

EAST RENFREWSHIRE COUNCILCABINET16 August 2018Report by Deputy Chief Executive and Chief Officer - Legal & ProcurementLEGAL STANDING OF LOCAL GOVERNMENT**PURPOSE OF REPORT**

1. To advise members of a draft proposal for a Members' Bill to be brought before Scottish Parliament seeking to put the European Charter of Local Self Government ("the Charter") into law in Scotland and to seek approval to submit a summary response which supports that principle.

RECOMMENDATION

2. The Cabinet is invited to support the submission of a response to the initial consultation on proposals for a Members' Bill seeking to legally incorporate the European Charter of Local Self Government into Scottish law which supports the principle of strengthening the legal status of Local Government in Scotland.

BACKGROUND

3. This report advises members on proposals for the development of a Members' Bill by Andy Wightman MSP which would have the effect of enshrining the terms of the Charter into law in Scotland thereby strengthening the status of Local Government.

4. At present Local Government in Scotland is wholly subject to the will of Parliament, which has the discretion to set its shape, size, powers and functions. The status and basic powers of Local Government in Scotland are not guaranteed in law. This is in contrast to common international practice where Local Government's basic rights are independently established, often reflected in a written constitution, and National and Local Government are required to work in partnership to exercise their respective roles effectively.

5. One of COSLA's longest held objectives has been to formalise and protect the role of Local Government in the governance of Scotland. COSLA has viewed the incorporation of the European Charter of Local Self Government into domestic law as a way of enabling progress to be made and have supported the development of a proposed Members' Bill by Andy Wightman MSP in this area which could potentially be introduced into Parliament later this year if sufficient support is secured.

THE CHARTER OF LOCAL SELF-GOVERNMENT

6. The Council of Europe is an international organisation that brings together 47 governments from across Europe whose aim is to uphold human rights, democracy and the rule of law in Europe. The organisation is distinct from the 28 nation European Union. The Charter of Local Self Government is part of the Council of Europe's treaty framework and guarantees the political, administrative and financial independence of local authorities to work in the interests of the local population, acting within the limits of the law. The Charter includes a number of provisions and a summary of these is provided at Annex 1.

7. The Charter was ratified by the UK in 1998 meaning that the government agreed to be bound by its terms in relation to the provision of local government within the UK. However, as an international treaty it has no direct effect in its own right in the UK and individuals who believe its terms have been breached have no legal recourse with which to enforce its provisions. In order to make it enforceable the Charter would require to be incorporated into domestic law and it is this process which is being consulted upon. Click [here](#) for link to full consultation document.

EAST RENFREWSHIRE'S RESPONSE TO CONSULTATION

8. COSLA has encouraged councils to support the prospect of a Members' Bill setting out local democratic rights in Scotland. It is proposed that the Council respond to this request by indicating its support for all efforts to enshrine Local Government's right to exist in law. Incorporation into domestic law would secure that right in a manner comparable to having it guaranteed in a written constitution and would build in protections that already exist for other tiers of government. The Charter includes provisions ensuring communities of the right to participate in decisions that affect them and this is very much aligned with the Council's partnership working and fairer East Ren plans. It is proposed that a summary response to this effect is submitted to the consultation process.

FINANCE AND EFFICIENCY

9. There are no financial or efficiency implications of the council lending support to the proposed Members' Bill.

CONCLUSION

10. The proposed Members' Bill provides an opportunity to formalise and protect the role of Local Government in the governance of Scotland. Participation in the current consultation will assist in influencing the terms of any bill going forward.

RECOMMENDATION

11. The Cabinet is invited to support the principle of strengthening the legal status of Local Government by supporting the initial consultation on proposals for a Members' Bill seeking to legally incorporate the European Charter of Local Self Government into Scottish law.

Caroline Innes, Deputy Chief Executive, 0141 577 3159
Caroline.innes@eastrenfrewshire.gov.uk

Cabinet contact: Councillor Tony Buchanan, Leader of the Council – Tel No:- 0141 577 3108

Summary of the substantive articles contained within 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. Prescribed 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 provision 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 cooperate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

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