Local Governance Review

Report Summarising the Main Themes emerging from the Strand 2 Consultation

May 2019

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1. Summary

The purpose of this report is to summarise the strand 2 responses to the Local Governance Review. 20 Local Authorities submitted a response, 6 Community Planning Partnerships and 16 other bodies responded including Regional Transport Partnerships, 2 NHS bodies and the Enterprise agencies (see Appendix One for the list of respondents). Two individual responses have also been considered. Overall, a total of 44 submissions were made to the Strand 2 Consultation and the key points contained within those responses are summarised within this report.

As might be anticipated, there are a wide range of views expressed across the responses. The phrasing of the formal consultation questions encouraged a diverse approach to the issues covered by respondents. It is also the case that many respondents chose not to directly address the consultation questions; instead opting to simply write about their experiences and the issues of greatest relevance / concern to them.

This report summarises the main issues reflected in the consultation responses. These issues do not necessarily reflect the views of the Improvement Service.

There are a number of key themes which have emerged across the responses, including:

- "One Size Does Not Fit All"- there needs to be recognition that no two communities are the same and that approaches should be flexible to accommodate the local context. Whilst perceptions of 'postcode lotteries' may be challenging, asymmetrical government is often appropriate and desirable in order to reflect variable localised circumstances and priorities.
- The current landscape is complex. A number of responses indicated that there is no wish to complicate this any further with new bodies or additional legislative requirements.
- A few respondents suggested that the Local Governance Review presents opportunities to amend existing legislation to facilitate better local governance and partnership working.
- There should be a continued focus on engagement and capacity building with local communities and ensuring engagement is better understood. The point was made that proper funding from Scottish Government needs to be available to support this.
- Several respondents indicated that their communities do not necessarily want control / responsibility, but generally do wish to have greater influence on decision making.
- There was wide agreement from respondents that structural change, changes to governance or empowerment of communities cannot be made without additional funding from Scottish Government. Additional funding needs to be provided and/or greater fiscal control with regard to raising revenue given.
- Many respondents, particularly Local Authority respondents, highlight that progress is constrained by short term budgets. This has an impact on achieving significant change and partnership working, in general. It is difficult to involve communities in any long-term projects. Further complexity also arises as there is not always alignment of budgeting across partnership organisations.
- The majority of Councils commented that too much of Local Authority budgets are ring-fenced, particularly in regard to education and social care, which constrains innovation and flexibility. Fiscal autonomy is key for local decision making to be meaningful.
- Linked to the previous point, a number of Local Authorities indicated that there is considered to be too much centralised decision making and there is an opportunity to redress the balance of the Scottish – Local Government relationship.
- In order to develop local governance and subsidiarity respondents highlighted that there are opportunities to build on existing Community Planning Partnership arrangements or develop Single or Integrated Public Authority models.
- Shared data and evidence/open data is key to promoting understanding in communities, across public sector partners and in order to effectively target priority issues.
- There is an appetite for the adoption of the European Charter of Local Self Government from Local Authorities.

- There is an appetite from Local Authorities to replace the Power to Advance Wellbeing with a stronger / clearer Power of General Competence, which would include the responsibility for local taxation.
- A few local authority responses highlighted that the role of Community Councils should be reviewed with potential for more devolution of power / budgets to them.
- Consideration needs to be given to the right level of place for delivery of services – Local, Regional and National.

In addition to the above key themes, there are also a number of interesting / useful suggestions, which are summarised in chapter 4.

2. Purpose

The purpose of this report is to present a summary of the views expressed in the submissions to Strand 2 consultation of the Local Governance Review.

This report summarises the main issues reflected in the consultation responses. These issues do not necessarily reflect the views of the Improvement Service

Scottish Government and COSLA jointly launched the review in December 2017. A conversation with citizens on the future of community level decision making called Democracy Matters got underway in June 2018 (Strand 1). In parallel, public sector leaders were invited to submit their proposals for alternative governance arrangements at local, regional or national level which can improve outcomes and drive inclusive growth (Strand 2).

The Scottish Government 'Programme for Government 2018-19' confirmed "We have launched the Local Governance Review, jointly with COSLA, and the Democracy Matters conversation with communities across Scotland will continue throughout the remainder of 2018. The findings from the Review will be used to put in place new governance arrangements, and where legislation is needed we will deliver these through a Local Democracy Bill."

The review's remit is open, offering communities, Local Government, the wider public sector and others, an opportunity to place key issues relating to governance arrangements onto the reform agenda. It was anticipated that all public services would wish to support the process, based on an acceptance of increased variation in decision-making arrangements across the country. i.e. an explicit recognition that what is right for one place, will not necessarily be right for another.

The first strand of the review involved engagement with communities via 'Democracy Matters'. Across Scotland, people came together in their communities of place, interest and identity to discuss a short set of open questions which had been co-designed by a group comprising local and national government, equalities groups, business and academia. Community conversations were complemented by a series of regional events held in November 2018 which provided people with a sense of the emerging findings and an opportunity to take a deeper look at the key issues. A report detailing the Strand 1 engagement process and overall findings is also available.

For the second strand, involving local councils and all public bodies including Health, an initial scoping exercise was carried out by Professor James Mitchell, Chair in Public Policy, University of Edinburgh.

Subsequently a letter (attached at Appendix Two) was sent out to public bodies to invite them to be involved, as Scotland's public sector leaders, in a dialogue about how changes to how Scotland is governed might make the lives of Scotland's people better. This invited public bodies to bring forward proposals to feed into the review.

A series of COSLA workshops in November and December were an opportunity for officers to discuss draft proposals.

The strand 2 deadline for responses was 14 December 2018, however responses to the Strand 2 invitation submitted beyond the formal deadline of 14 December, until 31 January 2019, were considered and are reflected within this report.

44 strand 2 responses were received, including 20 from Councils, 6 from Community Planning Partnerships and 16 from other public bodies. There were also 2 individual responses taken into consideration.

3. Key Themes

The following paragraphs provide more detail on each of the key themes.

3.1 One size does not fit all/Asymmetrical and Permissive Government

There is consensus across the majority of the responses that there is no desire for a restructure of Local Government.

Many responses recognise that there needs to be a spectrum of models of local governance, and that one size cannot fit all local areas. The spectrum runs from single/integrated public authority models to local community empowerment. Community empowerment requires to be tailored to each area, with models changing depending on local circumstances e.g. rural, urban, island, level of deprivation/affluence, communities of interest versus communities of place/geography, local capacity etc. Some areas have existing developments in regard to different models of delivery and ask that these be allowed to be built upon.

There is a request that any legislative changes need to be permissive to prevent prescriptive reforms becoming an obstacle to change based on local needs and context. One respondent captured this by asking for 'legislation which would offer options to allow for the development of governance structures which recognise a diversity of views and that communities develop in different ways at different stages, taking account of their own capacity as well as their needs and aspirations'.

Above all, a number of respondents, particularly from local government, stressed the need for flexibility to address local priorities. The powers and resources available need to reflect the responsibilities and workload of each sphere of local governance, whether it be local elected members or Community Councils. Permissive legislation would provide the flexibility for unique models and solutions to be developed for each place, that best reflects local needs. This would require resource to support local communities, but would ensure that all partners can be open to proposals specific to communities.

Another suggestion is that the Scottish Government currently controls too much decision making, which has adversely affected local areas. Some power should be devolved, and respect given to the democratic mandate of Local Government to make democratic decisions for the best interest of their communities. The review should involve a discussion on decision making taking place at different levels. It was also suggested that powers should be shared on the principle of subsidiarity, and that Scottish Government's role should be one of support and setting minimum guidance, rather than prescribing how services should be delivered.

Communities want to make decisions about and influence the services they receive from a range of public sector bodies. There were a number of comments that there should be more democratic accountability across public sector organisations, not just Local Authorities, and that existing arrangements for e.g. health, are not democratically accountable enough. This was also seen to be true of non-departmental public bodies (NDPBs).

In order to develop alternative models of governance and shared resource allocation the Community Empowerment (Scotland) Act 2015 section 17 (Establishment of Corporate Bodies) could offer a mechanism for change. The Transport (Scotland) Bill could also offer opportunities to explore a single public authority model for discrete service delivery elements.

3.2 Complex Legislative Environment

The current legislative landscape in Scotland is generally seen to be overly complex. There is generally no wish to complicate this any further with new bodies or additional legislative requirements, although some respondents indicated that they would like to pursue different models of governance, which may require additional legislation.

There are also opportunities through the Local Governance Review to amend existing legislation to facilitate better local governance and partnership working. For example, increased use of the community empowerment legislation, coupled with a few discrete legislative changes, may be enough to provide the enablers to achieve the key themes identified by the respondents to the review.

Several responses make reference to the current complexity in the legislative, policy and strategic landscape in which Local Authorities and other public bodies operate. These responses also recommend streamlining and rationalisation of the "cluttered landscape of national bodies." In addition, it was suggested that within CPPs, governance arrangements and accountability structures are unclear, particularly given the mixture of local and national organisations involved.

It is felt broadly, particularly by Local Authorities, that this complexity has a significant negative impact. Confusion and, in some cases, a perceived incompatibility between local, regional, and national priorities hampers local partners' ability to meet local needs and act autonomously to meet their communities' requirements. Some legislation can also act as a barrier to partnership and cross-boundary working.

Furthermore, several responses highlight how this complexity increases the barriers to engagement within community groups. Direct experience of working with these groups showed that the complicated landscape and cumbersome processes through which participation takes place reduced willingness to engage and get involved. This is especially true for those community groups that are already underrepresented.

Within this context, there is little appetite for any new legislation or national and regional bodies that might further add to this complexity. Instead, existing legislation could be simplified or amended to further empower Local Government. Furthermore, the point was made, largely by Local Authorities, that where new obligations and responsibilities arise, these should be accompanied with additional funding.

Several responses suggested that any legislative changes should strengthen the role of Local Government on the basis of subsidiarity and that Scottish Government's role should be to impose minimum standards rather than set restrictions for Local Government, a move which would help to clarify the balance between local and national priorities.

Some specific suggestions for changes to legislation or current processes, highlighted by the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) and a few Local Authorities included:

- Repeal of section 124 of the Local Government (Scotland) Act 1973 which provides that half the members of an Education Committee shall be councillors, and also provides for religious representation. It is suggested that the decision on who sits on a Committee should be taken locally. Some Local Authorities may wish to maintain religious representation and others will include representatives from other groups such as young people and unions. Therefore variation should be allowed.
- Repeal of the restrictions in the Local Authorities (Goods and Services) Act 1970 – this prevents trading to generate income to fund services.
- Community Planning Partnerships- section 17 of the Community Empowerment (Scotland) Act 2015 – remove requirement for consent of ministers for formation of a CPP as a body corporate.
- Remove the right to appeal a planning decision where the Planning Authority's decision accords with the Local Development Plan.
- Repeal of sections 15 to 17 of the Local Government and Housing Act 1989, which relates to the duty to allocate seats on committees to political groups. This presents challenges in a committee involving external representation, something which is increasingly essential for effective partnership working.
- Local Government (Scotland) Act 1973 Changes to Governance – A number of specific changes are required to enable partnership working and working across boundaries:

- Deletion of the provision in section 57(3) of the Local Government (Scotland) Act 1973 which restricts the number of non-councillor Members on a Committee (but not a sub-committee) to one-third.
- To support Locality Planning, Schedule 6 of the Local Government (Scotland) Act 1973 should be amended to prioritise local geographical considerations and community cohesion over electoral parity.
- Amendment of section 56 of the Local Government (Scotland) Act 1973, which currently only allows delegation of functions to committees, joint committees or officers. The aim should be to give power to allow Councils to delegate functions to other CPP partners or communities, where desirable.
- Amendment of the requirement in section 62A of the Local Government (Scotland) Act 1973 to obtain the consent of Scottish Ministers to the incorporation of Joint Committees into Joint Boards. While a useful tool, this has been rarely used due to the bureaucracy and timescales in obtaining Ministerial consent. As a matter of principle, this should be a decision for Councils, not Ministers.

- Best Value - Best Value could usefully be expanded into other public bodies and could provide an answer to some of the accountability issues stemming from community participation.
- Removal of all ring-fencing and conditionality – If it is considered by the Scottish Government to be inappropriate for the UK Government to use such measures to control how the Scottish Government prioritises spend, then it is equally inappropriate for the Scottish Government to impose this on democratically elected Local Authorities.
- While it is Scottish Government policy to promote inclusive growth, a legal duty on all public sector bodies to promote inclusive growth could ensure that this is consistently applied, including by Government and its agencies. As part of this, it would be helpful to amend the duty to promote sustainable growth which appears in sections 4 and 5 of the Regulatory Reform (Scotland) Act 2014, to refer to inclusive growth.

In addition, there is a range of specific legislative change suggested by at least one Council, its local CPP and SOLAR, which could be introduced to support the development of local governance, including:

- A duty on all Community Planning Partners and Community Councils to support Locality Planning, which, for Community Planning Partners, must include their provision of resources, including financial support;
- A legal duty on a wider range of public sector bodies to support and resource community participation (not just those listed in schedule 1 of the Community Empowerment (Scotland) Act 2015);
- A duty on Local Authorities, in consultation with CPP partners and local communities, to divide their areas into Localities, not just focussed on locality planning for specific groups (e.g. inequality, islands, or IJB Locality Planning) to allow a focus on priorities for all Localities;
- A duty on Councils to form a Locality Partnership for each Locality with representation from Community Planning Partners, Community Councils and other representative community organisations;
- A duty on Community Planning Partners to deliver services with regard to Localities;
- A duty on such Locality Partnerships, in consultation with communities and partners, to identify key strategic priorities for such Localities and actions and support required to deliver such priorities;
- A duty on all CPP partners to identify annual funds for Participatory Budgeting and to identify services which can be the subject of a participatory approach;
- A legal duty on all public sector bodies to promote the principle of subsidiarity, that wherever possible, power should be delegated to the appropriate lowest level;
- This duty would replace the duty to prepare a Decentralisation Scheme in terms of section 23 of the Local Government etc. (Scotland) Act 1994 with Locality Planning; and
- Review of the ‘Following the Public Pound’ guidance in the light of community participation to provide clarity on accountability issues. Best Value would be a useful starting point for any such review.

3.3 Community engagement, capacity building and empowerment

The majority of responses were supportive of greater involvement of communities in decision making, but recognised that fully funded (by Scottish Government) community capacity building is required to ensure equitable and fair involvement, which does not further increase inequalities. As a result of austerity, many community learning and development services have been reduced, as funding for this service is not ring-fenced and therefore suffers when budget decisions are taken on the 15% - 25% that is within the power of Local Authorities to decide on (there is no suggestion that CLD funding be ring-fenced). This means that more deprived communities are not receiving the level of support required to build their capacity and ability to be involved in decision making, e.g. participatory budgeting. Having additional funding and the flexibility to spend it on local priority issues would facilitate the support of communities. There is a need to create more opportunities for deprived or excluded citizens to participate, developing channels of communication and engagement which a wide range of citizens find accessible. It must be recognised that not all communities are equal and that without intervention, the ability of communities to fully embrace community empowerment will continue to diverge

One Community Planning Partnership suggested that the introduction of Scottish Government funding of Community Planning Partnerships could also support capacity building and support for communities, as there would be more resource and capacity within the CPP.

It was pointed out in one submission that capacity building within communities is also required to allow them to truly lead and develop socio-economic growth opportunities. There is also a need for communities to be well informed in order to be able to be involved in decision making and able to make informed decisions that benefit the wider community, not necessarily just a community of interest.

A common statement, particularly from Local Authorities, was that for communities to be empowered, Local Government needs to be empowered in order to pass responsibility and decision making on to communities.

The Community Empowerment (Scotland) Act 2015 still requires some time to bed in and could be further used to improve community involvement in decision making. It was also suggested that this Act, alongside some amendments to other existing legislation (as set out above), may be enough to facilitate an increase in community empowerment and subsidiarity, without the introduction of additional legislation.

Responses also highlighted the need to recognise the areas of local delivery that communities are more likely to be interested in, those which are more visible to local communities. Any new structure of local governance would need to reflect the local level of community identity and interest. Additionally, in regard to community control, some responses indicated that many communities are more interested in collaboration with, and influence of, local public services rather than having overall control of services. For example, a public body would retain core functions but consider partnership working between community/3rd sector groups and all spheres of governance, where there are agreed and specific objectives e.g. a local project.

It is suggested by some respondents that to better attract communities to be involved in decision making, there requires to be investment in the design of an aligned and clearer framework so that public bodies can demonstrate consistently how they have arrived at their decisions; and also to support the roll-out of relatively new approaches to public decision making e.g. Participatory Budgeting. One local authority highlighted that there needs to be a recognition that capacity within organisations to effectively engage in Participatory Budgeting might not be there, and Scottish Government needs to support the development of this capacity.

3.4 Funding

There is wide agreement from respondents that recent levels of funding have become unsustainable, especially from Local Authorities. There is concern from Local Authorities and partnership organisations that it is becoming increasingly difficult to deliver core services in line with legislative duties and, as a result, it is almost impossible to deliver additional projects and to focus on preventative approaches. There is growing concern that the focus becomes solely on how resources are distributed rather than the broader debate about how high quality public services are sustainably resourced. There is additional concern that the erosion of public service budgets has resulted in increasing inequalities. It is suggested that with greater certainty of funding and/or greater financial flexibility, it would be possible to realign efforts on costing out high quality public services and focus on how this can be sustainably resourced with the powers available. There are various suggestions from respondents as to how this could be achieved. Most notably, there is extensive support for greater fiscal autonomy, as is described in the next part of this report. It is also proposed that it would be helpful to have a commitment from Scottish Government that any new legislative duties imposed on Local Authorities or new asymmetric models of governance implemented will have a new funding framework to support potential governance arrangements. Additional suggestions include;

- Greater capital powers allowing Local Authorities to borrow without Ministerial consent to support capital expenditure under a Power of General Competence (see paragraph 3.9). This is to allow Local Authorities to borrow for others, including ALEOs, providing Best Value and State Aid requirements can be satisfied.
- National organisations that work locally, e.g. police and fire could have budgets delegated to localities and regions.
- The Scottish Government could provide funding of 'additionality' (for projects needed to address gaps additional to core services delivery). This would help develop partnership working amongst organisations that do not normally work together on projects that could have 'added value' at a local level
- Specific dedicated financial and people resource to support CPP activity, in order to fully achieve improved community empowerment.

3.5 Fiscal Autonomy

A high number of respondents said that too much of local authority budgets are ring-fenced, which does not allow for innovation or flexibility. Fiscal autonomy is key for local decision making / local democracy to be meaningful.

The three main sub-themes around fiscal autonomy centre around a need for less ring-fencing of budgets, less short-term funding settlements and the ability to raise local taxes.

A number of submissions highlighted that between 75% and 85% of Local Government budgets are ring-fenced, meaning that local decision making on allocation of spend is limited to between 25% and 15% of funding. Granting councils more power to decide on their financing (50% at a minimum to be decided locally) will make them more accountable and better able to respond to local priorities / preferences. Being able to engage with communities over a wider range of service delivery options and outcomes will encourage communities to be better involved and take a greater interest. Shared outcomes should be seen as the mechanism for delivering local and national aspirations, not ring-fenced funding.

One response set out the issues particularly succinctly:

> "Local Authorities' ability to act in the best interests of their communities is constrained by the way they are resourced. The imposition of reductions in core government grant support, together with the removal of discretion on local taxation, dilutes the democratic accountability and effectiveness of Local Government. With the right enabling powers, leadership and ownership, councils could make even more of a difference in issues that concern their area."

The continued trend of one-year budgets makes collaboration and committing to undertaking medium-long term projects difficult. It creates uncertainty. Several responses indicated the need for at least three-year funding settlements to enable engagement with communities and partners in regard to decision making, strategic planning and service delivery.

Alignment of public sector budgets is also an issue for many respondents, making shared strategic planning difficult. Alignment of budgeting across Community Planning Partners would assist with this. Regional and national organisations, it is suggested by several respondents, should have elements of local budgets within their overall funding, which can be informed by local communities, thereby furthering accountability. Furthermore, partner and internal budget boundaries are reasons why the prevention agenda, critical to the delivery of improved outcomes for communities, is proving difficult to deliver. Harmonisation of accounting and financial rules and regulations across the public services based around support for the delivery of local outcomes would help to break these barriers down, facilitating better local partnership working.

There is a call across a high number of responses for greater local tax raising powers to be introduced, possibly aligned with the introduction of a power of general competence (see paragraph 3.9), to bring Scottish Local Authorities into line with their English counterparts. A consultative and comprehensive review of local authority funding is required.

Suggested potential local taxes and levies included:

- Setting and retention of local business rates
- Property taxes
- Parking levies
- Tourism levy
- Proportion of income tax

A number of Local Authorities would like to be able to set their own levels of Council Tax, including the power to set the values for each band. This power should be unrestricted without caps or sanctions, as there has been in recent years.

Other comments included reference to the way transport is commissioned and funded. The transport partnerships highlighted that funding for transport through charities is not helpful and creates a competitive environment that is not useful. They suggest a more coherent approach to commissioning, consultation and co-delivery with local communities.

3.6 Build on existing arrangements or develop Single or Integrated Public Authority models

There was some appetite from a number of respondents for a single or integrated public authority model, while others do not see this as a relevant approach for their local area. Some respondents hold reservations in assuming that only structural changes can make improvements and instead the focus should be on strengthening current arrangements. For many, this includes strengthening CPP arrangements. One respondent argued that a structured partnership approach, comparable to a CPP, would be useful for how their own organisation works with partners. It is argued that a statutory requirement for partnership working would strengthen the collective leadership role and strengthen capacity. Another respondent conversely argued that partnership cannot be forced but should be allowed to grow. This can be supported through strong leadership and ensuring that partnerships are appropriate to the size and scale of the partners. Further suggestions as to how CPP arrangements can be strengthened include;

- Greater emphasis on encouraging the link between community-led developments and institutional partners
- Allowing CPP partners to delegate functions to other CPP partners or communities where desirable and agreed. This would include amendment of section 56 of the Local Government (Scotland) Act

1973, which currently only allows delegation of council functions to committees, joint committees or officers
- Alignment of plans, operations and resources to delivery of local priorities
- Increased use by all partners of area-based staffing, assets and resources to manage operational support and create a devolved and integrated approach to community provision and local community planning
- All partners formally adopting local governance into their management and governance arrangements.
- Placing empowerment and community planning within the key priorities and structures of nationally accountable organisations, therefore ensuring community planning becomes a core deliverable and priority of all organisations.
- Given the changes in local accountability for community planning and empowerment, a review is needed of national and regional demands as it is challenging to service both with current capacity.

Where Community Planning Partnerships work well, they are increasingly effective in agreeing shared priorities, coordinating resource, adopting preventative approaches and supporting communities. The caveats to this are:

- The effectiveness of a CPP can depend on the strength of personal relationships;
- Even in the most effective CPPs, it can be nigh on impossible to secure any financial resource from partners;
- Securing meaningful involvement of national agencies
- The extent to which other CPP partners, such as Health Boards, can be locally responsive are constrained by national targets, centralised procurement, etc.

While Community Planning provides many examples of project and service delivery integration, governance structures are still maintained at an organisational level and have been further complicated by nationally led structural change including Health and Social Care Partnerships, Police Scotland, Scottish Fire and Rescue Service, and regional collaborative approaches in housing and education. A simplification of this governance, with improved accountability to locally elected councillors, would be welcomed.

An additional comment focussed around incentivising collaboration. Fiscal empowerment, further devolved powers or shared budgets have the potential to be a key incentive for collective and collaborative working, potentially making CPPs more effective.

There are varying views in regard to a single or integrated public authority model for the islands, with some organisations keen to develop this model and others that do not think the public sector organisations are ready for this yet. Each Islands Council are at different stages of development of possible models.

3.7 Open Government and sharing data

The importance of data and intelligence for evidence-based policy decision-making is recognised by many respondents. However, it is emphasised that, for this to be of best use, there must be a commitment to the principle of open data, ensuring that data is shared amongst partners and that the Scottish Government supports this by making as much as possible of its own data open and available to partners. This would help partners to identify those in most need, thereby targeting resources effectively. The sharing of data is a necessary component of partnership working in that it informs shared priorities and allows partners to avoid the duplication of work and waste of resources. Although there appears to be collective enthusiasm for the principle of sharing data, a number of respondents raised their concerns around the practical barriers to achieving this. Data protection laws, are sometimes seen as an obstacle to sharing data, though it is often stated that cultural barriers and incorrect interpretation of legal duties are a bigger challenge.

Further to the emphasis on open data, there was also a general importance placed on the role of ‘open government’. It was pointed out that there can sometimes be a lack of (or perception of a lack of) transparency in governance around the structures and processes in place, leading to a lack of accountability. Members of the public often do not know who is responsible for what. They perceive elected members and Local Authorities to have more power over the local issues that impact them than

there is in reality and often raise issues with the wrong organisation. Several responses highlighted the need for structures to be easy to understand and use, not only to give the public the confidence that their voices can be heard, but also to ensure that their views are taken on board.

3.8 European Charter of Local Self Government

A number of Local Government respondents support the adoption of the European Charter of Local Self Government.

One response highlighted:

> "The Scottish Government has the competence at present to enact primary legislation which would honour the terms of the European Charter of Self Government. Article 2 of the Charter places a clear legal obligation on the Scottish Government to enact primary legislation and embed the Charter in domestic law."

It is argued that the adoption of the charter would facilitate greater local governance and promote rights enjoyed by most other countries in the Council of Europe.

Another submission set out that 'incorporating the Charter of Local Self Government into law in Scotland will strengthen Scotland's overall system of democracy and create the foundations for an enduring and progressive partnership between national government, Local Government and communities. It is key to building on local and Scottish Government's joint commitment to improve outcomes and renew democratic participation across Scotland. In summary, the advantages are:

- doing so would strengthen local and Scottish Government's ability to work jointly to improve outcomes in communities across Scotland.
- it would strengthen Scotland's democracy by ensuring that communities enjoy the same local democratic rights that are already commonplace across Europe and beyond.
- it would deliver the unfinished business of the Scottish Parliament by ensuring that, for the first time, this partnership between national and Local Government is built into Scotland's system of democratic governance, and reflected in its day to day culture and practice.
- it would ensure that Scotland fully complies with international treaty obligations and addresses outstanding issues that have previously been identified. It would also provide a springboard for the UK Government to similarly comply with its obligations. Failure to bring this into effect sends out the opposite message, that the Government never had any intention to comply with the Charter.'

It is suggested that the incorporation of the Charter is an opportunity to improve outcomes, empower citizens, and reduce inequalities for the whole of Scotland

The SOLAR response contains an appendix with more detail in regard to the incorporation of the Charter.

3.9 Power of General Competence

Currently, Local Authorities have the Power to Advance Well-being, and one theme emerging from multiple local authority responses was the inadequacy of this power and the suggestion that this should be replaced by a Power of General Competence within the Local Democracy Bill. That is, the power for Local Authorities to do "anything that individuals generally may do."

This suggestion stems from the perceived weaknesses inherent in the Power to Advance Well-being, which enables Local Authorities to do anything that they consider likely to improve the well-being of their area and/or the people in it. As multiple responses make clear, this power is "so hedged with restrictions that it verges on being unusable," and does not meet the purpose for which it was originally intended. In

particular, the Power does not allow raising of any monies through taxation or charges. Given the existing financial climate, there may be an expectation that Local Government ought to have the powers to raise income.

Where respondents have called for the introduction of the Power of General Competence to replace the Power of Well-being, this has generally been accompanied by the suggestion that tax and revenue raising power must be included, as well as the power to borrow to support capital expenditure. This would recognise that local contexts are unique, that costs vary, and allow Local Government to act in a manner that is felt appropriate to meet the needs of their local area, and help achieve outcomes for their communities.

It is suggested that the Power of General Competence, if it were accompanied by these powers, would ensure that Local Authorities were more fully empowered to act in ways that were most appropriate to improve outcomes for their communities, reduce inequalities and promote inclusive growth.

It was noted that the Power of General Competence already exists for Local Authorities in England, albeit with several restrictions imposed. It was widely felt that certain of these restrictions, particularly around revenue raising, would not be appropriate in the Scottish context and should be removed. It was recognised, however, that certain restrictions would have to be retained, for example the existing duty relating to Best Value was generally felt to work well.

The introduction of the Power of General Competence is also linked to the suggestion that the European Charter of Local Self Government be adopted, as set out above. Responses highlighted that, due to its restrictions, the Power to Advance Well-being does not fully meet the provisions within Article 4, Paragraph 2 of the Charter. This sets out the requirement of local bodies to act according to their own initiative in areas outside those specifically delegated to them. Therefore, introduction of a Power of General Competence would go hand in hand with adoption of the Charter.

The amendments that were passed at Stage Three of the Islands (Scotland) Act provide opportunities for Island Councils to submit requests to Ministers for additional powers and the devolution of functions. It is felt it is important that these provisions are fully considered, and opportunities maximised.

A ‘reserved matters’ power, allied to a Power of General Competence, would be hugely beneficial in terms of enabling Local Authorities to support their communities, address inequality and promote inclusive growth within communities.

The submission from SOLAR has an appendix dedicated to the Power of General Competence, which includes further detail.

3.10 Role of Community Councils

Several responses highlighted the need to consider the role of Community Councils, clarifying their legal responsibilities and possibly increasing these. This process would assist with identifying what decision making powers could realistically be delegated to them.

There is a call to align the review of Community Councils with the Local Governance Review.

One respondent went as far as to suggest that Community Councils have delegated powers, funds and staff. There were two suggestions to consolidate the roles of Community Councils into Community Planning Partnerships, either as members or as subgroups. Community Councils could have a distinct and specific role in the delivery of Local Outcomes Improvement Plans, with a suggestion that they could have a duty to support the delivery of Locality Plans.

Another view expressed by more than one response was that Community Councils at present are not generally representative of their communities and so new solutions to this need to be explored. One suggestion was that fiscal powers are key to enabling Community Councils to maximise their contribution,

and more effective legislation may drive the set-up of more Community Councils and strengthen their contribution. This could potentially encourage more people to get involved in Community Councils.

As with the section on community engagement and capacity building, any increased role for Community Councils, and any capacity building they may require, respondents call for this to be fully funded by Scottish Government.

Across many responses, there was generally a view that Community Councils could play a role in participative democracy at a local level. However, there would need to be a reduction in the bureaucracy involved in engagement to streamline processes and better enable engagement. A strength of Community Councils is that they are democratically accountable.

However, perceived disadvantages and issues with Community Councils at present include:

- Many areas, particularly in more deprived communities, do not have a Community Council
- The membership of Community Councils is not representative of Scottish society, and is often perceived as comprising middle-class, elderly people;
- Few Community Councils elections are contested due to a lack of candidates, with those standing appointed with no competition;
- While the main purpose of Community Councils is to express the views of their communities, it is rarely evident how communities are consulted, or involved in co-production;
- Community Councils are hugely variable in terms of their impact. Some are excellent, others focus on challenge and scrutiny and are reluctant to work in partnership with Councils and CPPs;
- Community Councils possess few powers and, possibly as a consequence, few take a strategic approach to dealing with the priorities of their area.

It is suggested that Community Councils can form part of the solution to decision making/subsidiarity without huge changes to their role. While no significant change is recommended to the current remit of Community Councils, it would still be helpful to clarify their legal status.

3.11 Place and National, Regional and Local levels of organisation

Multiple respondents agree that there needs to be a balance of Local, Regional and National working. Different functions will work better at different levels, and consideration needs to be given to what these functions, or parts of functions, are. Accountability at a local level of national and regional bodies is also required.

It is recognised that communities need to influence local decision making around communities of place, or communities of interest, but that there are benefits of a wider regional approach in some areas of service planning and/or delivery. Examples of regional approaches include Education Collaboratives, Regional Economic Partnerships and Transportation, with one suggestion to perhaps look at regional or national approaches to Educational Psychology, Trading Standards and Environmental Health. However, there is a requirement that any regional approaches are driven from the ‘bottom up’ and consideration requires to be given to what arrangements would need to be in place locally.

One respondent suggested the powers and responsibilities for economic development, transport and skills development currently held by the Scottish Government and its agencies could be devolved down to regional bodies. These regional bodies should continue to be driven by their member councils, with agendas set and decisions taken at a local level, and not directed by the Scottish Government.

Other comments included:

- Regional approaches will not necessarily mean the need for a new regional organisation, as partnerships approaches could work better.

- Rationalisation of the cluttered landscape of national public bodies would improve efficiency and effectiveness, particularly as there is seen to be a lack of local accountability for spending by national public organisations in local areas.

- City Region working will develop over the coming years and brings the opportunity to devolve more national powers to the regional level. The model allows councils to focus on meeting the needs of local communities, whilst each area uses its own specific strengths to play their own distinctive role in the city region. There is a need to safeguard against regional approaches becoming a mechanism to 'suck power up from local areas' rather than a mechanism to devolve power.

- Regional Economic Partnerships have the potential to prioritise local needs and drive prosperity and equality. It was suggested that it will be useful for the review to consider how these can be further enabled. It is important to consider how CPPs can continue to address local circumstances in the context of City and Growth Deals, and regional economic partnerships, and how these could create wider and deeper levels of collaboration with national bodies such as Scottish Enterprise.

- Public health could be more aligned to localities and communities, through health and social care integration and/or Community Planning.

4. Additional comments and suggestions

Other interesting or important comments, suggestions and concerns expressed in consultation responses included:

- **Leadership Capacity** - Leadership capacity in Local Government is very important, at both elected member and officer level. Large, complex, strategic services both demand and need the best leadership available. The crucial importance of leadership capacity at both councillor and officer level has become even more pressing given the increasing complexity of the work of a council. The role of councillors is changing from one where the council is the dominant service provider, to one where the council is a commissioner of services as well as a provider.

- **Representation -** At present the make-up of councils is not fully representative of the communities they serve.

- **National work delivered locally** – Greater recognition is required by national organisations about the implications for local delivery of national strategy commitments; and that community empowerment means that delivery can be by both public services and local communities/ communities of interest. There are opportunities for national public bodies to relocate jobs to help stimulate economic growth in different parts of the country.

- **Christie Commission -** The principles of the Christie Commission and the Commission on Strengthening Local Democracy should be central to any changes made to public bodies and specifically Local Government. It is suggested that the Christie Commission's principles for public service reform be followed in the design of any future arrangements for local governance.

- **Internal systems** - internal systems and processes within partners can often limit the ability to respond to local priorities. These can include rules around capital expenditures and receipts, recruitment and secondment, and opaque decision-making structures. A review of these internal bureaucratic barriers should be undertaken to ensure that public service community planning partners are working to deliver best value outcomes for communities.

- **Community Wealth building -** it is essential that, as part of a duty to promote inclusive growth, all public bodies engaged in procurement or local investment are supported to take community wealth factors into consideration when investing or procuring

- **Technology and engagement** - Increased opportunities to use technology and engagement tools to improve equality of opportunity in influencing decision making are needed. A commitment should be made to make the best use of our people, their skills and current and developing technological resources to improve engagement with local communities/communities of interest.

- **Cities** – the cities ask for a greater role in policy development at a national level. Just as island and rural communities are recognised in funding and investment decisions for the special role they provide and additional pressures they face, it is the view of the cities that similar recognition should be given to Scotland's cities.

- **Inclusive growth** - Proposals under the Review must be consistent with National Performance Framework ambition for inclusive growth and the Community Empowerment Act.

- **Economic Policy –** There is a call for greater autonomy in local economic policy, with the potential for local development and skills being devolved to a local level. There is a need for local levers to drive local economic growth via devolution of legislative powers. Current delivery vehicles and national structures are complex and overly bureaucratic and there is a need to review these to streamline them and ensure transparency.

- **Inputs versus Outcomes** - There should be a presumption against national input targets for any body delivering local services. These run contrary to the Christie principle of focussing on outcomes not inputs

- **Democratic Accountability**- Consideration needs to be given of the link between local authority councillors and their communities. Currently Scotland has the fewest locally elected representatives per head of population anywhere in Europe. If we are serious about having empowered communities, do we need more councillors? The current basic salaries for councillors are not good and tend to result in a high proportion of retired councillors or councillors who are juggling their duties with another job. How well is the multi-member ward system understood or is another proportional representational system worth looking at?

- **Participative democracy versus representative democracy** - participative democracy should not erode the ability of a council to make strategic decisions. The correct balance has to be found between the two.

- **Future Proofing** - the review of local governance provides an opportunity to look forward and future proof the current aims and objectives. Communities are currently changing and to support and enable them to more forward, there must be recognition of the different supports that will be required in the future, with an anticipation of the resources required.

Across the responses, there are issues for particular sectors e.g. transport, health, the cities, community justice, but the detail of these have not been captured in this report, which seeks to focus on the key themes arising across the submissions.

Conclusion

This report has sought to summarise the main themes emerging from analysis of the 44 submissions made to the Strand 2 consultation within the Local Governance Review.

Appendix One

List of Respondents

Aberdeen City Council
Aberdeenshire Council
Angus Community Planning Partnership
Argyll and Bute Council
Argyll and Bute Community Planning Partnership
Calmac Ferries
City of Edinburgh Council
Comhairle Nan Eilean Siar
Community Justice Scotland
Douglas Sinclair
Dr Serafin Pazos-Vidal
Dumfries and Galloway Community Planning Partnership
East Ayrshire Council
East Dunbartonshire Council
East Lothian Council
East Renfrewshire Council
Fife Council
Glasgow City Council
Highland Community Planning Partnership
Highlands and Islands Enterprise
Inverclyde Council
NESTRAN
NHS 24
NHS Shetland
North Ayrshire Council
North Ayrshire Community Planning Partnership
North Lanarkshire Council
Orkney Islands Council
Perth and Kinross Council
Police Scotland
Reform Scotland
Registers of Scotland
Renfrewshire Community Planning Partnership
Scotland's Cities
Scottish Borders Council
Scottish Enterprise
Scottish Natural Heritage
Scottish Water
SOLAR
South Lanarkshire Council
Stirling Council
Strathclyde Partnership for Transport
West Lothian Council
What Works Scotland

The Scottish Government
Riaghaltas na h-Alba

COSLA

Public Sector Leaders
By email

22 June 2018

Dear Public Sector Leader

LOCAL GOVERNANCE REVIEW – ENGAGEMENT PHASE

Programme for Government 2017-18 set out the intention to "decentralise power to a more local level in Scotland and launch a comprehensive review of local governance ahead of a Local Democracy Bill later in this Parliament". In December 2017, the Scottish Government and COSLA jointly launched the Local Governance Review.

We believe that it is important to review how powers, responsibilities and resources are shared across national and local spheres of government and with communities in the context of significant change to the governance of Scotland over the last two decades, and in recognition that outcomes for citizens and communities are best when decisions are taken at the right level of place.

This review reflects local and national government's shared commitment to subsidiarity and local democracy, and builds on joint agreement between COSLA and the Scottish Government to focus on and strengthen local and community decision-making and democratic governance in ways that improve outcomes in local communities, grow Scotland's economy for everyone's benefit, support communities to focus on their priorities, and help new ideas to flourish.

The Review of Local Governance will explore what might be achieved, and highlight opportunities for positive change. In doing so it brings a wide range of Scotland's public services into scope, takes cognisance of reforms where work is already progressing, and will include powers and functions held at national level. It is therefore very important that we hear from you.

Many of you will know that the review is being undertaken in two key strands. First, a highly inclusive conversation with communities is getting underway, and will listen to views about how decision making can work best for towns, villages and neighbourhoods around the country. This reflects our shared commitment to community empowerment, and builds on the work already done to give people a direct say over the decisions that matter most to them. If you would like to support this process, for example by hosting events, please get in touch. As part of that conversation, we expect people will be interested in how decisions about a range of public services can be made in the communities that they serve.

Second – the main purpose of this letter – we wish to involve you, as Scotland's public sector leaders, in a dialogue about how changes to how Scotland is governed can make the lives of Scotland's people better. Accordingly, we are now inviting you to bring forward proposals to feed into the review.

Just like the first strand, the second strand of the Local Governance Review offers a broad scope, and we anticipate that all public services will wish to offer proposals for improved governance arrangements at their level of place. This is based on an acceptance of increased variation in decision-making arrangements across the country: what is right for one place will not necessarily be right for another. For example, these could be at the level of a city or local authority, community planning partnership or regional economic grouping, or focus on how existing national arrangements can support a more local way of working.

We know that there are already many examples of working creatively across traditional boundaries to deliver responsive services for people. We want to hear how these approaches can be strengthened and scaled up, whether there are new powers or other changes that are needed to make more progress and the

benefits these would produce, and about opportunities to hardwire better local governance arrangements into the places you serve. We are also keen to hear about how this landscape could be made to work better overall.

What is important is that proposals reflect our shared aspirations in light of the new National Performance Framework to tackle inequalities and drive inclusive growth, are consistent with Christie Commission principles, and strengthen local decision making.

We also want to have an interactive process with you to consider and develop ideas. Whilst we are setting a deadline for written proposals and evidence of 14 December 2018, we want to hear from you as early in the process as possible in order to understand your proposals, help them take shape and identify where other evidence or assurances might be required to deliver change, and consider how they might link with other ideas.

To get that process underway, we are seeking an initial indication of the kind of issues you would like to discuss by the beginning of September, and we will follow up this letter at that point. There is no fixed format for this, however we do want to receive your initial input no later than early Autumn in order to leave enough time to work with you on proposals. We also want to avoid setting an arbitrary date that would put you under undue pressure to take things forward. But we can't stress enough that we would welcome you getting in touch as early as possible in the process of you forming your ideas. We would of course be happy to meet with you and your networks as part of this process too.

Where there is interest in developing an idea, it will also be important to involve all partners with a potential contribution to make. For example, this approach is already opening up new possibilities for the Islands, following the commitment in Programme for Government 2017-18 to support those Island authorities who want to establish a single authority model of delivering local services.

These two strands of the Local Governance Review will run in parallel for a period of around 6 months, and inform a programme of changes to governance arrangements in different places where these can increase the pace and scale of public service reform, focus on shared outcomes, and strengthen local decision making. In the event of legislative change being required a Local Democracy Bill is provisionally scheduled for introduction later this parliament. However, should you have ideas that will make a real difference, but will take longer to develop and deliver, we do of course still want to hear from you.

Joint oversight for the Local Governance Review overall is provided by the Cabinet Sub-Committee on Public Service Reform Delivery and COSLA's Political Leadership Team. These arrangements provide the primary forum for determining how proposals will be progressed, with Ministers reflecting this in the scope and content of legislation.

The Local Governance Review is part of a long term commitment by national and local government to place based reform and a more local approach to decision making in Scotland. The newly refreshed National Performance Framework provides a shared set of outcomes that this way of working can help to deliver. It is therefore vital that we hear from all parts of Scotland's public services in line with the timescale above. We look forward to your participation, and to discussing your proposals in the coming months.

To begin this process, you can make contact with the team at: democracymatters@gov.scot or 0131 244 0709.

ANGELA CONSTANCE, MSP
Cabinet Secretary for Communities, Social Security and Equalities

JOHN SWINNEY, MSP
Deputy First Minister and Cabinet Secretary for Education and Skills

CLLR. ALISON EVISON
COSLA President

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