

## **Peer Review of UK Local Democracy**

### **Purpose of report**

For discussion and direction.

### **Recommendations**

1. To note the intention of the Council of Europe to scrutinise UK compliance with the Charter of Local Self-Government; and
2. To endorse preparations to input to the scrutiny process, including commissioning an external evaluation.

### **Action**

LGA officers to take forward Member recommendations.

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## **Peer Review of UK Local Democracy**

### **Summary**

1. This report summarises a planned Council of Europe (CoE) peer review of local democracy in the UK during 2013 and considers how the LGA could engage. This activity can support existing LGA campaigns on localism and a new constitutional settlement for local government in England.

### **Background**

2. To recall, the Council of Europe was founded in 1949 at the initiative of Sir Winston Churchill to build democracy and good governance, defend human rights and foster the rule of law. It has 49 member countries and acts on the basis of key treaties and benchmarks, which it mainly upholds by peer pressure. It is based in Strasbourg and is not an EU body (the EU is a member).
3. The Congress is the local government arm of the CoE, and has an elected assembly to whom the LGA nominates 14 members. The core mission of the Congress is the effective monitoring of local democracy in member states by assessing the application of the European Charter of Local Self-Government, which was adopted in 1985 and entered into force in the UK in 1998. It embodies the conviction that the degree of self-government enjoyed by local authorities may be regarded as a touchstone of genuine democracy.

### **The Charter of Local Self-Government**

4. The purpose of the European Charter of Local Self-Government is to identify common European standards for measuring and safeguarding the rights of local authorities. The Charter commits central governments to applying basic rules guaranteeing the political, administrative and financial independence of local authorities.
5. The Charter has two main parts: (Full text attached at **Appendix A**).
  - 5.1 Part I sets out the principles of local self-government. It defines the concept and establishes principles governing the nature and scope of local authorities' powers; ensures that they have autonomy as regards their administrative structures and access to competent staff and defines conditions for the holding of local elective office. Two major articles aim at limiting administrative supervision of the activities of local authorities and ensuring that they have adequate financial resources at their disposal on terms which do not impair their basic autonomy.
  - 5.2 Part II relates to the scope of the obligations entered into by the signatories. To take account of the legal and institutional peculiarities of the various member States, it permits them to exclude certain provisions of the Charter from those by which they consider themselves bound. In the case of the UK, although it signed up to all of the matters of principle, the main exclusion is territorial as the Charter currently does not apply in Northern Ireland.

6. In 2009 a Protocol was added on the right to participate in the affairs of a local authority.

### **Monitoring**

7. The Congress polices the Charter through regular but infrequent monitoring. The first and so far only report on the UK was in May 1998, soon after the UK signed the Charter. It is intended to establish a five-year cycle for all countries from now onwards.

8. The process involves a small fact-finding visit comprising two Congress politicians (the rapporteurs), an independent academic expert in constitutional matters, and staff of the Congress. Visits are made to individual councils, the national associations of local government and Government departments at Ministerial and civil servant level. The findings of the visit are written up in the form of an evaluation and recommendations for future action, and presented to Congress by the rapporteurs.

9. To be effective, this monitoring is not limited to the production of reports and recommendations. It is also part of an ongoing political dialogue with the different levels of governance in the country, therefore once a Monitoring Report has been adopted, the Congress will periodically scrutinise how its recommendations have been implemented. In this way, peer pressure is applied to enforce Congress findings.

### **UK monitoring visit 2013**

10. The Congress has appointed its two rapporteurs:

10.1 Mr Willy Borsus: Mayor of Somme-Leuze and member of the Walloon Regional Parliament (MR party, Liberal Group).

10.2 Mr Alexander Uss: Chairman, Krasnoyarsk Regional Legislative Assembly (United Russia, Christian-Democrat Group).

11. They will visit the UK in Spring 2013. The programme will include Department for Communities and Local Government (CLG) staff and Ministers, the LGA and some English councils – possibly including the GLA – before moving on to Scotland, Wales and Northern Ireland. It is expected that the non-application of the Charter in Northern Ireland will be a focus of the report.

12. The evaluation will take into account all aspects of the Charter, and additionally new benchmarks for central-local consultation agreed at the October 2012 plenary.

13. It is proposed that the LGA commission Jeremy Smith to prepare an evaluation of UK compliance with the Charter, with specific reference to English local government. This will help ensure that the situation of English local government is given due consideration in the Congress report. Jeremy Smith, a barrister by profession, has held senior office in English and European local councils and associations, and prepared a similar evaluation 10 years ago which found a number of instances of non-compliance.

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14. Subsequent to receiving this evaluation, the LGA may wish to prepare its own contribution (or simply endorse Jeremy Smith's) to present to the Congress delegation when they visit LGA.

## **APPENDIX A**

### **European Charter of Local Self-Government**

Strasbourg, 15.X.1985

#### **Preamble**

The member States of the Council of Europe, signatory hereto,

- Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;
- Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;
- Considering that the local authorities are one of the main foundations of any democratic regime;
- Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;
- Considering that it is at local level that this right can be most directly exercised;
- Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;
- Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;
- Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,

Have agreed as follows:

#### **Article 1**

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

### **Part I**

#### **Article 2 – Constitutional and legal foundation for local self-government**

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

### **Article 3 – Concept of local self-government**

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

### **Article 4 – Scope of local self-government**

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

### **Article 5 – Protection of local authority boundaries**

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

### **Article 6 – Appropriate administrative structures and resources for the tasks of local authorities**

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.

2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

#### **Article 7 – Conditions under which responsibilities at local level are exercised**

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

#### **Article 8 – Administrative supervision of local authorities' activities**

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

#### **Article 9 – Financial resources of local authorities**

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

#### **Article 10 – Local authorities' right to associate**

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

#### **Article 11 – Legal protection of local self-government**

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

### **Part II – Miscellaneous provisions**

#### **Article 12 – Undertakings**

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
  - Article 2,
  - Article 3, paragraphs 1 and 2,
  - Article 4, paragraphs 1, 2 and 4,
  - Article 5,
  - Article 7, paragraph 1,
  - Article 8, paragraph 2,
  - Article 9, paragraphs 1, 2 and 3,
  - Article 10, paragraph 1,
  - Article 11.
2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the



expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

### **Article 13 – Authorities to which the Charter applies**

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

### **Article 14 – Provision of information**

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

## **Part III**

### **Article 15 – Signature, ratification and entry into force**

1. This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.
3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

### **Article 16 – Territorial clause**

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the

Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

#### **Article 17 – Denunciation**

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.
2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

#### **Article 18 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

any signature;  
the deposit of any instrument of ratification, acceptance or approval;  
any date of entry into force of this Charter in accordance with Article 15;  
any notification received in application of the provisions of Article 12, paragraphs 2 and 3;  
any notification received in application of the provisions of Article 13;  
any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

## **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority**

Utrecht, 16.XI.2009

### **Preamble**

The member States of the Council of Europe, signatories to this Additional Protocol to the European Charter of Local Self-Government (hereinafter referred to as "the Charter", ETS No. 122),

- Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;
- Considering that the right to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;
- Considering that the evolution in member States has shown the pre-eminent importance of this principle for local self-government;
- Considering that it would be appropriate to supplement the Charter with provisions guaranteeing the right to participate in the affairs of a local authority;
- Bearing in mind the Council of Europe Convention on Access to Official Documents, adopted by the Committee of Ministers on 27 November 2008;
- Bearing in mind also the Declaration and the Action Plan adopted at the 3rd Summit of Heads of State and Government of the Council of Europe (Warsaw, 16 to 17 May 2005),

Have agreed as follows:

### **Article 1 – Right to participate in the affairs of a local authority**

- 1 The States Parties shall secure to everyone within their jurisdiction the right to participate in the affairs of a local authority.
- 2 The right to participate in the affairs of a local authority denotes the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities.
- 3 The law shall provide means of facilitating the exercise of this right. Without unfairly discriminating against any person or group, the law may provide particular measures for different circumstances or categories of persons. In accordance with the constitutional and/or international obligations of the party, the law may, in particular, provide for measures specifically limited to voters.
- 4.1 Each Party shall recognise by law the right of nationals of the party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside.

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- 4.2 The law shall also recognise the right of other persons to so participate where the party, in accordance with its own constitutional order, so decides or where this accords with the party's international legal obligations.
- 5.1 Any formalities, conditions or restrictions to the exercise of the right to participate in the affairs of a local authority shall be prescribed by law and be compatible with the party's international legal obligations.
- 5.2 The law shall impose such formalities, conditions and restrictions as are necessary to ensure that the ethical integrity and transparency of the exercise of local authorities' powers and responsibilities are not jeopardised by the exercise of the right to participate.
- 5.3 Any other formalities, conditions or restrictions must be necessary for the operation of an effective political democracy, for the maintenance of public safety in a democratic society or for the party to comply with the requirements of its international legal obligations.

**Article 2 – Implementing measures for the right to participate**

- 1 The Parties shall take all such measures as are necessary to give effect to the right to participate in the affairs of a local authority.
- 2 These measures for the exercise of the right to participate shall include:
- i empowering local authorities to enable, promote and facilitate the exercise of the right to participate set out in this Protocol;
- ii securing the establishment of:
- a procedures for involving people which may include consultative processes, local referendums and petitions and, where the local authority has many inhabitants and/or covers a large geographical area, measures to involve people at a level close to them;
  - b procedures for access, in accordance with the Party's constitutional order and international legal obligations, to official documents held by local authorities;
  - c measures for meeting the needs of categories of persons who face particular obstacles in participating; and
  - d mechanisms and procedures for dealing with and responding to complaints and suggestions regarding the functioning of local authorities and local public services;
- iii encouraging the use of information and communication technologies for the promotion and exercise of the right to participate set out in this Protocol.

- 3 The procedures, measures and mechanisms may be different for different categories of local authorities, having regard to their size and competences.
- 4 In the planning and decision-making processes concerning measures to be undertaken to give effect to the right to participate in the affairs of a local authority, local authorities shall be consulted insofar as possible, in due time and in an appropriate way.

### **Article 3 – Authorities to which the Protocol applies**

This Protocol applies to all the categories of local authorities existing within the territory of the Party. However, each State may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Protocol or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Protocol by subsequent notification to the Secretary General of the Council of Europe.

### **Article 4 – Territorial application**

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
- 2 Any Party may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

### **Article 5 – Signature and entry into force**

- 1 This Protocol shall be open for signature by the member States of the Council of Europe signatories to the Charter. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified, accepted or approved the Charter. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which eight member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of paragraph 1.

- 3 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

#### **Article 6 – Denunciation**

- 1 Any Party may at any time denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

#### **Article 7 – Notifications**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

any signature;  
the deposit of any instrument of ratification, acceptance or approval;  
any date of entry into force of this Protocol in accordance with Article 5;  
any notification received in application of the provisions of Article 3;  
any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Utrecht, on the 16<sup>th</sup> day of November 2009, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.