

Corporate, Policy and Strategy Committee

10.00am, Tuesday 4 December 2018

Local Governance Review

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| Item number | 7.7 |
| Report number | |
| Executive/routine | |
| Wards | |

Executive summary

COSLA and the Scottish Government have jointly launched the Local Governance Review and are seeking written responses from public bodies by 14 December.

The review is an opportunity to identify issues and asks that could potentially be resolved within a future Local Governance Bill.

This report seeks members consideration and approval of a City of Edinburgh Council response attached in Annex 1.

Links

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| Coalition pledges |
| Council outcomes |
| Single Outcome Agreement |

Local Governance Review

1. Recommendations

- 1.1 To approve the proposed response to the Local Governance Review attached at Appendix 1.

2. Background

- 2.1 The Scottish Government and COSLA agreed to progress a joint review of local governance in Scotland in December 2017. The consultation process has gathered pace in recent months and has two key strands. Strand 1 focuses on a programme of community engagements involving a range of organisations from public services, the third sector and wider civic Scotland. Strand 2 of the review involves the Scottish Government, local authorities, CPPs and other public-sector organisations proposing approaches to governance, powers, accountabilities or ways of working that could improve outcomes, reduce inequalities, and improve democracy locally.
- 2.2 The consultation process has been an open format and COSLA and the Scottish Government have invited both formal and informal engagement on the matter. All public bodies have been asked to submit a consultation response by 14 December but engagement events are continuing past this point and it is expected that further consultation on any specific proposals that are brought forward.
- 2.3 The Deputy Leader also participated in a workshop aimed at Scottish Cities on 30th November. The COSLA draft submission to the review will be shared with COSLA Leaders in January.
- 2.4 The attached draft Council response has been developed with elected members input and consideration through 2 workshops, 1:1 meetings and consideration at the Budget Core Group.

3. Main report

- 3.1 Elected Members considered a draft response during 2 workshops. The response was reviewed to take account of these discussions.

- 3.2 The key strategic points addressed in the response are grouped under 4 headings – similar to those used by COSLA.
- 3.2.1 Empower both representative and participatory democracy
 - 3.2.2 A permissive legal framework for local government and its partners
 - 3.2.3 Remove barriers and increase responsibilities to collaborate
 - 3.2.4 Greater fiscal devolution for local government and public bodies
- 3.3 The full response covers these themes in detail but a summary of the key issues raised are highlighted below

Empower both representative and participatory democracy

- 3.4 The review should empower both participatory and representative democracy and all public bodies should be able to apply different ways of working in different councils and local communities as appropriate. In keeping with this, Scottish Government and other public bodies, should be jointly responsible with local government for adequately promoting, supporting and investing in participatory and empowerment processes and in the skills and capacity of local communities and citizens to engage.

A permissive legal framework for local government and its partners

- 3.5 While Edinburgh City has many unique pressures as a result of being both Scotland's most thriving local economy and the Capital City, a more permissive legal and fiscal framework for Local Government in the round would empower the council to take the appropriate local actions to manage these pressures and to be held locally accountable for the decisions it takes.

Remove barriers and increase responsibilities to collaborate

- 3.6 The reviews should consider and remove legal and operational barriers to collaboration and increase the expectation that public bodies work together where that makes sense and at an appropriate scale. This should include the potential to collaborate amongst communities of interest as well as in respect of geography for example in respect of any city agenda that may develop.

Greater fiscal devolution for local government

- 3.7 Scotland currently has the lowest level of local income raising fiscal powers allocated to local government across the whole of Europe. Local Governance, local accountability and local democracy would improve with the devolution of significant fiscal powers which rebalance the overall amount of local government budgets that can be raised locally and those resources raised by central means and distributed across local authorities by the Scottish Government. This general principle includes specific powers such as a tourist levy and a parking levy.

- 3.8 The response attached in annex 1 for members consideration develops these themes and makes further specific recommendations for Scottish Government to consider.

4. Measures of success

- 4.1 The City of Edinburgh Council's views are appropriately represented and heard by the Scottish Government as part of the review and that the council continue to shape any forthcoming proposals within the Local Governance Bill.

5. Financial impact

- 5.1 At this point, there are no financial implications in respect of this paper

6. Risk, policy, compliance and governance impact

- 6.1 None.

7. Equalities impact

- 7.1 None.

8. Sustainability impact

- 8.1 None.

9. Consultation and engagement

- 9.1 Elected members workshops were undertaken to develop the response.

10. Background reading/external references

None.

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11. Appendices

CEC Response to the Local Governance Review

Introduction

Edinburgh is a world class city of growing international significance. The size and geography of the city offers significant opportunities both for community empowerment and regional collaboration but it also presents challenges when seeking effective ways to engage with and meet the needs of a population of more than 500,000 citizens.

The population is also set to grow at a significant speed over the next 20 years. Along with this growth, Edinburgh will face increasing challenges around our growing school roles, increasing numbers of older people, homelessness, community justice and wider children's services and child protection.

At the same time, while the city is home to a thriving and successful economy, Edinburgh faces significant challenges in the management of future inclusive economic growth – encouraging development which benefits all parts of the city, managing the consequences of successful tourism activity, addressing challenges arising from Brexit and changes to the workforce needs of the economy.

The City of Edinburgh Council requires the powers to deliver a bespoke response to the unique configuration of challenges across and within the council boundary. It also requires the right environment to capitalise on the opportunities of a capital city.

The council has much to offer by way of local leadership and regional leadership and is seeking a truly empowering environment in which to explore the potential for more and different collaboration and service delivery beyond traditional boundaries of community planning partnerships.

The Local Governance Review is a welcome opportunity to deliver a vision of Scotland where:

- Community actors have the resources and support to plan and act in collaboration with each other and with public bodies
- local authorities are a trusted and empowered sphere of democracy which has the legal and fiscal powers to fulfil its role efficiently and effectively according to local circumstances
- regional partners have a strong duty to cooperate and the legal and operational flexibility to collaborate on the issues that demand city regional working
- National and regional actors have the discretion to operate differently according to local needs and have robust joint accountability for collaborating over shared agendas

The City of Edinburgh Council has a number of specific asks for the Scottish Government and COSLA to consider as part of this review.

1. Permissive Legal Framework

The City of Edinburgh Council asks that the Scottish Government:

- **Reviews the governance of national, regional and local organisations to ensure a coherent legal framework for all public bodies and organisations including IJBs, Community Justice Partnerships, Children’s Services Partnerships, CPPs, Community Councils.**
- **Reviews the LG Act 1973 to enable LG to take decisions outwith an individual council – both at a regional and a sub council level**
- **Consolidates appropriate Local Government Acts into a coherent single, modern piece of legislation**
- **Reviews legislative duties in favour of empowering legislation which increases local accountability for prioritisation and delivery of policies and services; removing historic or out of date requirements service plans and reporting**

Scotland has experienced a variety of changes in respect of centralisation, regionalisation and community and individual empowerment across all sectors. These reforms, policies and legislation evolve over time and not as part of a single coherent and systematic approach to good governance. While this is understandable, it has resulted in an unhelpful amount of complexity and confusion.

What is governed, commissioned and delivered centrally, regionally, locally; in communities and by the individual needs to be understood as a whole system which is mutually dependent and mutually reinforcing.

On a practical level, boundaries of governance and service delivery for police, prisons, the NHS, local authorities, education, transport and economic partnerships have a tangible impact on how well local services:

- engage with each other,
- flex to meet the variety of needs and priorities which exist across regions and the country and,
- flex to meet need within individual communities.

In this context, it is therefore necessary to talk of ‘local governance’ as part of the whole system of governance in Scotland. The review is an opportunity to bring clarity, cohesion and simplicity to Scotland’s governance and within that, the role and shape of local government.

Edinburgh and local government’s legal framework

While Edinburgh City has many unique pressures as a result of being both Scotland’s most thriving economy and the Capital City, a more permissive legal and fiscal framework for Local Government in the round would empower the council to take the

appropriate local actions to manage these pressures and to be held locally accountable for the decisions it takes.

In deciding what legal powers are granted to local government and the level of prescription applied within the law, the presumption throughout the review should be in favour of local government and subsidiarity unless a matter can only be progressed by the Scottish Government. This is similar to the approach taken in respect of devolution to the Scottish Parliament.

Decluttering the legislative landscape

Legislation impacting on local government has built up over time and is often progressed from a particular operational or policy perspective. Local Government is often required to give practical effect to this legislation and experiences first hand any contradictory aspects or unintended consequences as legislation is implemented.

This is most evident in the number of legal obligations placed on councils to draw up individual service specific or policy specific council plans which inevitably also require performance monitoring and reporting. This may not reflect local priorities or keep pace with the evolving picture of local government service delivery which is increasingly trying to be both joined up and strategic. At worst, this approach becomes a barrier to reshaping services into something more coherent and progressive. A simple example of this is the requirement to continue producing anti-social behaviour plans when councils are now focused on strategically addressing community safety.

This review is an opportunity to bring simplicity to the legislative landscape which would, at the same time, truly empower local councils and local communities to decide and focus upon local priorities. This approach would strengthen the local accountability for impact and the successful delivery of improved outcomes whilst recognising national priorities within the national performance framework.

The power to share decision making

Local Government faces a challenge meaningfully devolving decision making in an efficient, safe and legally compliant way to local partnerships and regional partnerships in the current legislative framework. Transparent, fair and safe decision making, the presence of checks, balances and safeguards and the legal ability to appropriately delegate decision making need to be considered in this review if local governance is to be more innovative and inclusive.

The review could helpfully look afresh at and simplify the various Acts of Parliament which specifically confer powers and duties on local government. The review should simplify the 1973, and 2003 Local Government Acts to enable local government to make decisions with non-council partners while still utilising the legislative provisions that offer sound financial safeguards for local government.

Financial controls and best value

At present councils are seeking to implement legislation such as the Community Empowerment Act at the same time as being in the role of creating checks and

balances on local decision making structures/ arrangements. For example, the council currently:

- has the duty to investigate complaints which includes community councils,
- is expected to regulate expected behaviours in these settings,
- ensures the rigour of decision making and,
- (in terms of the appropriate use of public money,) evaluates the effectiveness of spending or investment commitments.

In this respect the council is facilitating and supporting devolved decision making at the same time as it is required to instil controls, hold to account and evaluate effectiveness. This creates a confused dynamic with communities which can breed confusion and distrust.

As a principle, devolved decision making must not come at the expense of internal controls, good governance and public money being spent appropriately. Being able to evidence this rigour is at the heart of transparent accountability and therefore the trust that communities have in whatever form our governance takes.

This review is an opportunity to support community empowerment by providing legal clarity and flexibility around the roles and responsibilities of the council in this respect. This could take the form of a power to legally delegate authority to take decisions in partnership with non-council members as detailed above but also requires greater clarity around the relationship between bodies, organisations and decision making and regulatory structures.

2. Participative and representative democracy

The City of Edinburgh Council asks that the Scottish Government:

- **Affords equal value and respect to representative and participatory democracy alongside the freedom for Local Government to apply different mechanisms for making local decisions according to local circumstances**
- **Legislation that enhances participatory democracy must evidence how this infrastructure will be supported and resourced**
- **Communities should be empowered to engage more directly with and impact local, regional and national public sector services, partnerships and decision making bodies.**
- **The review must provide clarity around the relationship between the council and community structures especially in respect of participatory budgeting and the devolution of other types of financial decisions making and the council's statutory Best Value duties.**

Balancing participation and representation

Good governance needs a mix of strong representative and strong participatory democracy at every level of government.

The review should look to empower both participatory and representative democracy and public bodies should be able to apply different ways of working in different communities. Currently, there is a danger that the burden of community engagement, community empowerment, Participatory Budgeting and participative democracy in the round can fall heavily on small groups of regular community members and in particular, on community councils and neighbourhood partnerships.

It can be difficult for citizens in full time education and employment or with caring responsibilities or other complex personal circumstances to invest the amount of time increasingly required to be a part of a participatory process. This can undermine the outcome achieved through local collaboration and can impact the perceived fairness of decisions taken for communities who cannot, for whatever reason, commit to be involved in local processes.

While there are examples of well established good practice and strong participation and community empowerment in some parts of the city – most notably Leith, different communities prefer different ways of working with the council. In some communities a fully engaged and consulting representative model is more appropriate and this should be respected.

In terms of representative democracy, while decoupling Local Government elections from Scottish and UK Parliamentary elections allows local government to be the primary focus of the electorate's decision making, the consequences of this has been a lengthening of councillors' term of office. This has reduced the frequency that members are held to account by the electorate. While this issue connects Westminster and Holyrood, the legislation to address it sits with the Scottish Parliament and this should be considered as part of the review.

Scale and place of decision making

At the same time, the review should support councils to be clear over the appropriate place and scale of decision making. What it makes sense to deliver at a city wide/council level and what it is practically possible to devolve to local and individual levels should be more transparent to communities and citizens. This should be addressed as part of the review to ensure community empowerment is meaningful but also to manage expectations around the appropriate place of decision making.

Clarifying the role and responsibility of community councils including their legal responsibilities and relationship with the council is also an important part of supporting community engagement and community empowerment. Clarifying the relationship between the Local Authority and Community Councils and the extent to which their role can be effectively supported and empowered while also maintaining good governance is essential.

Finally, setting aside any debate around the rationale for the national provision of services such as police and fire, the review should address the impact that the centralisation of these important local services has had on local accountability. The review should not only consider how this type of body or organisation can better work with the council but how they can be required to work across siloes with each other and most importantly, directly with communities and citizens.

The political support for participatory democracy and empowerment as a principle, cannot relate only to those matters reserved to local government. There is a clear deficit in consideration of the appropriate relationship between regional and national bodies and the community and the extent to which community empowerment should shape and impact regional considerations as much as local ones.

The local governance review is an opportunity to provide some clarity and cohesion to the appropriate balance between national and regional collaboration and local community empowerment. At present, regional structures and collaborations are largely distinct and separate from the community except through the lens of local government or large-scale consultation exercises. Communities should have a voice at all levels of governance and decision making and not simply at the sub local level of a council.

Audit, accountability and support for participatory democracy

At present, the Scottish Government commitment to participatory budgeting is for councils to devolve 1% of budget for communities to allocate. In Edinburgh, this is equivalent to a £7m per annum budget devolved to local communities. While local government champions the importance and role of our communities in decision making, service design and service delivery, there are practical and legal issues to overcome when delegating public resources of this magnitude. These issues must be addressed as part of the LGR to support a meaningful delegation of decision making and power into the future while ensuring the legal use of public funds.

It must also be acknowledged that by its very nature, participatory democracy, in all its forms, is not a more cost effective model of decision making to operate. It comes with capacity, skills and resource implications that haven't been adequately understood or referenced in the legislation which has provided for enhanced community empowerment to date. The Planning Bill place requirements; the Community Empowerment Act and; the Scottish Government commitment to 1% participatory budgeting are all examples of commitments which need additional resources to invest in the different ways of working required as part of the legislation.

There is a real risk that local government does not have the resources or the skills and capacity within its workforce to facilitate and enable the type of participatory landscape currently committed to by the Scottish Government and supported by Local Elected Members.

This review needs to take the opportunity to adequately reflect on the reality of increasing participatory approaches and empowerment and consider how the Scottish Government and all its agencies will contribute to and support that capacity and infrastructure alongside local government.

In keeping with this, Scottish Government and other public bodies, should be jointly responsible with local government for adequately promoting, supporting and investing in participatory and empowerment processes and in the skills and capacity of local communities and citizens to engage.

3. Improved collaboration and integration

The City of Edinburgh Council asks that the Scottish Government:

- **Reviews governance and operating models of regional and national bodies and remove any barriers which may prevent joint working with councils and communities.**
- **Ensures the full implementation of The Public Bodies (Scotland) Act and in particular, provide**
 - **further clarification of governance when decisions taken by the IA will have a material impact on the viability and financial sustainability of the parent body.**
 - **clarity around local public accountability and democratic oversight of the decisions taken by the IA**

The Council intends to be at the forefront of regional collaboration which supports our council and wider city ambitions. The reviews should consider and remove legal and operational barriers to collaboration and increase the expectation that public bodies work together where that makes sense and at an appropriate scale. This should include the potential to collaborate amongst communities of interest as well as in respect of geography for example in respect of any city agenda that may develop.

Regional opportunities

New policy direction such as the Enterprise and Skills Review provide a requirement for local authorities to work in collaboration and partnership across regional boundaries, including new requirements for Regional Economic Partnerships and Regional Economic Strategies to align with and complement City Region Deal and other investment programmes.

This direction of travel can offer significant opportunity for improved regional working, and improved alignment of economic development collaborations alongside other statutory place development regional partnerships (including planning, housing, and transport partnerships).

More thought is needed as to how to empower, encourage and expect enhanced regional collaboration where it makes sense. This principle should also apply to collaborate between regional bodies, organisations and partnerships. SESTRAN and SESPLAN for example, could helpfully be expected to collaborate more overtly with each other to the benefit of our local communities.

National and regional bodies working locally

As described earlier, simultaneous support for regional planning and decision making, community empowerment and other policies that encourage greater local decision making within council boundaries carries the risk of an increased gap in local democratic governance and accountability.

There is also a danger of duplication or confusion around roles and responsibilities for example local government need to plan for employability and skills provision through local community hubs designed to meet the needs of local citizens, at the same time as it is asked to plan similar services and structures to meet the needs of national agencies working at a regional geography. Connecting these layers is sometimes difficult and connecting communities to the decisions taken nationally and regionally doesn't happen as well as it should.

In addition, national and regional bodies often also don't have the appropriate authority or flexibility to meaningfully collaborate locally according to local needs. This review is an opportunity to increase the operational and financial flexibilities regional and national organisations have to work differently to meet the needs of different councils and/or communities within a council. Any regional or national body delivering services to, or making decisions impacting on, local areas and the people who live there should be required to directly consult and engage with those communities.

Integration of health and social care

The layering of the Public Bodies (Joint Working) (Scotland) Act's provisions for governance on current and unchanged legal framework for Local Government and the NHS has created its own challenges that could helpfully be addressed as part of this review. Failing to take this opportunity for clarity could further impede the ambition of the reforms supported by local government, to integrate health and social care and shift the balance of care.

In particular, further clarification is needed around the interdependent governance that exist when decisions taken by the IA have a material impact on the viability and financial sustainability of the parent body. In addition, local public accountability and local democratic oversight and accountability of the decisions taken by the IA and the financial impact of those decisions on wider statutory services needs to be clearer.

4. Fiscal devolution

The City of Edinburgh Council asks that the Scottish Government:

- **Devolves fiscal powers to Local Government to**
 - **Raise income locally through devolved tax raising and other powers including TVL**

- **Enable more flexible use of borrowing and lending revenue putting Scottish Local authorities on a par with English and Welsh councils**
- **Enables greater devolution within public bodies to**
 - **Use national and regional budgets with greater local delegated authority**
 - **Enable greater financial collaboration around investment choices in respect of capital assets**

Fiscal devolution to Local Government

Scotland currently has the lowest level of local income raising fiscal powers allocated to local government across the whole of Europe. Local governance, local accountability and local democracy would improve with the devolution of significant fiscal powers. Shared decision on the allocation of resources must include shared decision on the ability to raise resources locally. Fiscal devolution is also necessary for local government to effectively manage the increasing budget pressures facing the public sector for the foreseeable future. It is also an essential part of visibly and meaningfully empowering local places – be they councils, neighbourhoods or communities.

This review should rebalance the overall amount of local government budgets that can be raised locally and those resources raised by central means and distributed across local authorities by the Scottish Government.

Longer term financial settlements would also enable councils to more meaningfully plan our own budgets and make long term financial decisions with greater confidence.

Specific powers relevant to Edinburgh

Within this broad principle of devolving more fiscal powers to local government, the City of Edinburgh Council has long supported the call for specific legal powers to implement a Transient Visitor Levy (TVL). The council has more recently also advocated for the power to implement a Parking Levy Scheme within the city. These permissive powers would allow all councils in Scotland to consider their local circumstance and apply the powers in such a way as to address local challenges or enhance local opportunities.

In respect of these two examples, Edinburgh has a strong and unique case to make as to how we would utilise powers for local benefit. The council's formal position to support the adoption of a TVL is based on the assessment of the strength of our tourism industry and the need to manage that success appropriately to the benefit of visitors and residents alike. Empowering local government to take these decisions in collaboration with our communities increases local responsibility to make balanced and mature decisions and to be accountable for those decisions over time. This is one of a host of ways in which the ability to increase local income could and should be delivered.

Parity for Scottish Councils

The absence of these powers is in stark comparison with other UK and international cities, for example, London has implemented congestion charging, Nottingham has successfully implemented a workplace parking levy and TVLs are commonplace across the EU. Failure to similarly empower Scottish local government puts councils at a disadvantage and importantly, as a city, puts Edinburgh at competitive disadvantage.

At a minimum, Scottish LAs should see their fiscal flexibilities on a par with local authorities in England and Wales. This includes council borrowing powers and the legal power to invest directly in income generation or to lend to third parties. Without this type of permissive legal framework, innovation will be constrained and slow.

Fiscal devolution for other public bodies

Financial devolution should also be considered in respect of the wider public sector and between and amongst statutory partners required to collaborate locally and within the community planning partnership. On an everyday level, community planning legislation requires national and local statutory bodies to work together in partnership to deliver better outcomes for local communities. However, national or even regional partners participating in local partnerships are hamstrung in their ability to collaborate by a lack of local discretion and an absence of local budgets to jointly invest according to local priorities.

At present this is true of relatively small levels of financial commitment. Larger scale financial collaboration with national or regional bodies is proportionately harder. For example, while all evidence points to the merits of joint capital investment and co-location of services, this is far harder to turn into a reality in Scotland than other parts of the UK. The central approach to the capital assets of the NHS or latterly Police and Fire, hinder collaborative projects to jointly divest and reinvest in local capital projects – from care homes, to GP surgery and advice service co-location to broader ‘community hubs’. More should be done to delegate all assets and budgets in a more flexible way to regions and localities as appropriate.

In this context, regional and national consolidation of services currently works against good local governance and empowerment.

Conclusion

The City of Edinburgh Council welcomes this opportunity to engage in a discussion about Scotland’s governance and the changes that could helpfully be made to ensure that all public bodies work better together to meet the needs of our citizens and to ensure that citizen’s and communities feel able and empowered to engage effectively and collaborate with all public bodies.

