

Written comments from COSLA

1. COSLA is pleased to provide this submission to the Commission on Parliamentary Reform, which is intended to provide context to its verbal evidence on 30 January 2017.
2. We are committed to engaging closely and positively with the Scottish Parliament, Committees and Parliamentarians, and we regularly do so in a variety of ways. Like the Commission, COSLA and local government are also fundamentally committed to enabling people to participate in decisions that affect them, and we welcome the work of the Commission to explore this further.
3. The remit of the Commission is to consider how the Scottish Parliament can 1) increase its engagement with wider society and involve the public, 2) clarify its identity, and 3) be assured of the right 'checks and balances'.
4. Our submission addresses each of these objectives. We are ambitious about what can be achieved, and it is for this reason that we do not primarily focus on our day to day interaction with the Parliamentary process. Instead, we want to help the Commission take a step back and consider the opportunities to address its remit by looking at Scotland's overall system of democracy.

The Commission on Strengthening Local Democracy

5. Much of our evidence draws on the work of the Commission on Strengthening Local Democracy. Run independently of COSLA, it brought together local government, civic society, and a range of experts to consider how to strengthen democracy and empower communities.
6. It found that local government is out of step with other modern democracies; geographically large scale, without legal protections, and over 50 years, witness to powers shifting to the centre. Its evidence also suggested that this 'top down' way of working hasn't tackled the inequalities that are holding back many communities and has led to a culture that hasn't empowered those around it.
7. It was able to build that view because of the open conversation that it engaged in with thousands of people across Scotland, the UK and Europe - all of its evidence is publicly available at www.localdemocracy.info. It invested heavily in that process, which included participative listening events around the country and with different communities of interest, webcasting 13 expert evidence sessions involving over 70 witnesses, an Ipsos MORI survey of 1000 households, a Call for Written Evidence, and a major conference to explore local democracy. We believe that this work broke the mould, and provides valuable lessons for how the Scottish Parliament can extend its engagement processes too.
8. A key component of its final report, published in August 2014, was the need to reinvent the structures and practices of democracy to actively empower citizens and communities, and build participation at all levels of government. We're pleased that many of these ideas are now entering the political debate.

The checks and balances of a democratic system

9. We welcome the Commission's focus on the Parliament's system of checks and balances. We believe that there are opportunities to strengthen these, and in particular that this question must consider the role of local government as part of the governance of Scotland. There are 2 key issues to consider:
 - *Local Democracy and the Parliamentary System*
10. The first is the design of the Parliament itself. Scotland has a Parliament with a single chamber. Our intention is not to debate the relative merits of bicameral and unicameral systems, but what is clear is that strong local government must be a key check on Scotland's system for sharing power within this single chamber design.
11. As a democratically elected sphere of government, councils must be able to express the priorities of their local community, and be accountable for these to those who elect them. Too much control from the centre will hinder this spectrum of checking and balancing, and hinder Scotland's overall democracy.
12. This is all the more important given that recent experience has demonstrated some limits to the anticipated checks and balances built into the Parliament, particularly in relation to overall parliamentary majority, and opportunities to strengthen the Committee system through elected chairs and other measures highlighted by some Commission witnesses.
13. However, strong local democratic checks do not mean diminishing the role of national government, or the Scottish Parliament in holding it to account- we absolutely recognise its right to focus on priorities for the whole of Scotland, and to set out the rights that everyone should enjoy. But so too do we need to recognise that people's daily lives are not just about the internal workings of Holyrood, but about their democratic right to determine the priorities and choices they want locally too.
 - *Protecting Local Democracy*
14. Given the vital role of local government in balancing Scotland's democracy, the second checks and balances issue relates to the constitutional relationship between Scotland's system of government and the Parliament. Local democracy in Scotland and the UK is almost unique amongst western democracies because it has no status or protection in law and is wholly subject to the will of Parliament.
15. Despite the establishment of the Scottish Parliament, Scotland has continued to rely on the old way of doing things in this regard. Ministers have effectively the same power to give powers or take them away as the Secretary of State for Scotland had prior to 1999.
16. In practical terms, it is national government that sets the shape, size, powers and functions of local decision making, not communities and their locally elected representatives. Scotland does not operate the basic constitutional protections that are available in other mature democracies. In fact, local government in Scotland lacks the right to exist at all, and the reality is that Parliament could,

should it wish to do so, change or remove local government tomorrow without the checks and balances that are legally required in most other countries.

17. The principle of local democratic checks and balances is already well established internationally at United Nations, Commonwealth and European levels. The European Charter of Local Self Government, for example, highlights that subsidiarity:

“should be at the heart of any debate about the nature of central/local relationships and the promotion of a new local democracy... 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”.

18. A glance to Europe demonstrates that Scotland’s national-local relationship is unusual and in need of reform. If Germany is taken as an example then Article 28(1) and 28(2) of the Basic Law guarantee the existence of elected councils for counties and municipalities and, *“the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws.”* Similar constitutional guarantees can be seen in Spain, where the constitution states in Article 137 that, *“The State is organised territorially into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests”* and France where the principle has been reinforced under the 2003 constitutional reform.

19. Scotland should be no different, and COSLA is therefore very clear that the principles and provisions of the European Charter of Local Self Government must be adopted into law in Scotland in order to enshrine subsidiarity and strengthen democracy.

Increasing engagement and improving the identity of the Parliament

20. Our starting point is that we fundamentally believe that people in Scotland care passionately about the decisions that affect them, their families, and their local services. However, our evidence is that for many people, decision making feels distant and opaque.

21. We applaud the efforts being made through this Commission to open up the activities and processes of the Parliament, and we are keen to highlight what we consider to be significant key opportunities to transform engagement.

- Subsidiarity and Participation

22. The first question to address concerns the motivation that communities have to engage in decision making. In Scotland and around the world, it is now well accepted that it is fundamentally better for decisions to be made by those that are most affected by them. It follows, therefore, that if people are to have control over their lives, they need services that are accountable locally and that reflect their local priorities. After all, it is at the local level, in the places where people live, that people have most contact with services and most opportunity and motivation to share in their governance.

23. Yet in Scotland and the UK we have witnessed a 50-year trend towards centralising – by all parties - powers and decision making. In simple terms, we believe that this position contributes to a sense in many communities that they are spectators rather than full participants in their democracy. Many decisions are taken far away from where people live, and it may be little wonder that many do not actively seek to participate in these processes.
24. While improvements to parliament's existing processes can undoubtedly be found, our view is that this will only address a small part of the overall increase in participation that is possible. Instead, we believe that the key to vitalising the whole democratic process is to devolve powers and resources out of Edinburgh and into the lowest appropriate level in communities. This subsidiarity principle should therefore be a prominent focus for the Parliament's guiding principles.
- *The Identity of the Parliament and Improving Transparency*
25. The landscape which communities need to navigate is also an important factor. A founding principle of the Parliament is that the Scottish Government is accountable to it. But the wider system of accountability is much less clear. It includes locally elected councils but also a plethora of public agencies and quangos that are accountable to Scottish Government rather than local people. This complex environment makes the relationship between the Scottish Government, Parliament, Local Government and other organisations highly unclear. From a citizen's perspective, our sense is that many people have little idea about who is democratically accountable for the services they experience.
26. The role of the Parliament in that accountability has not, in our experience, always been clearly understood. COSLA and councils are committed to engaging openly with all of our stakeholders, and no less so parliamentarians and the committee system. But we are clear that as a democratically elected sphere of government, Councils are ultimately accountable to their communities. The perception can be that local government reports to Parliament or its Committees, and that national politicians are a 'higher authority' in terms of decision making and accountability.
27. For all the above reasons, the relationship needs to be clarified. A key challenge is that the current system operates without any map of powers and responsibilities. We believe that it is therefore time to define the competencies of central, local and community governance.
28. One way to do so would be to look to the EU system by clarifying in law the roles and responsibilities of democratically elected bodies in Scotland. In federal systems or states with written constitutions, the basic rules of the law are codified and the relationships between different spheres of governance are set out.
29. A constitution is not a prerequisite to clarify Scotland's democracy in this way. For example, under the Scotland Act 1998, the Scottish Parliament can make primary and secondary legislation in those areas not reserved to Westminster or protected from modification.

30. Whatever the vehicle, the benefit would be that for the first time, people would have clarity about what they can expect from different spheres of government, and be able to engage with and hold their elected representatives to account accordingly. The transparency created by codification would also help Parliamentary scrutiny, and enhance the ability of differing spheres of governance to identify and support shared priorities.
31. Because the Scottish Parliament, local government and community government would exist in their own right and have their own clear democratic mandate, it would also follow that no part of government could be abolished or significantly changed without a clear mandate- further improving overall checks and balances.
32. A more negotiated set of relationships would therefore not only free local people to engage in more decisions affecting their lives, but also provide the more consensual style of politics envisaged by the Scottish Constitutional Convention in the founding days of the Parliament. Indeed, the evidence that we have accumulated suggests that some tensions in our system are much less familiar in other countries that have taken this approach; they simply get on with the job.

Conclusion

33. We want all those who are democratically accountable and involved in the governance of Scotland– the Scottish Government, Scottish Parliament and Local Government – to work together on the task of democratic renewal. The Parliament's day to day processes and procedures can be strengthened, but greater transformation in Scottish democracy is also possible.
34. Our aspiration is about more than short term changes that are possible now, and we recognise that some of the issues we highlight will require a longer term approach. We also recognise that some of these ideas will not be familiar. Some may feel that controlling the levers of power is the only way that politicians at all levels can carry out their mandate or that devolving decision making and resources is less effective than a one size fits all approach. We hope that the Commission on Parliamentary Reform can help focus on the journey that is required, and bring together everyone with an interest in building Scotland's democratic strength.
35. We look forward to supporting that task.

COSLA
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