

HOUSE OF LORDS
HOUSE OF COMMONS
JOINT COMMITTEE ON DRAFT CONSTITUTIONAL RENEWAL BILL

Memorandum by the Local Government Association

A New Politics: Localising the Constitution

1. Introduction

1.1 The government and the LGA have committed to a new relationship which moves closer to recognising that central and local government are equal partners in delivering services for people - through the central-local concordat.

2. Summary

2.1 The LGA believes that local government should feature more strongly in the bill as it presents an opportunity to reconnect people and political processes, and to formalise local government's place in the constitution, building upon the central-local concordat.

2.2 The LGA would like to see the points below addressed in the draft Constitutional Renewal Bill:

v A statutory duty to ask government departments and agencies at all levels periodically to review their functions and ensure that power is exercised at the lowest effective and practical level;

v Establish a powerful Parliamentary committee charged with pre-scrutinising legislative proposals with local government implications and promote the deregulation of councils and the reduction of consent regimes;

- v Allow councils to introduce Public General Acts to Parliament;
- v The Audit Commission, like the NAO, to become directly accountable to parliament; and
- v The right of councils to nominate a proportion of members to local public bodies

How would councils like to see the bill improved?

3. Local government must be at the heart of constitutional renewal

3.1 There is a need to reconnect people and political processes. Our constitution - written or unwritten - is our society's definitive statement of the relationship between people and political processes. Our vision is democratic. Political structures exist in order to make real the insight that the nation is a community, owning in common its collective assets and mandating collective effort through the organs of the state to achieve justice and equity.

3.2 It follows from this that the constitution is not simply about roles and responsibilities among the central bodies of the state. Implicitly or explicitly, the constitution gives an account of how individuals, families and communities relate to the totality of collective action. So local government must be at the heart of the constitutional settlement and the draft Constitutional Renewal Bill. If the broad challenge is to restore vitality and trust to our democracy, local government is central to it. The bill is also an opportunity to formalise local government's place in the constitution and embody in the core constitution the devolutionary direction of travel that we have been pleased to see Ministers advocating.

3.3 We are looking for a draft Constitutional Renewal Bill that reflects this and believe there is a strong case for legislation in five areas.

4. Legislative embodiment of the principle of subsidiarity.

4.1 There is a cross party consensus about what can be achieved through centralism and recognition that the solutions to some of society's greatest challenges will only be found locally, such as gang culture, drug abuse, obesity and long-term unemployment.

4.2 Clause 4 of the central-local concordat sets out a number of shared objectives between central and local government and states that "in delivering these objectives, there should be a presumption that powers are best exercised at the lowest effective and practical level." We suggest this could best be achieved by including a subsidiarity clause in the draft Constitutional Renewal Bill that enshrines into law what central and local government have already agreed to in the concordat, and which is embedded on the European Charter of Local self-Government to which the UK subscribed in 1997.

4.3 The Duty to Involve, set out in the Local Government and Public Involvement in Health Act 2007, may provide a useful model. A subsidiarity clause could ask government at all levels to review their functions and ensure that power is exercised at the lowest effective and practical level. Exempt from this would be matters where we recognise central government, acting through Parliament, has the responsibility and democratic mandate to act in accordance with the national interest, including national economic policy, and national taxation.

4.4 But the presumption would be that decisions should be taken as closely as possible to citizens because this leads to better services for local people and more efficient use of resources. Local decision-making and local innovation are vital to making things better for citizens and restoring trust in public services.

5. Establish a powerful Parliamentary committee charged with pre-scrutinising legislative proposals with local government implications and promote the deregulation of councils and the reduction of consent regimes

5.1 Too often, Parliament legislates on the basis of central government's proposals, to impose new tasks on local councils which have been inadequately thought through for their cost or their ease of implementation. Sometimes the result is unanticipated cost on the council tax payer. Sometimes it is chaotic implementation. In many cases - as with the 2003 Licensing Act - it is both. In either case, local communities are left disillusioned as Ministers' policy commitments fail to materialise in line with the vision they have set out. This contributes to disengagement with the political process and

low citizen satisfaction. Better scrutiny would help to create a more consensual and realistic political climate, as well as improving actual policy delivery in communities.

5.2 So we recommend that Parliament should set up a powerful committee charged with pre-scrutinising legislative proposals with local government implications and oversight of the deregulation of local government and the reduction of consent regimes. Such a committee already exists in the House of Lords to scrutinise "whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny."

6. Allow councils to introduce Public General Acts to Parliament

6.1 The government has a monopoly of control over what Parliament can talk about. Private Members' Bills which the government opposes can be killed by depriving them of time; Local Bills can only apply to a limited geographical area and are prohibitively costly for an individual council to promote.

6.2 So we recommend that Parliament reform the process for initiating Bills and the way Sessional Orders allocate legislative time to allow councils to introduce Public General Acts within their sphere of competence. They would have more chance of passing into law than a Private Members' Bill, and require a less costly and cumbersome process than Local Bills currently do.

6.3 There would be three operational parts to this proposal:

- v Create a new Bill procedure that allows local government acting collectively to promote a Bill intended to create Public General Act (i.e. an ordinary Act of Parliament that applies everywhere, rather than a Local Act that only applies to a single council or group of councils); currently councils can only promote a Local Bill, considered in a cumbersome special committee procedure

- v Equip councils to promote a Bill collectively through a new joint arrangement

- v Change the Sessional Orders that allocate legislative time so that the government takes a smaller share of time, allowing enough time for debate on Bills promoted under the new procedure

6.4 This proposal would allow new legislative ideas to come from communities themselves, not from government with its automatic majority, and on subjects that were not part of the government's programme. Without eroding the authority of the government's mandate in the Commons, it would

restore the perception that Parliament was a place of genuine debate on real issues arising in parts of the country outside the Westminster Village.

7. That the Audit Commission, like the NAO, should become directly accountable to parliament

7.1 The Audit Commission and the NAO are both responsible for ensuring public bodies behave with financial propriety and deliver value for money. It is not obvious why the body charged with assessing value for money and probity should, in the case of central government, be accountable directly to elected representatives, but, in the case of local government, to public officials (which is what Ministers are). Notwithstanding the statutory provision that "The Commission shall not be regarded as acting on behalf of the Crown" (Sch 1, para 2 of the Audit Commission Act 1998), "The Secretary of State may give the Commission directions as to the discharge of its functions and the Commission shall give effect to any such directions" (Sch1, para 3 of the 1998 Act). Over recent years, the Commission's principal role has been to implement an inspection regime that establishes whether councils are implementing the government's service improvement priorities. The National Audit Office, on the other hand, is answerable to Parliament alone and cannot be influenced by Ministers. Its role is to establish whether taxpayers' money is being properly spent for the purposes set out by the elected representatives of the people - not the purposes chosen by Ministers.

7.2 Our proposal makes sense because their functions - making sure money voted by Parliament is properly spent - are the same. It would:

- v establish that all taxpayers' money was subject to the same standard of value-for-money and probity;

- v reestablish that audit and inspection of local government was about value for money and probity rather than also being about compliance with Ministerial policy;

- v demonstrate that taxpayers are equally respected as taxpayers whatever tax they happen to be paying.

7.3 It would require repeal of the 1998 Audit Commission Act and amendment of the 1983 National Audit Act (possibly by simply adding councils and the NHS to Section 7

8. That councils be given the power to nominate a proportion of members serving on local public bodies

8.1 In recent years it would appear that service as a local councillor has increasingly been regarded as a disqualification for appointment to local public bodies like LSCs or PCTS rather than the reverse. The knowledge and experience of local elected members, and their connection with the local community and local authority services should make them more, not less well-equipped to serve on such bodies, though local authorities need to nominate members with relevant skills and the time to devote to such duties, and to offer adequate support.

9. About the LGA

9.1 The Local Government Association is a cross party organisation representing over 400 councils in England and Wales. The LGA exists to promote better local government. We work with and for our member authorities to realise a shared vision of local government that enables local people to shape a distinctive and better future for their locality and its communities. We aim to put local councils at the heart of the drive to improve public services and to work with government to ensure that the policy, legislative and financial context in which they operate, supports

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