

Political and Constitutional Reform Committee

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Illustrative draft Code for central and local government¹

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 On 18 January 2011, the Committee agreed “that written evidence be sought from an academic witness, containing an illustrative draft code governing the relationship between central government and local authorities in England”. Professor Colin Copus of de Montfort University agreed to take on this work. On 23 March 2011, the Committee wrote to all those who had given oral evidence to the inquiry asking for their views on the draft code for relations between central and local government. Suggested revisions were received and at the request of the Committee incorporated by Professor Copus into the draft code.

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 decision-

making 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.

Prospects for Codifying the Relationship between Central and Local Government

Introduction

The Committee set out nine principles to be expanded upon and to form the basis of a draft code governing the relationships between central and local government. The draft code could then be the basis for a wider consultation and discussion under the auspices of the Select Committee. The nine principles flow throughout the draft code and are developed in the clauses within each article. The Committee also asked for an assessment of the issues involved in implementing the principles through a code of central and local government relationships.

The first section of the paper sets out a rationale for the construction of a code of intergovernmental relationships and the rationale for each article contained within the draft code; the second section presents the draft code. The Third section assesses the feasibility and practicality of such a code. The paper concludes by drawing out the main issues that the Committee may want to consider in the development and decisions about the adoption of a code of intergovernmental relationships.

Section One: Rationale for Codification

The draft code is based on an assumption that it is required to re-establish and strengthen the position of local government within the constitution, to enable it to operate as a co-equal alongside central government and to provide a degree of protection for local government and its citizens from centralisation and over-regulation. If codification is to produce a balanced working relationship between central and local government it must explicitly recognise the value of local government and formally establish the degree of its political and governing autonomy. Without those underpinning assumptions a code is likely to see local government as little more than a means of providing or overseeing the provision of public services and consequently diminish its politically representative features.

Article Rationale

A preamble is required to set out a broad framework within which the articles sit and to set the context for operationalising the code in relation to principal authorities by stressing the underlying localist philosophy on which it is based.

Article One is required to emphasise the independence and autonomy of local government and to secure the code as an agreement between the entire centre and the localities. It is designed to ensure that all central government departments work with local government

through a shared set of practices. Constitutional protection for the code is required to prevent it being amended or abolished.

Article Two is required to achieve an agreed definition, between central and local government of the role, purpose, nature and constitutional status of local government and to emphasise that local government accountability is primarily to citizens. It asserts councils as governing and politically representative institutions with independent regulatory and legislative powers within their own boundaries.

Article Three establishes a consultative working relationship between central and local government based on a mutual acceptance of the broad remit of local government responsibilities.

Article Four is required to ensure a negotiated and mutually agreeable process of constructing a framework for ensuring service delivery quality.

Article Five establishes the territorial autonomy of local government and that council boundaries are to be agreed by councils and their citizens (through local referendum). Without territorial integrity and autonomy council boundaries can be re-organised for the benefit of central government and the national parties' ideological concerns.

Article Six is required to operationalise the freedom of councils and local citizens to decide the internal political decision-making arrangements of the council and the voting systems for local elections to suit local circumstances. The article recognises that central government is not required to decide how councils will be elected or how they will make decisions once they have been elected.

Article Seven recognises that local autonomy and independence is strongly related to financial freedoms, but also that financial responsibility and rectitude comes with a clear link of accountability to local citizens. Alignment is required between central and local government financial processes to add certainty and consistency to financial planning. The article recognises the importance of an independent equalisation process between councils and that local and central government should be co-equal partners in this process.

Article Eight is required to set out the broad parameters within which councils can co-operate with each other and with other bodies so that there is clarity and recognition of councils' rights to act in ways that they think beneficial to their areas.

Article Nine provides for local referendum to be the responsibility of the Electoral Commission. Such independence enhances the probity of and confidence in, the referendum process and that local referendum will be overseen by a body Independent of local and central government.

Article Ten by enabling local government to take legal action in any circumstances that might threaten the autonomy of a council serves to provide additional protection to local government independence from external control or interference.

The next section sets out a draft codification of relationships between central and local government.

Section Two: The Practicalities of Codification

The section is set out in two parts to ease consideration of the issues involved. The first part examines the key issues (identified as italicised sub-section headings below) involved in codifying the relationship between central and local government and the implications arising. It does this by using the draft code developed from the nine principles the committee articulated which have been collapsed where they consider similar issues, such as finance. The first part of this section considers the following issues: securing agreement to the principle of codification; central and local government policy consultation; council boundaries; local electoral systems and internal council political decision-making systems; local government financial freedom; quality of services; and, local government independence and autonomy.

The second part of this section makes a brief assessment of each article of the draft code.

1. *Assessment of Broad Principles*

Securing agreement of central government to the very principle of a codification of the relationship with local government has two key dimensions:

1. Central government accepting a permanent change to the current constitutional settlement between the centre and the localities
2. Ensuring that agreement to a code and abiding to its conditions extends across government, that it is not restricted to the DCLG alone and that it is adhered to by ministers and civil servants

Given the last Labour Government's policies of devolution to Northern Ireland, Scotland and Wales and given the current government's localism agenda and the Localism Bill, particularly section one's 'general power of competence', common ground should exist across the parties, for establishing a framework for the independence and autonomy of local government. Past governments, however, including the last government, have implemented policies which expressed little patience for local government autonomy and have viewed councils as a mechanism for little more than implementing central government policy. Currently however, each of main political parties appears to support greater autonomy for local government, so the time is right to develop and consult on a draft code. The feasibility of a code stands or falls on two aspects: first, Parliament and government re-balancing the constitutional

relationship and doing so on a permanent basis; and, second, local government being willing to use new found freedoms.

A code itself does not alter the fundamentals of the constitution; making that code constitutionally secure does however, create a re-balance to a more localist orientation in the governing system.

Government would not be able to change the structure, nature, functions or purpose of local government, without the due process necessary to respect the independence of local government including undertaking negotiations. Any change negotiated would require (under Article 1.1) a legislative process different to that normally employed. While this may create frustration for government and slow down its own policy implementation, it would also mean less legislation, wider consent and more localised decision-making. Parliament has become accustomed, very quickly, to constitutional change brought on by devolution to Northern Ireland, Scotland and Wales and what that means for Parliamentary and governing processes. If viewed in the same devolutionary and evolutionary way a codification of central-local relationships would soon establish itself as the standard operating procedure.

A failing of the current concordat is that it has not been taken up across government departments and across ministers as the means by which intergovernmental relations are to be conducted. The concordat's focus on the service role of councils has served to sideline the political, democratic and representative contributions made by local government. Experience has shown that production of a code alone is insufficient to change working practices and that a change of attitudes across central government is required to successfully operationalise any code.

Independent central and local government would need to devise effective arrangements to work together in partnership. Developing a forum for *policy consultation* between local and central government means a shift from a top-down, control relationship to a negotiated, consensual style. Such a relationship between the centre and local government exists in other governmental systems, both unitary and federal (Goldsmith and Page, 2010). Central government already consults and negotiates with local government and creating a forum would sharpen the focus of existing processes and enable more detailed consideration of policy development concerning local government. A negotiating forum may however, slow down policy decisions, delay the implementation of government policy and frustrate government intentions across a range of policy areas. Genuine consultation and negotiation comes with the expectation of compromise and concession and that would be an expectation on all parties to the process. As a consequence delay may be off-set by better policy decisions and policy outcomes.

Control of *council boundaries* resting with councils and local citizens rather than with central government, exemplifies local autonomy and independence. Devolving to councils and citizens, working with the Local Government Boundary Commission for England, the power to set and change boundaries, to amalgamate (in whole or in part) or to disaggregate councils, is easily achievable. Moreover, it avoids the danger of council boundaries being manipulated for national party political reasons; or for reasons that suit the needs of the central government machine.

There are examples across the globe where decisions about council boundaries rest with citizens and councils and there are no practical difficulties in switching to a system of local boundary control, which would remove the need for the expensive bidding process that has been seen in some past reorganisations (Chisholm and Leach, 2008). A question arises as to whether council boundaries should be something that citizens alone should control, rather than giving councils a say in the matter as councils will tend to want to maintain or extend existing boundaries.

Central government will, of course, have a view on proposed boundary changes and on the overall coherence of the structure of local government and will be able to express that view during any consultation process.

Local electoral systems and internal council political decision-making systems need not be the same across the country. Indeed, since the Local Government Act 2000, some choice in internal political decision-making systems has existed. Moreover, the Localism Bill widens that choice by making the committee system open to all councils. The implications of councils being able to adopt different internal decision-making systems fall on the councils concerned; although, government inquiries have explored the way councils make decisions in an attempt to speed-up and add clarity and accountability to the process and this will still be a central government concern (HMSO, 1967, HMSO, 1986).

If council decision-making is perceived to be slow then there is an impact on central government as local people look to it for a solution to be developed and imposed. In this case government continues to be the arbiter of local matters at a detailed level. Encouraging independent councils to develop local political decision-making processes, with local people, rather than government legislating across the entire local government system could lead to more refined processes developing. By devolving responsibility to councils and local people to set council political decision-making arrangements, central government will be faced with a possible array of systems when it comes to negotiating with councils. But, local decision-making forms would be the choice of local people rather than designed for the convenience of Whitehall.

The consequences of local electors choosing different electoral systems would again fall mainly on the councils concerned. Those council areas choosing a more proportionate electoral system are likely to have a wider range of parties and non-partisan groups represented on the council and would be more likely to be governed by some form of coalition, than those choosing to employ the first-past-the-post system; those areas retaining the current voting system for local elections are more likely to have a clearer one party outcome and governance. Central government will, of course, have a view on the matter and will be able to express that view during any consultation process, while the choice of electoral system should rest with the locality rather than Whitehall.

Securing *Local government financial freedom* is necessary to operationalising any of the nine principles and the draft code in section two. Central government control of local finances, both the source of finance and the way in which it is used by councils, would need to be fundamentally changed to give councils greater financial freedom (Layfield, 1976, Foster, *et al*, 1980).

Securing local government financial freedom from the centre is made difficult by: the role that local government expenditure has in the macroeconomic and fiscal policy fields; the control governments, of all parties, have been able to exert over local finances for national economic and political reasons; and, the current government's deficit reduction policy. Again, these issues are not insurmountable but rely on the formation of a different mind-set in the relationship between the centre and the localities when it comes to financial matters, rather than relying on an evolution of policy to secure change (John, 1999).

The Layfield Commission (1976) and the Lyons Review (Lyons, 2007) examined local government finance set within the wider context of the purpose of local government and central-local government relationships. Lyons was restrained in the reforms suggested, but the practical implementation of alternatives such as local income tax is not the issue, here. It is in local financial matters that we often see the conflation of local and national government in the public mind. Overall council expenditure and council tax levels are national issues and debated in the national media and thus government is required to have a view on their reasonableness. But, government holding and expressing a view about council financial decisions need not mean having control of them to ensure accountability; adding clarity to the system would enhance local financial accountability.

The current system of financing local government would be greatly simplified and accountability sharpened as a result of local people having freedom to endorse, or not, council access to diverse and buoyant sources of finance and to set their own taxation levels. With complete financial freedom given to local people however, central government would no longer be able to safeguard communities from excessive increase in local taxation, high levels of local expenditure or other financial adventures by individual councils. But, if local electors

continue to grant a mandate for such financial policies by re-electing controlling groups who pursue them, the choice is either for local citizens to be the arbiters of local affairs or for central government by claiming a national mandate (Wolman and Goldsmith, 1992). There are no practicalities only political choices involved here.

Financial freedom for local government is not an all or nothing choice. Structures created for negotiation and agreement between the centre and the localities over the financing of local government, financial equalisation, and the level and nature of grant support, can replace a top-down approach without the centre relinquishing all control or involvement (Goldsmith and Page, 2010). Enhanced financial freedom would provide stimulus for re-energising local political parties, local civic society and civic debate around local choices and value for money. Yet, there is a need for central government to provide funding in emergencies such as natural disasters or, if for some reason, a local authority's finances broke down entirely.

The *quality of high-profile services* provided or overseen by local government are an issue of national debate. Major policy areas, such as education and housing, will always provoke central government interest and concern for involvement beyond inspection and freedom for local government needs to be seen and set in this context. A balance must be drawn between services which can be left to local decisions reflecting local sensitivities and circumstances so as to recognise local differences and diversity; and, those areas in which government will negotiate with councils about service standards, while avoiding any centralising tendencies which the provision of public services generate and which has been long noted (Toulmin-Smith, 1851).

The solution to the nationalising pressures of national expectations of service standards is to be found in the construction of fora where central and local government can spread best practice and negotiate and agree service standards and inspection regimes in a broad sense. Negotiation and agreement avoids the need for heavy-handed inspection regimes – which have served to undermine local autonomy and the democratic mandate granted to a council (See, Leach 2010). Moreover, it avoids the need for central government to impose required service standards and thus treat local government as a means of implementing government policy.

Local government independence and autonomy from central government and changing the directional flow of accountability from the centre to local citizens are factors inherent in the nine principles and are reflected throughout the code in section two. If local government is to have autonomy from the centre it must have the freedom to be able to undertake any action. The feasibility of achieving local government autonomy rest on the same considerations as those required for securing agreement to codification in the first place: re-balancing the constitutional relationship between central and local government; and, acceptance across government of a new working relationship. To ensure the continual effectiveness of a code it

must be adhered to throughout the life of any government which is easier at the outset of a new government but becomes more difficult as time passes and governments become closer to the Whitehall machine.

The constitutional relationship required to secure local autonomy is something that has been achieved in federal and unitary states. Yet, there has been a recent trend across Europe for central government, in states which have constitutionally guaranteed local government freedom, to find ways of increasing control over local government (Goldsmith and Page, 2010). Again, the Localism Bill's 'general power of competence' nudges in the direction of autonomy – although 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.

2. Brief Assessment of articles in the draft code

Article One: There is no reason why this article could not be implemented. A difficulty might occur around the issue of local government representation on the hopefully rare occasions when the joint committee proposed in the article, is convened. While Parliament might not accept non-MPs being full members of a Parliamentary committee, the local government representatives could be non-voting members, or hold their membership *ex-officio*.

Article Two: For the purpose of drafting a code general competence and local government autonomy are not fully articulated and these concepts would have to be defined in any consultation on the code undertaken by the select committee to avoid confusion. Indeed, general competence and local government autonomy are usually limited in constitutional settlements and are not left unrestrained. It is also necessary to set out elsewhere the distribution of functions and responsibilities between the levels of government and how disagreements can be resolved. Would the Supreme Court, or some other body, for example, be the final arbiter in any dispute?

Care would be needed in defining 'local citizens', either employing the current formulation for compiling the electoral register; or, a more extensive view of 'local citizenship' based on proximity to, but not residency within, a council area.

Article Three: Sets some limits on the autonomy of local government to that contained in article two. The scope and extent of the powers within article three and the nature of local government and community power over economic development would need to be agreed and defined in other documentation. It would rest on the agreed distribution of functions and responsibilities between levels of government. A *de minimis* rule may need to apply when it comes to this article.

Article Four: There are no practical problems as to why this cannot be achieved and implemented, quickly. But, it is likely that central government would want to have primacy in the process – again, the question of allocation of functions and responsibilities between levels and agencies would be required.

Article Five: There is no reason why this cannot be achieved. The question of the allocation of functions and responsibilities may be an issue in boundary setting, but, given that under article eight councils would be able to co-operate with each other in the provision of services, then boundaries are no longer linked to issues of service management and efficiency. The accountability of joint-provision would need to be ensured and mechanisms needed to enable voters to cast a judgment on jointly provided services.

Article Six: There are no difficulties in implementing article six. The article requires straight-forward devolution of power over electoral systems and political decision-making arrangements to councils and citizens. Too frequent changes however, should be avoided and maybe there is a need to place a time limit on change – such as two electoral cycles – eight years.

Article Seven:

Clause 1: The concept of local government financial independence needs to be carefully defined and agreed, otherwise as a statement of principle it could become meaningless and easily ignored, unless otherwise set out in law.

Clause 2: The use of referendum provides for a specific democratic mandate for taxation and revenue raising policy. But, councils must be prepared to have their proposals overturned and thus have developed, through consultation, alternative plans.

Clause 3: Rests on the assumption that an agreement has been reached about the re-allocation of local services and the division of income tax. Such agreement is not impossible, but, would require detailed negotiations between central and local government and devolution of functions and power from the centre.

Clause 4: Rests on the assumption that existing rules will be agreed for equalisation and the mechanism for allocation will continue. It would also mean that central and local government was unable to unilaterally change the processes once they had been agreed and therefore they would both need government to accept this limitation.

Clause 5: The clause has implications for the PSBR and is something that the Treasury would need to be closely involved in and is likely to strongly oppose, given its ongoing and long-standing reluctance to see any local government financial reform. It is possible that linking loans to council credit ratings would be limiting for councils if

resource bases were not equalised and thus poorer areas would suffer from their low credit rating, while more affluent areas may not need to borrow. On the other hand, prudent competent councils would be recognised by a revived local government bond market of the sort that has existed in the UK and that currently exists in the USA and elsewhere. The need to balance budgets would have to include the right to maintain reserves.

Clause Six: Easily implementable but rests on government's willingness to devolve final decision-making power on local taxation to local government. Financial and Partnership mechanisms imply a limitation to local autonomy by their very existence, so they would have to be voluntary and councils entering into partnerships do so without the expectation of government funding, so that those choosing not to operate in that way were not financially penalised.

Clause Seven: Difficulties may arise with this provision unless there are comparable disciplines on central government. Problems could arise from a general election and a change of government mid-Parliamentary or mid-budgetary cycle; or, if a severe financial crisis emerges; or, an event requiring immediate and large-scale financial commitment, such as an overseas military operation. These can be overcome by the agreement of a set of 'emergency provisions' that would allow central government to respond to mid-financial term emergencies.

Article Eight: The broad powers suggested here would have to be only for purposes which were legal and carried out within the legal framework setting out council powers.

Article Nine: Included to ensure probity in the referendum process and would require the allocation of the responsibilities and functions necessary to the Electoral Commission. Cost implications of the increased use of referendum would emerge, but linking them to the electoral cycle could reduce that cost.

Article Ten: The power for local government contained here would be under the rule of law which could result in legal challenge to abuses by central government action, policy and proposals and as with all issues covered by UK law could involve judicial review at Supreme Court or at the European level.

Conclusions

There are no real technical or practical reasons why the nine principles articulated by the committee or the draft code that is set out in section two, cannot be operationalised. The feasibility of codifying the relationship between central government and English local government rests not so much on practical and technical concerns. Rather, the feasibility of codification rests on political and ideological grounds and on the willingness of the centre to

accommodate a new constitutional settlement for local government which acknowledges for it a political, representative and governing purpose. Moreover, codifying the relationship between central and local government would sit well with the government's localism and the Big Society agenda. It would underpin these policies by reducing centralisation and by providing the ground on which councils and communities could experiment with local initiatives that reflected local priorities.

The general implications of codification would be:

- Freeing local people to make many more decisions effecting their lives at a local level
- A shift to a more negotiated set of relationships between central and local government
- Enhancement of the constitutional status of local government
- A freeing of central government from the detailed control of local government
- Improvements to the clarity of the financial relationships between central and local government
- Other documents would be required to fully elaborate how the code would be operationalised, to set definitions and agree areas of responsibility
- Possible delays because of the time needed to build a consensus for central government in the development and implementation of policy and legislation as it impacts on local government
- Limitations on the central executive machine to use a Parliamentary majority in regard to local government policies, which would reflect similar limitations resulting from devolution to Northern Ireland, Scotland and Wales
- At a time of national financial constraint the costs associated with creating a new settlement between local and central government and of the consultation process may be seen to be prohibitive
- Considerable cultural change will be required to ensure that all central government ministries were aware of and adhered to the code in all activities and to recognise that a constitutional rebalancing had occurred as a result of the codification of the relationship between central and local government
- Mechanisms for dealing with disagreement between central and local government about the code and breaches of it would have to be decided upon by agreed structures

- As now, court action either involving the Supreme Court or at the European level would ensure the rule of law
- Greater freedoms for local people to make choices could result in wide diversity in the quality, type and nature of public services chosen
 - Involvement and education of public and media around the choices available would be essential
 - Strengthened localism could stimulate a revival of civic culture and activity and encourage local parties to forge greater links with local civil society
 - The conflation, in the minds of the public and the media, of local and national politics and government may lead to central government suffering at the polls for local government failings or *vice versa*. But, a clear understanding of the roles of councils and governments could lead to them being elected on their own record and merits
- Enhanced financial freedom for councils would impact on central government economic and fiscal policy
- Robust mechanisms would be required for financial equalisation and central financial assistance in the event of local emergencies
- If local electors are to judge local issues central Government would find it difficult, if not impossible, to intervene where individual councils acted in ways that generate public concern or outrage, or are unnecessarily bureaucratic and meddlesome. Court action, as we see currently with central government, may be the only redress for citizens and the cost may be prohibitive and it would be necessary to ensure this was not repeated by local government.

The key to successfully implementing codification of inter-governmental relationships is the centre's willingness to permanently devolve political and governmental power to councils. Given that intention, the negative implications of codification can be overcome through the creation of safeguards and by negotiation and compromise. The forging of a new relationship between central and local government must go hand-in-hand with forging a new relationship between citizens, councils and councillors. The principle of codification and the draft code

contained in this report, provide the basis for forging those new sets of relationships and a framework within which they can be explored.

References

Chisholm, M., and S. Leach, *Botched Business: The Damaging Process of re-Organising Local Government, 2006-2008*, Douglas McLean, 2008.

Committee on the Management of Local Government, *Vol. I, Report of the Committee*, London, HMSO, 1967.

Committee of Inquiry into the Conduct of Local Authority Business, *Research Vol. I, The Political Organisation of Local Authorities*, Cmnd 9798, London, HMSO, 1986.

Committee of Inquiry into Local Government Finance, *The Report of the Committee (Cmnd 6453)*, 1976.

Foster, CD, Jackman, R, and Perlman, M, *Local Government Finance in a Unitary State*. George Allen and Unwin, London, 1980.

Goldsmith, M., and E. Page., (eds), *Changing Government Relations in Europe: from Localism to Intergovernmentalism*, Routledge / ECPR, 2010

John, P., Ideas and Interests; Agendas and Implementation: An Evolutionary Explanation of Policy Change in British Local Government Finance, *The British Journal of Politics & International Relations*, Vol. 1, No.1, 1999, pp.39-62

Keith-Lucas, B., *The English Local Government Franchise*, Oxford, Basil Blackwell, 1952.

Leach, S, *Managing in a Political World: The Life Cycle of Local Authority Chief Executives*, Palgrave MacMillan, 2010.

Lyons, M. *Lyons Inquiry into Local Government: Final Report*, The Stationery Office, 2007

Toulmin-Smith, J., (1851) *Local Government and Centralisation: The Characteristics of Each; and its Practical Tendencies, As affecting Social, Moral and political Welfare and Progress, Including Comprehensive Outlines of the English Constitution*, Elibron Classics Series, 2005.

Wolman, H., M.Goldsmith, *Urban Politics and Policy: A Comparative Approach*, Blackwell, 1992.