Overview

The LGA and the House of Commons Political and Constitutional Reform Select Committee are working in partnership to lead a debate on the benefits of codifying the relationship between central and local government. The code would guarantee councils' legal and financial independence and autonomy to serve their citizens. The Committee's Chair, Graham Allen MP, has launched a draft code for consultation and is encouraging council groups and other organisations to hold discussions on the idea.

There is much for Councils to welcome in the document, notably the recognition of councils as equal partners with central government, the establishment of an irrevocable legal status for councils and the freedom to raise and spend revenue in any legal ways open to individuals or companies, subject to local people's consent.

Briefing in full

On the 01 of November 2011, the Political and Constitutional Reform Select Committee (PCRSC) announced that it would be undertaking an enquiry into possibility of codifying the relationship between central and local government. The Committee subsequently sought written evidence from an academic witness in the form of an illustrative draft code. Feedback from stakeholders was sought and comments incorporated.

On the 09 February 2012, the PCRSC launched a public consultation. The consultation is scheduled to end on 05 October 2012. The Committee has not taken a formal view of the draft code. Rather it is looking to gauge the general appetite for its introduction.

The aim of the code is to introduce a framework and series of mechanisms that will establish a more equal relationship between central and local government, enabling it to operate as a co-equal with central government and to provide a degree of protection for local government and its citizens from centralisation and over-regulation. The principles of codification – 9 in total - and the draft code provide the basis for forging a new relationship between central and local government and a framework within which this can be explored.
The Principles

1. Central government must consult on any new policy or legislative proposal that will affect local government through a specifically created forum which will also have responsibility for seeing that a code is entrenched so that its provisions cannot be unilaterally repealed by central government.
2. Central government cannot change local authority boundaries without consultation.
3. Local authorities can determine their own electoral system through local referenda.
4. The financial systems used by local authorities to raise revenue should be diverse and buoyant to enable them to raise money to achieve local priorities that meet local need.
5. Central and local government should design a financial equalisation procedure to correct unequal financial distribution across councils.
6. Local authorities should be able to determine local rates of tax and be answerable to communities for rates, not to central government.
7. The responsibilities of central and local government should be clearly defined in statute.
8. Central government should retain the right to require local government to implement national standards in the delivery of national policy but local government should determine how this is done.
9. All provisions of a code should be subject to law.

The Code

Article 1 Legal Status
The fundamental rights and duties of local councils are defined, protected and entrenched and can only be changed through an act of Parliament. The code is representative of consensual agreement amongst stakeholders who are bound by the code. Its provisions are subject to law and do not affect individual citizens. Local authorities and central government can seek legal adjudication if they believe the code has been breached.

Article 2 Local Autonomy and Self Government
Councils are autonomous, democratic, independent and accountable to citizens. They operate within a framework of general power of competence with powers to pass local legislation on matters affecting the affairs and interests of the population in their area.

Article 3 Scope of Local Government
The powers of local government should, following consultation, be prescribe in statute. Local government will have full discretion to exercise its powers wherever they are not excluded from doing so by
law. Central government must consult councils – at an early stage – on any policy change that will affect them.

Article 4  Intergovernmental Activities
Central and local government should work in partnership to devise inspection regimes that raise standards.

Article 5  Territorial Autonomy
Any changes to boundaries must involve the Boundary Commission, be within the law and be subject to a local referendum.

Article 6  Council Governmental Systems
Local citizens, through their councils, have the autonomy to choose decision making processes which should be subject to a binding referendum. Processes must be reviewed every eight years. Any electoral system can be adopted by local citizens following consultation and a referendum.

Article 7  Local Government and Financial Integrity
As far as possible, councils will be financially independent and able to raise income in any way they wish, provided it is within the law, and subject to a referendum. Local government will also receive a guaranteed share of income tax which will be proportionate to the level of services for which they are responsible. Equalisation to ensure fairness in resource allocation across councils will be undertaken by an independent body. Councils will be able to raise loans in accordance with their credit rating. Central government will not cap or limit council tax powers and the same financial transparency will apply to both central and local government alike.

Article 8  Councils’ Right and Duty to Co-operate and Associate
Councils can cooperate with any other body, including bodies in other countries and, where appropriate, councils delivering services in one area will cooperate to maximise wellbeing and value for money. Councils can belong to any association that protects or promotes its interests.

Article 9  Local Referendum
Local referenda will follow the standards set by the Electoral Commission and councils will be accountable to the Commission.

Article 10  Legal Protection of Local Government
Councils will have the right to seek judicial remedy to secure its right to freely exercise powers and with respect to the general power of competence.
The Implications of Codification

- The code has the potential to give local people increased freedom to have a greater impact on the decisions that affect their lives.
- It would shift relationships between central and local government from being based on a top down, paternalistic model to being a relationship of negotiation.
- If this relationship were to be codified in statute, it would enhance the constitutional status of local government.
- Central government would be freed from detailed monitoring of local government.
- The cost associated with creating a new settlement between local and central government, including the consultation process, could be prohibitive.
- The success of a code would rely on achieving considerable cultural change across central government ministries who would need to adhere to it in all interactions with local government.
- Mechanisms for dealing with breaches of the code would themselves need to be codified.
- Enhanced freedoms to make local choices would result in the diversification of the quality, type and nature of public services. In order that citizens exercise their increased freedoms, the public and media would need clear and easily accessible information enabling them to understand the impact of devolution of power to a local level upon citizens and the associated new freedoms.
- Genuinely increased localism could stimulate a more active civic culture within communities who will feel they have a greater stake in the future of their area.
- Greater financial freedoms for Councils would clearly have an impact on central government fiscal policy.

Comment

Successfully codifying inter-governmental relationships in order to shift the balance of power in favour of local government relies, first and foremost, on the willingness of the centre to permanently devolve political and governmental power to councils. As is pointed out in the code, the Localism Bill’s ‘general power of competence’ nudges in the direction of autonomy’. However, ‘the Bill does contain around 140 reserve powers for the Secretary of State, which indicates that local government autonomy will not be a direct outcome of the Bill alone’. This not only points to the need for a code, but also to the significant barriers that the introduction of one would meet, largely in the form of a reluctance to cede power amongst politicians and Whitehall officials.

As Majeed Neky, an Associate at the LGiU, points out in a recent blog, to challenge this barrier, ‘normal local people outside the circle of local government geekery will need to be added to the debate, in creative ways and with a message that is immediately relevant across range of concerns’. Only through doing this will the
momentum and pressure required in Westminster to bring the code to fruition be
generated. The code is clearly in the interests of citizens and of local government; it
would deliver Localism proper. Councils should bring this campaign to life by
debating and discussing the code with local citizens and opinion formers and
responding to the PCRSC’s consultation, all the time making clear that the outcome
would be a stronger, more vibrant and empowered citizenry coupled with a less
bureaucratic state with services that can truly respond to local need.

Related briefings

- CLG select committee report on localism - 20/06/2011
- General Power of Competence – 16/02/2011

For further information, please visit www.lgiu.org.uk or email info@lgiu.org.uk