

Minister for Local Government and Planning
Ministear airson Riaghaltas Ionadail agus Dealbhadh
Derek Mackay MSP
Derek MacAoidh BPA



F/T: 0845 774 1741
E: scottish.ministers@scotland.gsi.gov.uk

Kevin Stewart MSP
Convener
Local Government and Regeneration Committee
Committee Office, Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

In 2014 Scotland Welcomes the World



26 September 2014

Dear Kevin,

INQUIRY INTO THE FLEXIBILITY AND AUTONOMY OF LOCAL GOVERNMENT

Further to our earlier exchanges, I have the pleasure of enclosing the Scottish Government's response to the Committee's report of the above inquiry.

I look forward to further engaging with the Committee as it develops this work.

Yours
Derek Mackay

DEREK MACKAY

Scottish Government Response to the Local Government and Regeneration Committee's Report of June 27th to the Scottish Parliament on its Inquiry on the Flexibility and Autonomy of Local Government.

INTRODUCTION

The Scottish Government welcomes the Committee's report, and the associated work by the Committee in progressing its Inquiry into the Flexibility and Autonomy of Local Government. This is a timely piece of work, not only in the light of the related activity taking place across Scotland, but also given the clear appetite for democratic renewal demonstrated by the recent referendum campaign.

Local Government is an essential element of the overall good governance of Scotland. It delivers a range of services that form the bedrock of our society, whilst responding to local circumstances and aspirations. This Scottish Government continues to work in partnership with Local Government – a way of working whose success was highlighted by the Council of Europe earlier this year – as we seek to implement and build on the findings of the Christie Commission and a shared vision of strengthened community planning, involvement and empowerment.

The publication of *Empowering Scotland's Island Communities* saw the first steps towards implementing the First Minister's Lerwick declaration that confirmed our commitment to subsidiarity, whilst our Community Empowerment Bill, introduced to Parliament in June, will help to shift the balance of power more towards communities. We expect to make progress on both of these throughout the coming year.

The extension of the powers of the Scottish Parliament – if the promises of the Westminster parties are met and depending on the extent of any further devolution that is agreed - could create a new opportunity to consider the right level for decisions to be made across Scottish society.

Our response to the Committee's Report follows the same structure, with our comments responding to each finding or related group of findings referenced using same paragraph numbering of the Summary of Findings.

Strand 1 - Contrasting the position of local government with the constitutional and legal framework in neighbouring EU jurisdictions

Paragraph 40 Our preliminary conclusion here is that beyond the narrow confines of academia and COSLA, people are less concerned about the ratios and numbers of councillors to wards and more interested in how functions are being exercised and the extent to which they are able to influence them.

Paragraph 41 Equally we see no identifiable case for increasing the number of authorities, we are not convinced of the need for structural reform of this type. Later in this report we look at whether changes should be more concerned with appropriate powers in different areas matching local needs.

Scottish Government Response: These conclusions are notable and the Scottish Government welcomes the Committee's work in developing this insight as, at the time of our written evidence to the Committee of March this year, we suggested that any linkage between democratic participation and the size of population represented by elected members was not fully understood. The Scottish Government notes the Committee's finding that the public is more interested in how functions are exercised and individuals' capacity to influence than the size or structure of Local Government. The Committee's finding that there is no identifiable case to increase the number local authorities is consistent with our policies - we have no plans to change the number of Councils in Scotland - rather our priority is to make existing structures work better for people and communities.

Strand 2 - The level of public engagement and interaction with local government, including turnout at local elections

Paragraph 71 We believe, like the Carnegie UK Trust, the low level of public engagement in local politics is at least partly related to the nature of the relationship citizens and communities have with government. We consider adequate powers to devolve responsibilities currently exist which local authorities must begin to exercise. In the event it transpires there are a few limited areas in which local authorities may be lacking powers to devolve responsibility and control to communities such restrictions require to be identified and appropriate action, at whatever level, taken to resolve.

Scottish Government Response: The Scottish Government endorses this finding, in particular that Local Authorities already have considerable powers to devolve responsibility to communities and citizens. We also recognise that legislation determining the powers and statutory functions of local government is complex, having evolved over many years and many administrations. This means that identifying those few limited areas referred to by the Committee, where Local Government's powers to devolve responsibility and control to communities are lacking, may in itself prove complex. The Scottish Government would be pleased, as indicated by Derek Mackay, the Minister for Local Government and Planning, in his evidence to the Committee on June 11th, to receive identification of any impediments to such progress and of any restrictions identified.

Paragraph 72 We agree with the President of COSLA, who stated—
"Power should lie at the most appropriate level. Sometimes it is appropriate for it to be at community level; sometimes at local authority level; and sometimes at national level."

Scottish Government Response: The Scottish Government concurs with this view. It is right that the division of responsibilities should be debated as it may be that different localities have differing appetites for local autonomy and accountability as well as the attendant risks that are associated with a particular responsibility.

Paragraph 73 Given the comments we received we expect local authorities to draw up schemes to have power exercised at the lowest appropriate level in all areas (localities or by groupings of interest) involving and including bodies/groups who are

engaged, empowered and have controls. In so doing we anticipate they will wish to reflect the approach as part of their Single Outcome Agreement.

Scottish Government Response: The Scottish Government agrees with the Committee that local authorities should be encouraged to continue to empower communities across the country. We are aware of the many excellent examples of community groups delivering benefits to people in Scotland, but believe that more can be achieved, and that local government has a key role in nurturing and supporting that work. The forthcoming Community Empowerment (Scotland) Bill will provide a framework which will help to enable local authorities to play that role.

Paragraph 74 We do not consider it important what the body or group exercising these powers and responsibilities is called, in some areas Community Councils will be working well and respected while in others it may be Residents Associations, Tenants Associations, Community Development Companies or Community Trusts. The type of body or group should be the one best suited to local circumstances.

Scottish Government Response: The Scottish Government agrees that there are a very wide range of types of group that can anchor community interests and play a valuable role in delivering positive change. There is no definitive “template” for participation, and indeed it would be wrong for central government to be prescriptive - rather it is for communities to decide themselves how they want to organise. As the Minister for Local Government and Planning noted in his oral evidence to the Committee, the Scottish Government will not take a top down approach and prescribe new ways of communities participating in local decision making, rather it seeks to create the right conditions for success for any local group to become empowered and participate in the delivery of services and to build capacity in communities to participate in that process.

Paragraph 75 We are also clear there should be a requirement to directly, or through elected representatives, consult with all local or interest bodies prior to decisions being taken by the local authority which affect or impact an area. We have heard numerous comments about consultation being tokenistic or even after decisions have been made, and expect all authorities to do their utmost to make consultations both meaningful and timely.

Scottish Government Response: The Community Empowerment Bill will help to change the culture of community engagement whilst the National Standards for Community Engagement, and the associated on-line planning tool “VOICE”, continue to set out good practice in engaging and consulting with communities. The Scottish Government encourages public bodies, including local authorities, to continue to use these helpful tools whilst ensuring engagement and consultation is proportionate to the issue in question. We believe local authorities are uniquely placed to develop new methods of direct consultation with those they represent and would encourage them to do so.

Paragraph 76 We further consider appropriate bodies/groups should have control over budgets for the delivery of specified local services. It is for wider discussion what those services should include, but for example grounds maintenance, play parks and local care services.

Paragraph 77 We consider it should, in the first instance, be left to each local authority to determine how the above is achieved and with which groups/bodies with the clear aim that such groups or bodies are collectively fully representative of all strands of interests and groups in the community.

Paragraph 78 We will return to this area next year and in the absence of significant progress will make recommendations to require these actions to be taken.

Scottish Government Response: The Scottish Government believes that community groups have a huge potential to deliver positive change in their communities, and that local authorities have a key role to nurture and support that community led activity, which would include making resources available. We agree with the committee that it is critical that such groups ought to be inclusive and have strong and genuine links to the communities that they work in.

Paragraph 79 In relation to local elections we are content to await the results of the Scottish Government consultation which picks up many of the issues we raised in our earlier report on the 2012 elections. As indicated in our report we will be closely monitoring progress on these matters.

Scottish Government Response: As set out by the Committee, the Scottish Government published a consultation document in the spring of 2014 seeking views on recommendations to improve the future conduct of elections in Scotland. This consultation, which closed on 11 July, drew on the Committee's own 2013 report into the last Scottish local government elections ('Report on the 2012 Scottish Local Government Elections'). Responses to the Government's consultation have been received from electoral professionals, third sector bodies and a wide cross section of groups and individuals. Following a detailed analysis of responses, the Minister for Local Government and Planning, Derek Mackay, will report to Parliament later in the year.

Mr Mackay has also established a 'round table' group comprising a small number of representatives of key stakeholder bodies with the aim of exploring the issues behind declining electoral turnout. Membership includes the Electoral Commission, the Electoral Management Board and the Electoral Reform Society as well as bodies representing young people, ethnic minorities and other communities who are often less likely to vote in elections. Further engagement of this kind will continue over the autumn.

The Committee will be aware that 11 June 2014, Mr Mackay led a Scottish Government debate in Parliament on the issue of tackling low voter turnout. This was well-attended and consensual, with all Parties in broad agreement on the need to take action to improve voter participation.

Strand 3 - The Legal and Constitutional Funding Mechanisms Available to Local Government

Paragraph 100 While political parties agree there is need for financial reform no one party has yet brought forward ideas as to how this should be undertaken or what a

replacement for council tax should be. We make a clear recommendation this issue must be addressed at the earliest opportunity involving all political parties.

Paragraph 101 Steps should be taken within the lifetime of this Parliament to initiate an agreed approach to facilitate meaningful debate on alternative approaches with the aim of having a new system identified in time for the next local government elections in 2017. We consider this to be the latest appropriate timetable which would enable candidates at that election to put forward their policies linked to revised funding mechanisms. Given the desirability of reaching consensus we consider this should be done by way of an independent cross-party commission which should include representatives from local government and wider civic society across Scotland.

Scottish Government Response: The Scottish Government notes these findings by the Committee and the action proposed to address the issues identified. The Scottish Government has previously set out our commitment to consult with others to produce a fairer system based on ability to pay to replace the Council Tax and to put this to the people at the next election.

Paragraph 102 Local authorities should have powers to raise sums locally. Indeed, they already do this to a considerable extent. We consider existing restrictions imposed centrally should be relaxed allowing local authorities to determine what is appropriate for local circumstances and what will further support local ambitions. We consider there should be a range of taxes or charges from which they should be free to choose to levy to meet local circumstances and needs.

Scottish Government Response: The Scottish Government recognises the Committee's finding of Local Authorities' considerable use of existing powers to raise funds locally. Indeed, this, along with the existing local taxation powers, means that Local Authorities enjoy significantly greater financial autonomy than provided by the present constitutional arrangements to the Scottish Parliament and Government, having generated 39% of their total Gross Revenue Expenditure in 2012-13. However, it would be useful to understand where local authorities feel constrained and whether this applies to core or discretionary services.

The Scottish Government notes that the Parliament and Government are constrained in the financial powers available at present but that if commitments from Westminster parties to deliver "devo-max" are met then there will be a further opportunity to consider the appropriate level for exercising financial responsibility.

Paragraph 103 We recognise this power will lead to variations across the country which we see as a desirable adjunct of the exercise of democracy. It would then be for locally elected politicians to be held to account by their electorate.

Scottish Government Response: The Scottish Government welcomes this finding of the committee. As noted in our written evidence, local decision making can and should lead to different levels of service provision in different areas, although the existence of differing outcomes is then often criticised – the postcode lottery. The reality is that equity of public service provision across local areas and the extent of local autonomy and accountability can be trade-offs. The optimal balance must take

account of what tax payers, voters and the users of public services expect to receive- this is indeed the essence of democratic choice.

Paragraph 104 We draw to the attention of local authorities, activities in other jurisdictions which provide services and make profits to be reinvested locally. However we would not like to see this undertaken without clear business cases being established or at the expense of democratic accountability which is often seen as being the case of some ALEOS.

Scottish Government Response: The Scottish Government endorses this finding. ALEOs are now established parts of local government, and although they are classed as separate bodies, councils are still responsible for ensuring sound governance arrangements are in place and roles and responsibilities of their members are clearly defined. As democratically elected bodies, Councils are responsible for determining how they deliver local services, consistent with the principles of Best Value. However it is important that they do not absolve themselves of their responsibilities when they set up arm's-length bodies and it is for them to ensure good and transparent governance arrangements are built into the process at the very start.

The Cabinet Secretary for Finance and Sustainable Growth wrote to the Committee in December 2013 in response to a question raised during the Committee's consideration of the Model Code of Conduct for Members of Devolved Public Bodies. In that letter, Mr Swinney described how the Accounts Commission had decided to update its 2011 guidance on ALEOs and had commissioned work by Audit Scotland on the governance of ALEOs. The Cabinet Secretary also agreed to keep the Committee updated on this work as he engages with the Accounts Commission.

Strand 4 - How remote, peripheral or island communities are accommodated within the local government structures

Paragraph 119 We support the principle of the island authorities receiving more powers, with less controls to enable them to implement bespoke, local policies for their areas.

Paragraph 120 We see no difference in principle to prevent similar arrangements being provided for Argyll and Bute, Highland and North Ayrshire councils in relation to the islands within their areas.

Paragraph 121 We support the principle of joint working between the island authorities.

Scottish Government Response: The Scottish Government welcomes the committee's view on the principle of engaging with such communities.

This Government has from the outset, including in the 2007 Concordat, been committed to empowering local government and communities and to freeing up councils from unnecessary controls – hence our massive reduction to the pre-2007 levels of budget ring-fencing, favourable budget settlements for councils and our actions to strengthen community planning. Along with the First Minister's affirmation of our commitment to subsidiarity and local decision-making, this set the platform for the range of proposals both within the islands prospectus, *'Empowering Scotland's*

Island Communities', negotiated with Leaders of the Councils participating in the 'Our Islands Our Future' Campaign.

This prospectus is for all islands, not just those within the three Islands Council areas who formed the 'Our Islands Our Future' campaign. Like the Committee, we support the principle of joint working between the Islands Councils – indeed the 'Our Islands Our Future' campaign is an example of such joint working– just as we agreed with the Christie Commission in supporting the principle of partnership working more widely and we intend to maintain this work with Scotland's islands.

Paragraph 122 We urge further examination of the concept of City Deals.

Scottish Government Response: The Scottish Government is always open to new approaches and the Committee will be aware that we have committed £500 million to match fund the UK Government contribution to the Glasgow and Clyde valley city deal.

Whilst the Glasgow and Clyde Valley City Deal is expected to deliver clear benefits, the UK's initial £15 million a year is dwarfed by the Scottish Government's on-going investment in Glasgow. Investment in the Commonwealth Games, the new Southern General hospital, Fastlink and the Glasgow Subway improvements alone amounts to a massive £1.5 billion in capital spend - that is Scottish Government investment in jobs and infrastructure happening now. We have also provided capital funding of £1.1 billion to Glasgow City Council since 2008.

The Scottish Government is working individually and collectively with all Scotland's cities as part of the Scottish Cities Alliance to optimise economic growth for the benefit of the whole of Scotland. Our recently announced Growth Accelerator funding model combines public and private sector investment in local infrastructure and public space to deliver outcomes that grow the economy. It has unlocked a £850 million funding for investment in the St James Quarter in Edinburgh and will be the basis for a new funding mechanism which will could help to see £6 billion spent on infrastructure investment across Scotland's cities.

Paragraph 123 In the next strand we look further at local authority powers more generally as they apply across all local authorities.

Strand 5 - The level of legal flexibility, and autonomy from central government, which local government enjoys

Paragraph 139 Control or the perception of control by the centre, whether at local or central government needs to be addressed. Unless authorities and communities perceive they have the freedom to make decisions without control being exercised at a higher level there will always be a resistance to innovation, taking risks and delivering localised services to meet differing needs.

Paragraph 140 Looking ahead we support the vision of local authorities as enablers as well as providers of services. We are clear local authorities should seek to use

their powers better and that greater flexibility is required across local authorities in the policies and practices that are adopted across the country.

Paragraph 141 We would expect to see structures put in place that suit those communities who wish to avail themselves of local control; this might require different structures throughout the country/authority as is appropriate to meet local needs. If there are legislative, audit or other internally imposed barriers in place which prevent a differentiation of services to meet local needs across a region or across the country as a whole these need to be removed.

Paragraph 142 In coming to the above conclusion we make the following observations—

- There are core services which must be provided by local authorities universally across the country and to agreed basic standards. For example education and social work. The agreed basic standards are basic human rights and fall to be specified centrally. Provisions beyond the minimum become matters for local democracy.
- We do not expect the same level of services or service provision to necessarily be appropriate in all places. For example local schools will inevitably be sighted further from some residents in rural areas and the economics of services such as refuse collection will dictate frequencies. We heard when in Stornoway of a culture of volunteering with local services often being provided by volunteers. We do not agree with the suggestion from Argyll and Bute that the distribution formula always needs to recognise higher costs of having multiple service points for small populations. Communities should not expect identical service provision beyond agreed basic levels to those who choose to reside in large urban settings.
- Decisions on the services and levels to be provided are matters for local democracy, recognising inevitably that they will be influenced by funding considerations.
- We do not accept postcode lottery arguments for other than the core services, provided minimum standards are met. The extent to which agreed basic standards might be exceeded, or indeed for non-core services provided at all, are matters for local determination. We are clear that is the democratic function of local authorities working alongside local areas and communities.
- We accept, should this approach be implemented, there will be degrees of success. Indeed as we suggested in an earlier report the absence of failures will be indicative of authorities taking a too cautious and risk averse approach. It will be incumbent upon tiers of government and particularly politicians not too react to such failures by rushing to condemn.

Paragraph 143 In relation to the powers exercised by local authorities we suggest this should be variable by authority, indeed variable to a local level. We retain an open mind on the subject and look forward to this discussion developing over the coming months. We note the moves towards implementation of the City Deals in Scotland, we have commented above on the islands and have noted proposals towards subsidiarity.

Paragraph 144 We do not consider it would be helpful or appropriate to specify who should do what. We would like to see local authorities, preferably in partnership with local groups, taking the initiative here and either coming forward with their own proposals or preferably using existing powers to simply do it, make the necessary changes administratively and devolve responsibility and authority to the lowest level. Perhaps empowering local councillors to make more decisions, with their

communities. We expect central government to facilitate this by both word and action and to remove barriers to this approach were they might exist. We do not accept audit, finance or other bureaucratic requirements should be allowed to impede local decision making.

Paragraph 145 Councillors Garvie and Kerr both suggested we should be looking at “a statutory way of empowering localism”. We want to see localism empowered but hope it can be done without recourse to statute thus preserving the maximum possible flexibility to meet local circumstances and conditions.

Scottish Government Response: The Scottish Government considers these findings of the committee to be very much consistent with its policies and reflective of its written and oral evidence to the Inquiry. In nurturing community led activity, it is important that councils show high levels of trust in their communities whilst at the same time ensuring that accountancy, governance and accountability arrangements are in place.

In evidence to the Committee, the Minister for Local Government and Planning, Derek Mackay, described the considerations made by the Scottish Government in developing the measures set out in the *Empowering Scotland's Island Communities* prospectus. These would equally apply to the wider debate around whether powers and responsibilities should lie within central government, local government or with communities themselves. Specifically, considerations should be given to whether a proposed measure would:

- empower local communities, rather than simply being a transfer of responsibility between public bodies;
- command a high level of public support within the community;
- lead to improvements in the quality of services;
- represent value for money;
- not impose costs on other communities, or,
- enable Scottish Ministers and Councillors to fulfil their duties of accountability.

Applying these principles will help to inform debates about where a particular responsibility should lie and achieve an optimal balance of power that delivers what communities, as tax payers, voters and users of public services, desire.