

European Charter of Local Self-Government (Incorporation) (Scotland)
Member's Bill – Update

Summary and Recommendations

This paper provides COSLA Leaders with an update of the progress being made toward strengthening the status and standing of Local Government by incorporating the European Charter of Local Self Government into Scots Law through a Member's Bill.

COSLA Leaders are invited:

- I. to note that the European Charter of Local Self Government (Incorporation) (Scotland) Bill has now been lodged formally in the Scottish Parliament on 9 May 2020;
- II. to agree that COSLA lobby strongly and fully to seek to ensure its enactment; and
- III. to agree that Leaders be kept updated on developments.

References

Previous reports: -

- European Charter of Local Self Government: Members' Bill Update – Leadership Sounding Board, January 2019
- European Charter of Local Self Government: Member's Bill - Draft COSLA Response to Initial Consultation – Leaders, August 2018
- European Charter Member's Bill – Leaders, June 2018
- European Charter- Convention, March 2018
- Strengthening Local Democracy – Leaders, August 2017

European Charter of Local Self-Government: Members' Bill – Update

Purpose & Background

1. This paper provides members with an update and review of the progress made toward securing one of COSLA's long held objectives, namely the legal formalisation of local democratic government within the governance structure of Scotland. This ambition is reflected in COSLA's Constitution, in the COSLA Plan 2017-22, in COSLA's work to strengthen intergovernmental relations in the context of Brexit, and in a variety of policy issues, and in relation to local taxation. An *aide memoire* of the key provisions of the Charter are summarised in Appendix 1.

COSLA's Current Position

2. In August 2018 COSLA Leaders agreed COSLA's response to an initial consultation, by Andy Wightman MSP, on proposals for a Member's Bill to incorporate into Scots Law the European Charter of Local Self-Government with the aim of strengthening the status and standing of Local Government. In addition a programme of parliamentary work to highlight key elements of our position with parliamentarians was agreed. This included the development of an MSP briefing and associated material for all MSPs in September 2018.
3. The consultation elicited substantial support for the central proposal and for the method of incorporation of the Charter into law. As with any Member's Bill, the proposal required the support of at least 18 MSPs from at least three political groups within the Parliament for it to be taken forward formally as a Bill. This was significantly exceeded with the support of 26 MSPs from 4 political parties.
4. Accordingly, on 9 May 2020, the European Charter of Local Self-Government (Incorporation) (Scotland) Bill ¹ was introduced formally as a Member's Bill to the Scottish Parliament.

Key Points for Consideration

5. In terms of financial implications Mr Wightman believes the Bill does not introduce, or come with, any additional finance requirements. The focus of the Bill is on incorporating the Charter into Scots Law so that it is judiciable.
6. The Bill:
 - places a duty on Scottish Ministers to act compatibly with the Charter Articles;
 - places a duty on Scottish Ministers to promote local self-government;
 - requires the courts to read and give effect to legislation, where possible, in a way that is compatible with the Charter Articles;
 - enables the courts to declare legislative provisions to be incompatible with the Charter Articles, and enables Scottish Ministers to take remedial action, by regulations, in response to such declarations;

¹ [The policy memorandum can be found via this link.](#)

- allows the courts to suspend the effect of a decision that Scottish Ministers breached a duty imposed on them by the Bill, or remove or limit the retrospective effect of such a decision; and
 - requires each person introducing a Public Bill in the Parliament to make a statement about the extent to which, in their view, the Bill is compatible with the Charter Articles.
7. Given the support outlined in paragraph 3 above, which we understand continues, we would hope ultimately for a positive outcome when this is debated by the Scottish Parliament. Currently it is unclear whether the Scottish Government will also support the Bill. The COSLA President raised the matter of the Bill at a recent meeting with the Local Government Cabinet Secretary where she indicated that no formal consideration had yet been given to it by the Government.
 8. The success of the Bill is most likely to depend on whether it can make sufficient progress during the remaining period of the current Parliamentary term. As yet there is no indication as to when Stage 1 of the Bill process will begin. Obviously, if the Government could be persuaded to support this Bill then its progress would likely be smoother, quicker and positive.
 9. At the time of writing, COSLA officers are seeking further clarification around the Bill and its potential progress with Andy Wightman. An oral update will be provided to the meeting.
 10. As stated above, COSLA has long sought the powers for Local Government that this Bill would deliver. Accordingly, COSLA's Communications Team will put together a lobbying strategy to press for its early enactment. As part of that we will work actively with Andy Wightman to help secure the necessary support to pass his Bill. Ministers will be lobbied around the benefits to Local and National Government of the Charter and reminded of its full incorporation in most other European countries. Similarly, opposition parties will be briefed and their support sought throughout its progress. To do this, among other things, we will seek the support of professional associations across Local Government, the trades unions, academics, civic society and other key partners and influencers. Attempts will be made to secure some media coverage through traditional media channels. COSLA's social media channels will also be fully utilised. Thought will be given to how Spokespersons might focus on key messages relevant to their remit and how individual or groups of councils might reinforce the message from a local perspective.
 11. Leaders will be kept updated on developments.

Next Steps

12. Leaders are invited to agree that COSLA support the enactment of this Bill and underpin this through a COSLA lobbying strategy.

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29 May 2020

Summary of the substantive articles of the Charter of Local Self Government

1. Recognise the principles of local self-government in domestic legislation and, where practicable, in the constitution;
2. Embed the rights and abilities 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;
3. Prescribe the basic powers and responsibilities of local authorities in law;
4. Require prior consultation of local communities in relation to any changes in local authority boundaries;
5. Enable local authorities to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management;
6. Ensure that the conditions of office of local elected representatives provide for free exercise of their functions;
7. Ensure that any administrative supervision of local authorities is only exercised according to procedures and in such cases as are provided for by the constitution or by statute;
8. Guarantee local authorities, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers, and ensure that local authorities' financial resources are commensurate with the responsibilities provided for by the constitution and the law; and
9. Entitle local authorities, 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.