Prospects for Codifying the Relationship between Central and Local Government: final report

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Summary

- This briefing covers the final report of the Political and Constitutional Reform Committee following its inquiry into the prospects of codifying the relationship between central and local government.
- The briefing summarises the content of the report including the draft code, the principles underpinning the code and pertinent points arising from the Committee's consultation.
- This briefing will be of interest to local government officers, elected members and those with an interest in localism, democracy and devolution.

Briefing in full

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

Between February and November 2012, the PCRSC launched a public consultation to enable councils and interested parties to undertake proper scrutiny of the code, provide feedback and gauge the general appetite for its introduction. 99 responses were received from councils, elected members, officers, academics and think tanks. Alongside consultation, awareness raising activity was undertaken to stimulate debate around the prospect of a more independent local government. Following consultation, the draft code has been revised and the principles underpinning it honed. In particular, the revision has taken account of key concerns raised by respondents relating to financial equalisation, use of referendums, and the application of the code to town and parish councils. All of this is detailed in the final report which was published on 29 January 2013.

The Rationale for codification: next steps beyond localism
The report explains that the aim of the code would be to introduce a framework and series of mechanisms that would establish a more equal relationship between central and local government. It would enable councils to operate as co-equals with central government and provide a degree of protection for local government and its citizens from centralisation and over-regulation. The principles of codification – nine in total – and the code provide the basis for forging a new relationship between central and local government and a framework within which this can be explored.

Currently there are some 1,293 duties imposed on local government by the centre. Local government, therefore, is not independent. The intention is that the code would supersede these and be enshrined in statute. The report highlights the fact that though there appears to be political commitment to localism, most notably in the introduction of the general power of competence in the Localism Act 2011, no existing regulation has been repealed meaning that ‘the ability of local government to act under the general power is constrained. Therefore, the committee argue, the Localism act ‘only opens the door to greater powers for local government’ whilst the code provides a ‘useful way to take this agenda forward’.

In building the rationale for the introduction of a code, the report highlights the failure of previous non-statutory attempts which have been unsuccessful. For example, the 2007 Central-Local Concordat was introduced to ‘foster new partnerships between central and local government while setting out a framework of rights and responsibilities that each partner should uphold’. This soon fell into disuse because it ‘had no legal force and was not enforced by statute’.

The report sets out how much of the evidence received by the Committee points to the fact that a more balanced relationship would need to come hand in hand with greater financial autonomy. Recognition is given to recent steps to achieve this – notably the Local Government Finance Act which will enable the retention of a proportion of business rates for councils and a reduction in ring-fences around local government grants. However, ‘both measures fall short of giving councils real financial autonomy’. The Committee advocates greater financial freedoms if localism proper is to be achieved.

Significantly, the report highlights that ‘English local government lacks some of the most basic constitutional protections that are available to some of its counterparts in a number of other mature European democracies’ with central government maintaining complete control of the ‘shape, size, structure, powers, responsibilities and functions of English local government’. Conversely, in federal systems, for example, ‘the basic rules of the game are codified and the relationships between the levels of government can be balanced and set out’. A code would allow England to ‘join this democratic family’.

**The content of the code**
The report clearly states that the code is offered by the Committee as a tool for further debate and not ‘as the last word’.

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.

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POLICY BRIEFING

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.

Amendments to the code

Consultation highlighted areas for further development which were acted on when the code was redrafted.

Town and parish councils – comments highlighted the lack of reference to town and parish councils causing some to conclude that the code was not intended to cover these. The Committee’s response is clear that the code is intended to cover all levels of council in England.

Use of referendums – some respondents highlighted concerns that referendums to change decision making processes would be costly and could cause voter fatigue. Consequently, ‘references to referendums have largely been removed’ from the revised version.

A new relationship

The report argues that the relationship between central government and local government is currently unacceptably unbalanced. Indeed, it points out ‘some 83% of the population in the UK reside in England’ yet ‘whilst other parts of the Union have statutory devolution, people in England do not’. Therefore, if local government were given enhanced powers, enforced by statute, ‘this could go some way towards ensuring that local people have more say over policies that affect their lives’.

The consultation and evidence received pointed clearly towards the existence of an appetite for the introduction of a code. Indeed, the large and ongoing cuts to council budgets will require real and quick innovation from councils for which they will require real and stable freedom to act independently.

Financing greater local autonomy

The report states that ‘local government could have all the flowery declarations about its liberties, but without proper finance they will not be worth the paper they are written on’. More central government funding is not being proposed here. Rather, ring fences should be removed completely and local government should get to keep its fair share of income tax. In exploring financial autonomy, the devolved...
POLICY BRIEFING

governments are referenced as examples of how financial autonomy might be devolved to local government.

The report also advocates councils having the ability to raise bonds off the back of strong credit ratings to fund infrastructure projects. Thus residents would literally have a financial stake in the work being undertaken by the council representing them. This recommendation garnered clear support from Tony Travers, Local Government expert and Director of LSE London who described it as ‘an extremely good solution’.

The report draws helpful comparisons between England and other OECD countries in terms of how much of local government’s revenue is raised through taxation – 12.7% - which is far lower than comparable countries, making English councils highly dependent upon central government funding. If local government had access to a guaranteed share of national income tax combined with the ability to raise additional taxes in agreement with the electorate, the financial position of councils would be better safeguarded, particularly in times of austerity such as are currently being experienced.

A degree of permanence

A number of the Committee’s witnesses stressed the view that the only way of ensuring the code had weight and performed its duty was to entrench it in legislation. Indeed, ‘without entrenchment the Whitehall default position of micromanagement would reassert itself’.

A number of submissions highlighted the need for a ‘double lock’ to ensure a code could not readily be repealed. In relation to this, the Committee’s proposal is that the Parliament Act 1911 be amended to ensure that ‘the consent of the Lords was always required for any Bills that altered the 'powers, functions or structure of local government'. As such the second chamber would have to authorise any change that would impact on the fundamental freedom of local government.

Next steps

‘Even with the noblest of intentions, all previous attempts to rebalance the relationship between central and local government have had, at best, limited effect’. The Committee assert that this time, with ‘commitment and goodwill’ the outcome can be different.

As is repeated throughout the report, the Committee’s draft code is intended to begin and not end a conversation about rebalancing the relationship and to move gradually closer to a consensually agreed equal relationship. A code would have three clear benefits – 1) ‘it could help set out exactly where powers do, and should lie thereby increasing transparency for electors 2) it could help redress the over-centralisation of England 3) it could provide an economic boost that the country sorely needs’.

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However, many respondents highlighted concern that even if a code were to be enshrined in statute, a fundamental shift in culture and behaviour towards local government would be required to enable a balanced relationship to be achieved.

For any of this to happen, the Committee is clear that further dialogue is essential. To achieve this, it proposes a number of activities:

- A letter to the Leaders of all political parties with a request that the code be given consideration in the policy process
- Develop a draft bill based upon the code to enable all to understand what legislation could look like
- Urge all parties to consider the long-term constitutional future of local government in their policies
- Host a conference for Government, Parliament and local government to discuss the future of a code

Conclusions and recommendations

1. The commitment of all political parties to localism is welcomed.
2. The constitutional position of local government is evolving, as evidenced in City Deals.
3. The Committee has listened to all points raised throughout the consultation and acted on these. However, the code is draft and not a finished piece.
4. The Committee wishes the Government to use the draft code to begin a national conversation on the constitutional status of local government.
5. In relation to finance, the Committee has maintained a commitment to simplicity and has therefore made no proposals to change income tax rates, the method of income tax collection or the equalisation formula. Rather, it urges ‘tax transparency’.
6. Tax transparency would enable residents to see what their money is spent on and hold councils to account for this.
7. The Government should consider both how it can take financial devolution further and the merits of freeing councils to raise additional revenue.
8. Civil servants applying the equalisation formula should be answerable to a joint board of representatives of central and local government.
9. The Government should examine the possibility of a stronger constitutional status for local government through an entrenched statutory code.
10. Previous attempts to equalise the relationship between central and local government have failed but this time, things can be different.
11. A code could be beneficial to all tiers of government.
12. The code may seem radical but in other parts of Europe, local government has enjoyed constitutional protection for decades.
13. The Committee is not putting forward a water tight answer in publishing the draft code but rather aims to begin a debate about codification.
14. The Committee will write to all party leaders asking them to consider the code in the policy process.
15. Engagement that has been undertaken with local government so far will be extended to central government.
16. A draft Bill will be created.
17. A conference will be hosted on the issue.
18. The Committee hopes that the positive work undertaken throughout the inquiry will pave the way forward in relation to this important debate.

Comment

The LGiU welcomes the Committee’s clear and decisive commitment to the introduction of a code to rebalance and equalise the relationship between local and central government. Graham Allen MP, Chair of the Political and Constitutional Reform Committee, is right in saying that ‘local government has had to dance to the tune of central government for far too long’ – often this is at the expense of local democracy which is weakened by the lopsided relationship.

Clearly there is a growing political appetite for localism – evidence for this can be found in the Localism Act, the Local Government Finance Act and the introduction of City Deals. And yet, the case can easily be made that a genuine commitment to give local government constitutional protection is noticeably absent. As the Committee point out, the Localism Act contains upwards of 100 reserve powers for the Secretary of State. One does not need to think hard to work out where the power really lies.

Undoubtedly culture will be the biggest barrier to the progression of this important agenda – a concern which comes across strongly in the Committee’s detailing of ‘next steps’. So, in building momentum behind the case for change, lobbying should focus upon winning the hearts and minds of those at the centre whilst drumming up sufficient support at local level for a code to be put before the House. Without both of these crucial elements, this report could end up sharing a shelf with the 2007 Central-Local Concordat. This would be a regrettable outcome for local government, local democracy and local communities.

For more information about this, or any other LGiU member briefing, please contact Janet Sillett, Briefings Manager, on janet.sillett@lgiu.org.uk