

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

*Memorandum by Local Government Information Office*

The LGIU is an authoritative and informed source of comment, information and analysis on a range of local government and public policy issues. A local authority membership-controlled organisation, LGIU members include Labour, Conservative and Liberal Democrat councils. The LGIU shares its expertise with government and campaigns to extend local authority best practice, freedoms and responsibilities.

## SUMMARY

The Committee will consider the balance of power between parliament and government. Although it will focus on a limited number of topics, it has asked for contributions on how the specific proposals in the Bill fit into the wider constitutional context. LGIU believes that part of this wider context is the relationship between central and local government as a broad balancing factor in the constitutional framework.

The original Green Paper, *The Governance of Britain*, included a proposal formalising the central-local relationship in a concordat. This has been agreed behind closed doors between the relevant department of government and the Local Government Association. LGIU believes this concordat should be out in the open and be given constitutional recognition through inclusion in this Bill, and that consideration should be given to a more fundamental recognition of the roles and responsibilities of local government.

We believe that it is not only appropriate but desirable to include a range of provisions that are perceived to have 'constitutional' implications within a Bill such as this. Distinguishing general or underlying principles from the mainstream of legislation will be important in achieving the status, and consequently the protection, that such principles need.

LGIU welcomes the opportunity to submit written evidence to the Committee, and would value the opportunity to expand on the issues we have raised in oral evidence.

## THE WIDER CONSTITUTIONAL CONTEXT

1. In announcing the draft Bill in the Queen's speech, the proposals were described as being "to renew the constitutional settlement and strengthen the relationship between Government, Parliament and the people". The wider constitutional dimensions are recognised in the introduction to the White Paper, *The Governance of Britain - Constitutional Renewal*. Here, the Government has presented four key goals for its constitutional initiatives:

- a. to invigorate our democracy
- b. to clarify the role of Government, both central and local
- c. to rebalance power between Parliament and the Government, and give Parliament more ability to hold the Government to account
- d. to work with the British people to achieve a stronger sense of what it means to be British.

2. Local democracy has a crucial role to play in the relationship between the people and the state. The absence of the local dimension from the draft Bill is a critical imbalance as:

- the majority of interactions between individuals, communities and the state are local
- participative processes increasingly encourage people's involvement with local government as a means of influencing the services they receive and their quality of life
- responsive multi-purpose representative local democracy is a precondition of effective local participation.

3. Local government is a critical element in effective democracy, and LGIU believes that the law should protect both the status of local government, and its responsibilities to support the participation of citizens. There is danger in treating local government and the workings of Parliament and central government as distinct and separate, as this fails to recognise the inter-relationship of central and local spheres of influence and responsibility, and avoids the need to consider the working of democracy as a whole.

4. We would like to see the Committee considering the nature of the relationship of central and local government, recognising the important role of elected local government as a key sphere of responsibility and influence on behalf of the people of their areas, and reaching conclusions about how these issues might be provided for within an over-arching constitutional framework.

## CENTRAL-LOCAL CONCORDAT

5. In December 2007 the Local Government Association (LGA) and Secretary of State for Communities and Local Government signed a central - local concordat, as envisaged in The Governance of Britain Green Paper. The concordat gives a degree of recognition to the central-local relationship, setting out broad principles which are indications of intent rather than solid commitments. Indeed, government compliance with the concordat has been questioned on at least

two occasions since it was agreed[1]. It is important to note that the concordat represents an agreement between key players, rather than one based on a general commitment from government (signed for example by the Prime Minister on behalf of all government departments) or on wider consultation with those with a stake in local government.

6. LGIU believes that a central - local concordat requires statutory status, as an expression of the role and responsibilities and inter-relationship of local and central government, and that the opportunity arises quite naturally through this Bill. A set of principles for future concordats could require that agreements be settled from time to time between central government and the LGA, on a basis of consultation with local government stakeholders more widely (local authorities, National Council of Voluntary Organisations, and other national bodies with an interest). The set of principles should be ambitious for the future of local democracy; should have cross government and cross party support; and be based on a consensus of what democracy means to local people and communities.

7. The present position, that the partners to the concordat will be responsible for any revisions, and for monitoring the concordat, and therefore monitoring central - local relations, is inadequate. This crucial area of democratic and constitutional engagement should be open to public scrutiny, and partners to the agreement publicly accountable for implementing and reviewing the concordat's provisions. LGIU has an open mind as to whether the concordat should be monitored by an independent body or by a parliamentary select committee (joint committee) charged with an independent brief, and would welcome the Committee giving consideration to these options.

## PRINCIPLES OF LOCAL DEMOCRACY OR SELF-GOVERNMENT

8. LGIU believes that the ability of locally elected representatives to make democratic decisions and to represent and support the participation of people locally should be protected within the constitutional framework. The chequered history of local government over the last fifty years shows widely varying views on the role and responsibilities of local government on the part of central government. The progress made in the last decade should be built upon and protected within a constitutional framework that has cross-party support.

9. The British government has already recognised a set of principles that protect this approach in international law. The European Charter of Local Self-Government[2] defines local democracy as the ability of local authorities to 'regulate and manage a substantial share of public affairs' and having full discretion to take action in their areas of responsibility. The Charter, to which UK negotiators made a significant contribution, provides a litmus test for the level at which decisions should be made - 'for preference public responsibilities should generally be exercised by authorities closest to the citizen'.

10. It is a requirement of the Charter that the principles of local self-government are recognised and protected in domestic law. Central government has argued that the totality of our legislation ensures compliance. This is a gap in UK law and in our compliance with the Charter. It is also the case that the UK is in breach of the Charter in other significant respects, particularly in the sphere of the financing of local government.

11. LGIU sees two possible approaches that would safeguard the democratic principles acknowledged by the Charter: by including the terms of Charter in a vehicle such as the draft Bill, or by the adoption of a set of principles which complied with the Charter. There are illustrations of the adoption of a set of principles, both within the European Union and elsewhere, and LGIU tends to favour this approach, which would create the opportunity to enshrine commonly understood principles of representation and participation in our legislation.

12. This would have the effect of protecting the position of local government in three ways. It would ensure recognition by politicians both locally and nationally; mean that civil servants across government would need to consider the local implications of plans and investment; and create a standard that the courts could refer to in reaching conclusions in appropriate cases.

13. LGIU urges the Committee to consider whether statutory recognition of the terms of Charter would be appropriate, or would it be more in accordance with UK law to recognise a set of principles based on the Charter?

## LOCAL ACCOUNTABILITY

14. LGIU has significant concerns as to how the relationship between local authorities and the various quangos and locally appointed boards fits into the constitutional framework. In 2002, LGIU hosted the independent Commission on Local Governance, which heard evidence from a range of sources, and drew attention to the lack of accountability of the increasing number of organisations and agencies responsible for local services. It also expressed concern that local strategic partnerships were developing without sufficient attention being paid to accountability to local people - a situation which persists. The Commission called for a thorough review of the role and responsibilities of quangos, saying that the case for an assessment was overwhelming. Quangos should be added to the responsibilities of local authority Overview and Scrutiny Committees.

15. LGIU believes that immediate consideration could be given to the form in which quangos could be held to account through overview and scrutiny, building on the extension of scrutiny to the bodies represented in Local Area Agreements, recently introduced by Parliament in the Local Government and Public Involvement in Health Act 2007.

16. A review could also consider what functions of quangos should be reallocated to local authorities. We would wish to see the possibility of appropriate transfers of authority considered as part of a major review of the role of quangos and local boards.

June 2008

---

[1] 'LGA accuses government of breaking central/local deal' (over an amendment to the Planning Bill) Local Government Chronicle (LGC) 14 February 2008; 'Quango sparks concordat row' (over the draft strategy for the Local Better Regulation Office) LGC 3 April 2008

[2] The UK signed and then ratified the Treaty in 1997-98.