulting draft code, after discussion by my all party Committee, and with amendments suggested by other commentators, has been issued for consultation, and is included in this supplement.

Central and local government would benefit from a code that clearly set out rights and responsibilities. The code we have issued for consultation is a starting point. I would urge everyone to seize this opportunity to get involved in this consultation. We want to hear your views on the code, is it needed, what's good, what specifically should be changed, and how? I'm delighted that Sir Merrick and the LGA have joined us in exploring this new vision for the future, and the LGA and I will be campaigning around the country on this over the next few months.

The Committee itself has deliberately not taken a view on the draft code, but is making it available for consultation to see whether there is any public appetite for codifying the relationship between central and local government. The long time I have given to send in your views will enable you to raise this with your own organisations and set up your own debates.

Please send the Committee your views to pcrc@parliament.uk by Friday 5 October 2012.



Political and Constitutional
Reform Committee

Illustrative draft code for central and local government

Preamble

Through this code Parliament recognises free and independent local councils in England accountable to local citizens. These include unitary, county, district, metropolitan district, and London borough councils. They shall enjoy independence in both powers and finance and be entitled to do all that is required at local level, within the law, to secure and improve the well-being of their citizens and communities. Parliament makes plain that within their spheres of competence, local councils have co-equal not subordinate-status to central government and that their rights and duties shall enjoy equal protection in law.

Article One

1. The fundamental rights and duties of local councils herein are defined protected and entrenched. They may only be changed by the consent of Parliament as authorised firstly by an elected joint committee of both Houses, and then by the approval of both Houses of Parliament as prescribed in the amendment to the 1911 Parliament Act [enabling the second chamber to reject changes to the fundamental freedoms of local governance].

2. The code represents a consensual agreement between central government and local councils. Councils, local government representative bodies, all ministers, government departments, MPs, civil servants, courts of law and all public

agencies interacting with local government are bound by the articles within this agreement and will act in accordance with these articles.

3. All of the provisions of the code are subject to the law. The individual rights of citizens are not affected by this code and citizens may seek judicial review against any injustice or infringement of rights as now. Councils and government can seek legal adjudication should it be felt that a council, councils or central government are not acting in accordance with the code.

Article Two: Local autonomy and local self-government

1. Councils' accountability is to local citizens.

2. Councils shall operate within the rule of law and with regard and respect to human rights legislation.

3. Councils are autonomous, democratically elected bodies which independently decide upon, administer and regulate the public affairs of and deal with all matters of concern within their boundaries which are not dealt with or attended to by other governmental bodies.

4. Councils operate within a framework of an irrevocable general power of competence with a full legal personality. Powers rest with councils, acting in accordance with the national legal framework, to pass local legislation on matters affecting the affairs and interests of their area.

Article Three: Scope of local government

1. The powers and responsibilities of councils shall after due consultation be prescribed by statute subject to safeguards in Article 1.1.
2. Councils have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence or assigned to any other authority or body.
3. Councils are to be consulted, early within the policy and decision-making processes, by the Government if it is proposing reform, which will affect any council and its communities.

Article Four: Inter-governmental activities

1. Central and local government acting jointly shall be allowed to create inspection regimes to set and maintain service standards.

Article Five: Territorial autonomy

1. The boundaries of local authorities are an issue for councils and their citizens. Any proposal for boundary changes must be conducted with the involvement of the Local Government Boundary Commission for England and within the law and subject to a local referendum in the area concerned.

Article Six: Council governmental systems

1. Local citizens through their councils have autonomy to choose their internal political decision-making systems (including, whether to adopt a directly elected mayor and cabinet, cabinet and leader, committee system, or some other political decisionmaking arrangement). Changes to political decision-making systems must first be subject to a binding local referendum.

2. Councils must review their political decision-making system every eight years and produce a publicly available 'Political Governance' report setting out the effectiveness of the system and if appropriate considering alternative approaches.
3. Councils or local citizens can adopt any electoral system for use in council elections, after consultation and a binding referendum.

Article Seven: Local government financial integrity

1. Local councils shall to the greatest possible extent be financially independent of central government. Equalisation will be conducted by an independent Equalisation Board on an annual basis.
2. Local citizens through their councils may raise additional sources of income in their localities in any way they wish [subject to the rule of law and human rights legislation] if they gain the consent of their electorates through a binding referendum or local propositions.
3. Local government shall be given a guaranteed annual share of the yield of income tax. This share shall be increased as and when service provision responsibilities are transferred from central to local government so that councils are always able to benefit from the growth in buoyant tax resources available to the state as a whole.
4. The process of equalisation, ensuring fairness as between local councils, shall be undertaken by a body independent of central government.

5. Councils shall be able to raise any loans which their credit rating allows and will be exclusively responsible for repayment. For the purpose of borrowing for capital investment, councils shall have access to the national capital market at their own discretion. All councils shall operate an annual balanced budget so that all outgoings, including interest repayments on borrowings, shall not exceed income.

6. Central government will not cap, or in any way limit, councils' taxation powers. Central government must consult with councils on how it will distribute and allocate government funding when using local government as an agent to pursue its own policy objectives. Government funding to councils, in pursuit of central government policy objectives is to be based on a rolling three year budget cycle to coincide with the comprehensive spending review process. Once the three year medium term budget planning process has been agreed and announced no significant changes in funding levels will be made by central government.

7. The same financial transparency standards will apply to local and central government, alike.

Article Eight: Councils' right and duty to co-operate and associate

1. Councils as independent legal entities are entitled, in any undertaking, to co-operate in any way with other councils, public and private bodies, any voluntary, charity or third-sector organisation, or with any financial, commercial or private enterprise.

2. Where more than one Council is responsible for services in a geographic area, these Councils shall co-operate to maximise the well-being of those within that area.

3. Councils are able to belong to any association for the protection and promotion of their common interests and to belong to an international association of any sort. Councils are entitled to co-operate with councils in other countries for any matter.

Article Nine: Local referendum

1. The administration of any local referendum process shall follow standards set by the Electoral Commission, and those responsible for the conduct of any such referendum shall be accountable to the Electoral Commission for their performance against those standards.

Article Ten: Legal protection of local government

1. Councils have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for the power of general competence and any other principles of local self-government or individual rights enshrined in law or contained within the code or evident in Human Rights legislation.

The draft code is available online at tinyurl.com/draftcode (PDF)

For more information on independent local government please contact:

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Useful websites

www.local.gov.uk/parliamentary-watch

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