

From the President, Councillor Alison Evison



30 November 2020

James Dornan MSP
Local Government and Communities Committee (Convener)
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Mr Dornan,

European Charter of Local Self-Government (Incorporation) (Scotland) Bill

— Thank you for the opportunity to provide oral evidence at the Local Government Committee on Wednesday 18 November. It was a constructive session which I think helped secure a shared understanding of the positive step this Bill will allow Scotland to take toward strengthening the foundations of governance structures fit for the 21st Century. I sensed a high degree of support for the Bill coupled with a healthy appetite for additional evidence of the principles in practice.

I was delighted with the receptive and open-minded nature of the discussion and I think the two panels assembled by the Committee provided an excellent balance of informative and objective information. To supplement my evidence, I agreed to supply further information – including examples drawn from across European experience – to address the concerns raised by the committee as follows.

This Bill is about the status and parity of esteem of local government and national government being formally established, just as it is in every other European country except the UK home nations and Hungary.

Retrospection: It is important to know that local authorities are already able to challenge government decisions in the courts on past decisions over funding. In 2014 nine English local authorities challenged the UK Government allocation of EU funds 2014-2020 in the High Court as it benefited Scotland, but the Supreme Court confirmed the discretionary powers to allocate funds. Scottish councils already have similar powers in this regard.

The purpose of this Bill is precisely not to get to that litigation stage which is an unnecessary cost for everyone concerned and a distraction from agreeing shared outcomes that respect both spheres of government.

Inappropriate Influence (e.g. Financial Settlement): Echoing some of the academic witnesses to the session of 18 November, the Charter has been carefully drafted using language that is not so prescriptive as to provide an unsurmountable barrier for any national government and parliament were they determined to impose its will upon local government.

For instance the use of concepts such as “appropriate” and “commensurate” funding in articles 6 and 8 of the Charter point to a direction of travel but leaves the national level,

ideally working with the local one (article 9(4)), to define the meaning of terms like appropriateness and sufficiency.

Using the Charter provisions for partnership working between local and national levels to achieve shared outcomes will provide good policy making.

We have a number of recent European examples that illustrate situations that might have been avoided had the Charter been complied with at the time:

- The 2011 Greece Kallitrikis reform – this was one of the most radical, austerity driven suppression and force merger of local authorities in recent decades, in complete disregard of the Charter. There is now sufficient perspective to consider that it had made a bad situation worse due to the suppression of local services.
- The 2014 Local Government reorganisation in Ireland. The twentieth amendment of the Constitution of Ireland (1999) provided for constitutional recognition of local government for the first time in Ireland in a new Article 28A. However, the Local Government Reform Act 2014 changed the structure inherited from pre-Independence period by the abolition of all town councils and the merger of certain county councils. This was obviously resisted in some areas, as the degree of local Self Government in Ireland was already, pre-2014 reform, one of the more restricted ones in Western Europe.

The following examples show how incorporating the Charter into domestic law can result in better and less improvised policymaking.

- In Finland the 2014 Finnish Constitutional Court blocked the Health and Social care integration reform as it would have abolished an entire tier of municipal government. The reform has now gone ahead but in full respect of the Charter, as it was done with Local Authorities rather than unilaterally from the centre.
- The 2013 Spanish Local Government Rationalisation Act (commonly known as LRSAL) would have, in its original form, eliminated community councils (which unlike Scotland do have a statutory basis) just on grounds on austerity and without proper regard to the Charter. However during its parliamentary passage, it was pointed out that this would run against the 1985 Local Government Basic Act, which transposes the Charter in Spain, and the Spanish Constitution itself, hence the Government gave more thought and retained them, their costs being actually negligible.

These comparative cases demonstrate that although the incorporation of the Charter into domestic law does not eliminate the potential for the national government and parliament of the day to make bad decisions, it can be used to enable both spheres of government to agree make good decisions.

UK Perspective: The four national associations of local authorities of Scotland, Wales, England and Northern Ireland work together on the issue of localism at both domestic and European levels. Two good examples are the continuous cooperation in the Congress of Local and Regional Authorities of the Council of Europe and the preparations of the 2014 monitoring report of the Charter in the UK carried out by Congress at the time.

COSLA and our counterpart in England, the Local Government Association, worked together with the UK Government to agree a Policy Statement to the 2011 Localism Act to prevent the UK Government to unilaterally impose fines upon individual councils across the UK as a result of EU fines for non-compliance with EU law.

Where possible we provide support to our colleagues in the rest of the UK as they seek to bring the Charter to domestic legislation. As a result of this Bill being laid to the

Scottish Parliament, our Welsh counterparts were encouraged to commit to a similar proposal in their manifesto for the 2021 Welsh parliamentary elections.

Similarly, in terms of repatriation of EU powers, the four associations work together to obtain from the UK Government in 2018 a statement whereby local government would be consulted in developing new powers following EU repatriation.

Litigation: The benefit of this Charter is that it will reduce the risk of litigation further down the line as it provides a clear framework to which civil servants or Ministers will have due regard as they develop new policies and legislation affecting Local Government. A council would find it more difficult to bring a case to the Court let alone winning it, when the government of the day can show that it has effectively considered the Charter principles when developing such new policies and legislation.

Costs: As with litigation, the Charter provides an opportunity to save money through a reduced risk of litigation, better consultation processes, and a more predictable framework for relations between local government, national governments and parliament. As we discussed at the Committee, incorporating the Charter is likely to lead to better outcomes.

Evidently it is often a challenge to identify and present examples of negative consequences when they have *not* arisen as a result of legislation i.e. where the fact is that evidence does not exist to affirm initial concerns and worries. However, drawing from my officers' pan European experience and recent research they have undertaken, there appears to be no foundation that the concerns raised during the Committee hearing on 18 November, and addressed briefly above, have resulted in any significant problems.

Please don't hesitate to contact me for any further information in relation to this Bill as I look forward to its smooth passage through the Parliamentary processes toward adoption.

Yours Sincerely,

Cllr Alison Evison
COSLA President