



Final government response to the Select Committee report into the balance of power: central and local government

Presented to Parliament by the
Secretary of State for Communities and Local Government
by Command of Her Majesty
5 February 2010

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ISBN: 9780101780124

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2348545 02/10 1627 19585

Printed on paper containing 75% recycled fibre content minimum.

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Introduction

On 20 May 2009 the House of Commons Communities and Local Government Select Committee published its *Balance of Power: Central and Local Government* report which considered the current and future role of Central Government in relation to Local Government. The Government published its response to that report in September 2009¹.

However, in response to several of the recommendations, an interim response was provided pending the outcome of the Strengthening Local Democracy consultation exercise, which was launched on 21 July 2009². This approach was agreed with the Committee Chair and we are grateful for her support on this matter.

This document therefore provides a final response to the Select Committee in respect of recommendations 2, 4, 5, 6, 26 & 28.

CLG Select Committee Balance of Power Recommendation 4

In this report we advance the principle that decisions which primarily affect one area to a significantly greater extent than others, should be taken within that area and not outside it – the subsidiarity principle. Those local authorities taking such decisions should, of course, be able to demonstrate that where there may be a spill-over impact on other areas they should be able to show that they have taken reasonable steps to take account of any such impacts. The principle should underpin a new hierarchy of decision making which respects and places on a statutory footing the rights of a local community to determine a great deal more of what should or should not occur within their locality, and how the full range of public services are delivered in their area and integrated with each other.

(Paragraph 56)

CLG Select Committee Balance of Power Recommendation 5

We are clear that local authorities need both sufficient formal powers and more general autonomy to pursue a leading local leadership role.

(Paragraph 64)

CLG Select Committee Balance of Power Recommendation 6

We have considerable sympathy with the case for local government to be given a power of general competence, to provide greater recognition of the local leadership role that central government is asking it to play, and which we support. If local

¹ <http://www.communities.gov.uk/publications/localgovernment/balancepowerresponse>

² <http://www.communities.gov.uk/publications/localgovernment/localdemocracyconsultation?view=Standard>

government is able to accumulate evidence that the well-being powers are falling short of a power of general competence to the extent that they are impeding its local leadership role, then we recommend that the Government should introduce a power of general competence for local government.

(Paragraph 65)

Paragraphs 21-23 of the original response set out government's views in respect of the subsidiarity principle, enabling local authorities to better cater for the "spill over" effect and placing the rights of communities on a statutory footing as mentioned by the Select Committee. Questions 1-3 in Chapter 1 of *Strengthening Local Democracy* explored how scrutiny powers might be made more effective in looking at the range of local public services delivered in an area and Question 8 in Chapter 2 explores the links between LAA targets and national entitlements and how they might affect each other.

Paragraphs 24 to 29 of the September response set out Government's views in relation to Recommendations 5 & 6 of the Select Committee. However, Chapters 1 & 2 of the *Strengthening Local Democracy* consultation considered a number of issues around council powers, including a proposal to introduce, at the earliest opportunity, potential new powers for local authorities around mutual insurance. The consultation also sought views on whether there were other similar arrangements which councils thought could be beneficial that were potentially out of scope of existing powers.

In relation to the further exploration of how scrutiny powers might be made more effective, we have considered the responses received to the consultation paper on this issue and have sought the earliest legislative opportunity to implement the proposals to broaden the powers of local authority scrutiny committees and extend them to cover a wider range of external bodies. David Chaytor MP has laid the Local Authorities (Overview and Scrutiny) Bill as a Private members Bill before Parliament. This bill establishes a framework for an enhanced local government scrutiny regime³. It provides for the regime to apply to activities of external bodies that::

- are wholly or partly supported by public funding or are the functions of statutory undertakers; and
- predominantly affect only the area of the council or councils undertaking the scrutiny.

Bodies subject to the enhanced scrutiny regime will be specified in Regulations and, once subject to the regime, may be required by a council scrutiny committee to:

- provide information to the local authority's scrutiny committee
- send an appropriate person to scrutiny committee hearings to answer questions if required to do so
- have regard to the scrutiny committee reports and recommendations if exercising public functions; and
- formally respond to such reports and recommendations.

We are clear about the need for continued proportionality, and the enhanced regime will be supported by regulations and statutory guidance on the operation of the regime,

³ The existing enhanced scrutiny regime already in force for Police and Health services will continue to apply.

which will include measures and procedures in order to minimise the potential burden on external bodies subject to enhanced scrutiny. The second reading of the Local Government (Overview and Scrutiny) Bill is planned for 5 February.

To guarantee the capacity of the scrutiny function, the Bill also takes forward proposals to build on the requirement introduced in the Local Democracy, Economic Development and Construction Act 2009 for every authority with lead responsibility for LAAs to designate a scrutiny officer by the addition of a provision requiring those local authorities to provide these officers with such staff, accommodation and other resources as are, in the officer's opinion, sufficient to allow him to perform his duties. This mirrors analogous duties on local authorities to resource their Chief Executive and monitoring officer and will ensure that resources are available to enable scrutiny to carry out their role to best effect.

On the broader point about the delivery and integration of services, the 'Total Place' approach represents an opportunity to fundamentally rethink and redesign how public services work together across a whole area, with councils firmly in the lead. Better value for money will be achieved by cutting out duplication of effort and waste through better services, focused around the needs of the user, and enabling resources to be targeted on prevention – removing the need for more intensive, more expensive services later on.

The 13 Total Place pilots are coming up with some real, evidence-based propositions for change. The work has been given even greater impetus following the publication of *Putting the Frontline First: smarter government* and the Pre-Budget Report. Government considers Total Place and the Smarter Government White Paper as key drivers to positive change in the integration and efficient delivery of services.

Putting the frontline first: Smarter Government set out how government will meet these challenges by strengthening the role of citizens and civic society; freeing frontline services to innovate and collaborate; and streamlining and restructuring central government.

The Smarter Government White Paper drew heavily on the early findings from the Pilots, and signals strong cross-government commitment for Total Place. It sets out Government's plans for further streamlining bureaucracy to allow local government to focus on delivering key priorities. This includes:

- further reducing the national indicator set
- aligning performance frameworks across government
- further reducing the number of high level priorities we set nationally.

Evidence from the Total Place pilots, which is due to report at the Budget, will help to demonstrate the case for further alignment of performance frameworks across the public sector, and effective rather than excessive reporting burdens. Central government is working with pilots on this emerging evidence through a series of high-level workshops. Our aim is for the final report of Total Place to set out a series of specific reforms that government will make in response to the case for change set out by the pilots.

The Secretary of State for Communities and Local Government has also asked Sir Steve Bullock and Sir Richard Leese to lead a Task Force to look at ways in which local authorities can prioritise frontline services through leaner back offices with less

bureaucratic jobs, greater shared services, promoting innovative procurement and more creative use of assets

Work on entitlements is being taken forward by a number of Departments, including Communities and Local Government. Options will be considered as part of wider considerations on the streamlining and reform of existing performance management arrangements, as detailed in *Putting the Frontline First: Smarter Government*.

In relation to the Select Committee's comments on powers to enable local government to fulfil its local leadership role, responses received to the Strengthening Local Democracy consultation revealed that whilst there was an appetite amongst respondents for a power of general competence, the perceived benefits of this were seen to be around the broader relationship between central and local government. We do not consider that this issue should be addressed through the extension of powers, This is particularly as it is considered that action taken by local authorities that were held to be outside their powers in the recent court case on the development of insurance mutuals (the LAML case) such as the giving of guarantees, would not be rendered lawful by a general power of competence. In fact, government would question whether, once the inevitable prudential restrictions are applied, such a power would look very different to the current power of well-being.

Government has therefore included provisions within the Local Government, Economic Development and Construction Act 2009 that will enable councils to set up and participate in mutual insurance arrangements. The Government is however interested in extending powers – subject to certain prudential restrictions - to deal both with the issues raised in the *LAML* case around councils giving guarantees and indemnities to each other and also to ensure greater clarity in relation to action to drive efficiency and cost savings and so secure best value. These will be taken forward at the first legislative opportunity. Such developments are intended to ensure that councils will have a broad range of powers, freedom and support to be innovative and act in the interest of their communities, building on the Best Value duty. The well-being power remains as a power of first resort for councils acting in relation to the social, economic and environmental well-being of their areas. In *Putting the Frontline First*, and again in the Pre-Budget Report we have also committed to further exploring, subject to the overall fiscal position, what further finance mechanisms, powers and flexibilities could support local authorities to drive growth and innovation most effectively.

In addition, in response to the consultation, the Government is committed to issuing further material to clarify current powers including those that already may be used to develop activity that councils have expressed interest in through the consultation process, including the powers that local partners other than councils have, to ensure that collaboration and joint activity across current organisational powers are addressed where needed.

However, this is not just about devolving power, but effective use of the powers, freedoms and flexibilities that local government already has. I agree with the CLG Select Committee that local government should do more to demonstrate that it has the drive, determination and vision to continue to improve the lives of its communities beyond the action taken so far.

CLG Select Committee Balance of Power Recommendation 2

The relationship between central and local government in England deviates from the European norm in at least three areas—the level of constitutional protection, the level of financial autonomy, and the level of central government intervention. All serve to tilt the balance of power towards the centre.

(Paragraph 38)

CLG Select Committee Balance of Power Recommendation 26

We recognise the difficulty of achieving a lasting constitutional settlement for local government within the context of a Westminster model. However, we believe that the Concordat and Charter are potentially useful documents that ought to be guiding government departments' relationships with local government far more obviously than has been the case thus far. Potentially, as Sir Michael Lyons also suggested in his report, a constitutional settlement involving local government could provide impetus and help sustain a substantial shift in the balance of power between central and local government. We recommend, therefore, that the Government introduce 'constitutional' legislation that places the European Charter of Local Self-government on a statutory basis.

(Paragraph 134)

CLG Select Committee Balance of Power Recommendation 28

Whilst we share the Secretary of State's caution with regard to setting up new Committees in principle, we think in this particular instance the idea has merit. We have argued in the previous chapter in favour of putting the Charter on a statutory basis, and requiring government Ministers to declare the compliance of Bills with the Charter in the case of each piece of domestic legislation. We are persuaded that establishing a joint committee to monitor government compliance with this constitutional settlement would provide further impetus to creating and sustaining a pendulum swing in the balance of power between central and local government.

(Paragraph 140)

Paragraphs 20, 61, 62 and 64 of the September response to the Select Committee set out Government's interim views on these recommendations. There was a wide range of responses on the respective roles of central and local government, however, opinions on the best way forward were mixed, with some respondents keen to legislate and others who felt this was too rigid. Some favoured the approach taken by the European Charter and others a more tailored set of rules either as a stand alone document or as part of a wider written constitution. Government will continue to give close consideration to this issue to ensure that the role of local government in the development of any broader written constitution is examined as appropriate, and in a manner consistent with the Prime Minister's statement of 2 February⁴, which noted it would be necessary as part of the debate on a written constitution to consider what aspects of law and relationships between each part of the State and between the State and the citizen should be deemed constitutional. However, we accept that the principles as drafted in the consultation paper would need further development if they were to be adopted and we would aim to do that with stakeholders' input. Once any principles are agreed, there would need to be a wide buy-in from both Parliament and local government.

In response to recommendation 28, we consider there is merit in exploring further the establishment of a joint select committee to examine how the work of central government impacts on the ability of local government to fulfil its role. However, we do

⁴ Further details on are available at the following link; <http://www.number10.gov.uk/Page22337>

not consider that this scrutiny should be limited to looking at government compliance with the European Charter.



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ISBN 978-0-10-178012-4



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