

Agenda Item	12
Report No	HC/29/18

HIGHLAND COUNCIL

Date: 6.9.18

Report Title: Local Governance Review

Report By: The Chief Executive

1. Purpose/Executive Summary

- 1.1 The Local Governance Review was launched jointly by the Scottish Government and Cosla in December 2017. It aims to ensure local communities have more say about how public services in their area are run. The review will inform a Local Democracy Bill for later in the Parliamentary session. Engagement began with community groups in May 2018 and their views and ideas are sought until November 2018. Engagement with public bodies began at the end of June and runs until 14th December 2018.
- 1.2 Members have a keen interest in how local democracy can work better. A local democracy briefing was held for Members in April 2018 and this report up-dates Members on progress with the review since then. A number of actions are being taken forward by the Council to enable more local decision-making. In addition there are other changes that Members may wish to see that require action from partners or from Government, including legislative change. Some ideas for change are noted in the report and Members are invited to discuss these and any other ideas for changing governance, powers, accountabilities or ways of working that could improve outcomes, reduce inequalities and improve democracy locally.

2. Recommendations

2.1 Members are asked to **note**:

1. the launch of the Local Governance Review, its intention to enable further community empowerment and the two strands of engagement underway to inform the review;
2. Cosla's active role in developing a local authority position on the review;
3. that the Council is supporting Strand 1 and the engagement of community bodies in the review by offering to host any regional events planned and raising the engagement questions (Appendix 1) with our Community Councils;
4. that the Council can respond to Strand 2 by 14th December and has provided feedback on issues and ideas identified so far to Cosla (Appendix 2);
5. that there will be other opportunities to align and reinforce the Council's position on the Local Governance Review including supporting Cosla's work with the Government on the Open Government Partnership.

Members are asked to:

6. **discuss** the ideas raised so far as set out in paragraphs 4.7, 4.8 and Appendix 2;
7. **agree** any further ideas to explore;
8. **agree** the process for finalising the Council's proposals to be submitted by 14th December 2018 as set out in paragraph 4.13. This will enable further

discussion for Members in their groups, in a Member seminar, at Council and with partners and take into account any feedback from Community Councils and any regional events hosted by the Council as well as ideas developed through Cosla.

9. **agree** to support Cosla's position (Appendix 3) on the consultation response to a proposed Members' Bill to enshrine the European Charter of Local Self Government in Scots Law.

3. Introduction

3.1 A commitment in [The Scottish Government's Programme 2017-18](#) is to 'decentralise power to a more local level in Scotland and launch a review of local governance ahead of a Local Democracy Bill later in this Parliament.' It is to be a comprehensive review of how local decisions are made and how local democracy is working. It aims to ensure local communities have more say about how public services in their area are run.

3.2 The intention is to empower communities further following the introduction of the Community Empowerment Act and there are several other commitments on the same theme:

- Investing in communities for them to take decisions themselves (Empowering Communities Fund, Climate Challenge Fund, Community Choices Fund to support participatory budgeting, working with Councils for at least 1% of Council budgets to be allocated through community choices/participatory budgeting and investigating scope for employee ownership including social care cooperatives);
- Support for island authorities seeking to establish a single authority model of delivering local services (where proposals are developed with all stakeholders including Trade Unions and improved outcomes and efficiencies can be delivered while protecting local democracy and the NHS);
- Implementing new land reform legislation, the work of the Land Commission and devolving the Crown Estate; and
- Reform of school governance.

3.3 Local governance review launch, scope and methods

Cosla has worked effectively with the Government on the development of the review, [launching the review jointly](#) with the Government in December 2017. Cosla was instrumental in broadening the focus of the review to be about local governance and not solely about local government (as set out in the 2016/17 Government Programme). It is to consider how powers, responsibilities and resources are shared across national and local spheres of government (so across public bodies) and with communities.

3.4 An enabling group was established to identify how best to engage on the review. Cosla and SOLACE are represented on the enabling group. The process for engagement is described below.

3.5 Engaging in the review and timing

The review has two strands of engagement. They are:

1. Strand 1 – This focuses on gathering views from individuals and community groups. It started later than originally planned and runs from May until November 2018. [Key questions](#) are posed and are attached at Appendix 1 for information. Feedback can be provided on-line and local conversations are encouraged for a community response to be submitted. Community groups and voluntary organisations can apply for funding to host an event of at least 5 people with grants of up to £300 available. Regional engagement events are

expected to be held; although not yet notified.

2. Strand 2 – This focuses on gathering proposals for change from the Government, Councils, Community Planning Partnerships (CPPs), city regions, regional groupings and other public sector bodies. This began on 26th June and runs until 14th December 2018. Proposals are to focus on governance, powers, accountabilities or ways of working that could improve outcomes, reduce inequalities and improve democracy locally.

- 3.6 Key themes from both strands of engagement will be considered through the joint political arrangements in place between Cosla (a Special Joint Interest Group comprising Group Leaders and Presidential Team) and the Government (Cabinet sub-committee). This will inform any Bill proposals early next year.
- 3.7 Members were briefed at a well-attended [seminar in April 2018 on local democracy](#). This was introduced by the Deputy Leader with contributions from Malcolm Burr (Chief Executive of CNES) as the SOLACE representative on the Enabling Group for the review and Dr. Oliver Escobar from Edinburgh University. This provided Members with an early opportunity to consider the local governance review.
- 3.8 This report provides an update to Members on the review of local governance and how the Council can contribute to it and influence future legislation.

4. Opportunities for the Council to contribute

- 4.1 There are a number of opportunities for the Council to contribute to the review, namely:
 - Supporting and encouraging community groups to participate in Strand 1;
 - Developing proposals for Strand 2;
 - Aligning and reinforcing the Council's position through related work streams, such as supporting Cosla's position on a proposed Private Member's Bill to incorporate the European Charter of Local Self-Government into law in Scotland and in contributing to the Government's Open Government Action Plan.

These are detailed below.

- 4.2 Supporting community groups to participate in Strand 1
The Council has offered to host any engagement events to be run in the Highlands. As far as we know, no dates have yet been arranged. In addition, as part of our engagement with Community Councils on a revised Community Council Scheme we have included the questions from Strand 1 in our broader survey of Community Councils.
- 4.3 As part of the initial engagement phase of the Review of the Community Council Scheme, a series of questions are being posed to Community Councils regarding their role and how to address wider sustainability issues. Closely related are the questions posed on the Governance review which asks about greater community control of decisions and what role existing forms of government, such as Community Councils, could play in exercising new local powers. Community Councils are being asked to consider these as part of the initial Review engagement process and this will also be discussed at the series of drop-in events to be held across the area throughout September and as discussed in Ward Business Meetings. The feedback from this will be shared with the Government and, as noted below, could support developing Council proposals for responding to Strand 2.
- 4.4 Developing proposals for change in Strand 2

There is much the Council can draw on to develop its position on the Local Governance Review and there is time to do this. Over the past year or so the Council has:

- Agreed the Council's Programme (October 2017) and Corporate Plan (December 2017) with its commitments to localism, improving democracy and supporting more community action;
- Experience of Community Councils forming and is aware of sustainability issues (over 80% were formed without election and there are over 400 positions unfilled across our 154 community councils) and it can gather any feedback from the initial engagement as part of the Community Council Scheme review as noted above in Strand 1;
- Gathered feedback from community bodies on what would support them to do even more in their communities;
- Supported the [findings of the Commission on Highland Democracy](#);
- Analysed feedback from our Citizens' Panel which shows public appetite for people being more involved in decisions affecting them;
- Had positive experience of using participatory budgeting for discretionary funding;
- Learned from our partnership effort to make community planning work locally through community partnerships;
- Generated ideas from local Members on localism gathered in workshops from October 2017 to January 2018;
- Learned from our experience of disaggregating Community Services budgets and agreed new arrangements to engage with Members and communities for local choices to be made on the disaggregated budget (from the redesign review of car parking);
- Reviewed the use of delegated powers across local Committee with Area Chairs;
- Considered our experience of community asset transfers and where to focus improvement;
- Agreed through the Redesign Board to trial community reviews as a new type of redesign review; and
- Carried out effective scrutiny of local policing and local fire and rescue services.

4.5 Members will recall that the seven key findings from the Commission on Highland Democracy were:

1. Communities and individuals want involvement, not consultation and they are acutely aware of the difference between these two approaches.
2. Centralisation/decentralisation is not primarily a geographic issue. It is much more about inclusive or exclusive decision making.
3. Involvement with the democratic process should be integrated with the daily lives of citizens; not organised to suit the way in which public bodies work.
4. Communities want to see an appropriate balance between representative and participative democracy.
5. Communities want to see an appropriate balance between professional and executive, community based and representative inputs to decision making. Currently communities feel that professional inputs are the principal determinants of outcomes.

6. Communities and citizens expect that there will be considerable interconnection and joint planning between the various public bodies that serve their needs.
7. Communities and citizens were concerned that the ability of public bodies to secure and interpret complex information can be used as a powerful “weapon” to ensure that agencies get their own way.

These findings have influenced some of the Council’s work already, notably in the engagement process for making local choices on the disaggregated Community Services budget as agreed at Council in June 2018.

- 4.6 Cosla has commissioned Edinburgh University to gather information from Councils on their emerging ideas. This will help Cosla to identify common themes to feed into the review. It may also identify good ideas from other Councils that the Council may wish to explore or support.
- 4.7 All Councils were asked to share their thinking with Edinburgh University by the end of June 2018 to support Cosla’s work. The Council’s response is attached at Appendix 2. This includes further information on the points raised above in paragraph 4.4 and it highlighted the following areas which may form part of the Council’s proposals by December 2018:
 - Reforming the role, purpose, membership and requirements of Community Councils and their ability to have incorporated status to own assets and run services;
 - Mainstreaming participatory budgeting;
 - Continuously improving local committees and new ways of engaging community bodies in the local decisions they make;
 - Member and staff training in deliberative processes;
 - Streamlining support for community bodies across the public sector to remove duplication;
 - Improving the governance landscape for tourism;
 - Ensuring proper engagement from other public bodies for effective collaboration;
 - Querying whether the local scrutiny model for police and fire services could apply to other areas of public service not currently within the responsibility of Councils;
 - Potential support for proposals from other Councils such as the Single Public Authority model for island Councils and a tourism levy.
- 4.8 An up-date of the information gathered from Councils will be provided at the Cosla Leaders’ meeting on 31st August 2018. It is likely to include:
 - The case for exploring different models of governance for different communities, given diversity across the country. This points to permissive approaches to governance rather than prescriptive approaches;
 - More collaborative public service models, whether by geography (e.g. in the island authorities) or by policy area such as health and including greater budget sharing;
 - How to rebalance power between national and local government along with views on the right scale for public services (national, regional or local);
 - How best to push power and resources beyond local government to communities, including roles for local committees and community planning partnerships;
 - Addressing the role of community councils and the relationship between

representative and participative democracy;

- A desire to have more fiscal autonomy and to consider specific measures such as a transient visitor tax.

4.9 Further work is still to be done in Cosla and with Councils to develop firm proposals from Cosla by mid-December.

4.10 Members have a keen interest in how local democracy can work better. A number of actions can be taken forward by the Council and work is underway to do this e.g. decisions on disaggregated budgets being made locally, mainstreaming participatory budgeting, continuously improving our local committees, improving our relationship with Community Councils and developing staff and Member training on deliberative processes.

4.11 In addition there are other changes that Members may wish to see that require action from partners or from Government and possibly legislative change. The local governance review provides the opportunity for the Council to develop proposals for change and to work with Cosla to help make the case for them.

4.12 **Members are asked to discuss the ideas raised so far as set out in paragraphs 4.7 and 4.8 and Appendix 2 and agree any other ideas to explore.**

4.13 **Members are asked to agree that the following steps are taken to develop a final set of proposals for a Council submission by 14th December 2018:**

1. Discussion at the CPP Board meeting in October on how partners individually and the Community Planning Partnership may want to respond to the review;
2. Members consider the review again at the Council meeting in October. This would include any new information arising from feedback from: the survey of Community Councils; any regional event(s) hosted by the Council; Cosla discussions; and CPP Board discussions.
3. A Member seminar in November to cover a number of issues including community partnerships and the governance review;
4. Member Groups consider the review to inform a discussion among Group Leaders in November. These discussions can be facilitated by the Chief Executive's Policy and Ward Management Team.
5. Consider and agree final submission at the Council meeting in December 2018.

5. Aligning and reinforcing Council's position through related work streams

5.1 There are two related opportunities being developed through Cosla which can support a Council position on the local governance review. They are described below.

5.2 Member's Bill in the Scottish Parliament

A proposed Members' Bill to enshrine the European Charter of Local Self Government in Scots Law is proposed by Andy Wightman MSP. This would guarantee the political, administrative and financial independence of local authorities to work in the interests of their local population acting within the limits of the law. The process for developing a Members' Bill in the Scottish Parliament is:

1. The Member publishes an initial consultation setting out the factual position surrounding the issue and inviting views on it within a 12 week period.
2. A formal proposal is then submitted to Parliament.
3. Support of at least 18 MSPs from at least 3 political groups is sought.
4. If successful a Bill is lodged and taken through the normal 3 stage Parliamentary process.
5. The Government could consider legislating on similar terms and including it in

their Parliamentary programme.

- 5.3 Step 1 is now underway and runs until 21st September. Cosla is drafting a response to the consultation for Leaders to consider in their meeting on 31st August 2018. If reached, step 4 would be in late 2018. Step 5 may be possible through any Local Democracy Bill proposed by the Government and following the Local Governance Review.
- 5.4 Cosla supports the Member's proposal. Further information about the reasons behind the proposed Bill and the key highlights of Cosla's draft response are provided at Appendix 3. Cosla's position is that incorporating the Charter of Local Self Government into law in Scotland can fundamentally strengthen Scotland's overall system of democracy and create the foundations for an enduring and progressive partnership between national government, local government and communities. It is seen to strengthen democracy and recognise the status and powers of local democratic governance.

Members are asked to support Cosla's position and the Member's proposal.

5.5 The Open Government Partnership

The Open Government Partnership is a voluntary and international commitment to engage citizens more by opening up government processes and decision-making. The Scottish Government is part of the Open Government Partnership and has signed up to the declaration on Open Government and is committed to:

- Financial transparency – explaining how public finances work;
- Measure Scotland's Progress – through the national performance framework;
- Deliver a Fairer Scotland – with an action plan;
- Participatory budgeting;
- Increasing participation.

- 5.6 As a new signatory, the Government's actions were reviewed independently and found to meet basic requirements but with a low rating on the extent of participation so far. To improve, the Government is creating a 2nd action plan by September 2018 and it is seeking equal participation of Cosla in the Ministerial Group shaping the action plan.
- 5.7 There are clear links between community empowerment, open government and the local governance review. A recent event hosted by the Government in Inverness attracted around 12 representatives from Highland community bodies, including some community councils. Their contribution should help inform the 2nd action plan.
- 5.8 By supporting Cosla's contribution to the Open Government Partnership and 2nd action plan, some of the key themes emerging from Councils for the local governance review can be reinforced.

6. Implications

- 6.1 Resource – there are no new resource implications in developing the Council's response to the local governance review by December 2018. There may be resource implications arising from future legislation or from the development of localism, but these are not yet known.
- 6.2 Legal – the review provides an opportunity to inform and influence any proposed Local Democracy Bill. It is not known at this stage if the Member's Bill seeking to enshrine the European Charter of Local Self Government in Scots Law will proceed as a Bill.

- 6.3 Community (Equality, Poverty and Rural) – the Local Governance review seeks proposals to improve community empowerment. This means more people having a say in decisions affecting them. New ways of making decisions need to be inclusive and aware of impacts on different groups in our communities.
- 6.4 Climate Change / Carbon Clever – no new implications are known.
- 6.5 Risk – there is a risk that if the Council does not provide views for the local governance review that any changes proposed will not reflect local or regional circumstances.
- 6.6 Gaelic - no new implications are expected.

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**Local Governance Review Strand 1 May to November 2018
Questions for individuals and community groups**

Section 1: Communities more in control – a good idea to begin with?

Many people will have experienced decision-making processes that affect their lives and the public services they rely upon - whether at a national or local level. How easy is it to get involved and have your say? Some people may feel excluded from these decision-making processes. It is crucial we understand the barriers experienced.

Q1. Tell us about your experiences of getting involved in decision-making processes that affect your local community or community of interest.

Democracy in Scotland works in different ways. People have the opportunity to go to the ballot box at various elections to elect their representatives who are democratically accountable for making decisions in their name. People are also increasingly playing a more active role in ensuring that their voice is heard when decisions are made about the issues they care about most in local communities, and by taking decisions for themselves. This conversation is about identifying new approaches that will ensure these different ways of taking decisions complement each other to best effect.

Q2. Would you like your local community or community of interest to have more control over some decisions? If yes, what sorts of issues would those decisions cover?

Section 2: Communities more in control – how could it work in practice?

If more decisions are to be taken by communities, we would have to decide on the scale at which this would work: this could be at a very local level but would depend on the decision being made, the skills and expertise required, and the potential impact on different people. It's unlikely that the answer will be the same for every place or community. Through this conversation we want to understand what types and sizes of community make most sense to people, and why. It's a complicated issue, and we want to hear what you think would work.

Q3. When thinking about decision-making, 'local' could mean a large town, a village, or a neighbourhood. What does 'local' mean to you and your community?

We want to explore how all public services, councils and the Scottish Government can make this work. Existing groups that take action and are part of decision-making in communities include council area committees, area partnerships, community councils, development trusts, community based housing associations and community led groups and organisations. Other forms of decision-making, like Participatory Budgeting and community action planning are also being developed, although not all public services currently work this way. Perhaps all of these different structures and processes could be built on, or developed, to support greater levels of community decision-making across public services and to strengthen local democracy. That might include sharing powers or resources differently between the Scottish Government, councils and communities, a second, more local, layer of local government, or other potential ideas. Regardless of the structures or processes

people like best, this review is also a key opportunity to ensure diverse community voices are heard in decision-making processes. Get this right and it will help make a real difference to local priorities, and progress equalities and human rights across Scotland, including on issues such as housing, health and the enjoyment of a decent standard of living.

Q4. Are there existing forms of local level decision-making which could play a part in exercising new local powers? Are there new forms of local decision-making that could work well? What kinds of changes might be needed for this to work in practice?

Section 3: Communities more in control – what is most important to know before we go any further?

This is a big topic and the questions we've asked you to consider here won't have covered everything that will need to be explored. This will happen as people come forward with their ideas and the conversation builds. We'd like to take this opportunity to ask you to make any final points you feel are important, and invite you to ask any questions that will help you to remain part of the conversation.

Q5. Do you have any other comments, ideas or questions? Is there more you want to know?

**Local governance review – initial scoping exercise
Highland Council Response to Cosla/Edinburgh University, June 2018**

Has your authority prepared a position on reform, identified key issues for reform or engaged in any other preparatory work related to the local governance reform? Can you briefly outline what has been done, if anything, to date?

Yes. The Council's Programme 'Local Voices Highland Choices' 2017-22 includes 5/30 commitments relating to reforming local governance. They are focused on the Council's localism agenda, improving our representative and participative democracy and supporting more community action, as follows:

- Encourage more engaged, better informed, more resilient, sustainable and attractive communities by helping and strengthening tenant and community representation structures.
- Accelerate work to bring decision-making to local areas.
- Develop new ways to deliver services that are affordable, efficient and local.
- Consider the key recommendations from the Commission on Highland Democracy, which seek to reinvigorate local democracy.
- Many communities across the Highlands are increasingly ambitious to control more assets and land with increasing interest in local service delivery. The Council will work with other public agencies to simplify our processes and work with our communities to innovate and spread good practice.

These commitments are supported by a range of actions. Some of these are focused on the changing the Council's internal processes and ways of working and others are about our engagement with community councils, community bodies and community planning partners.

Now that Phase 2 of the local governance review is underway the Council will undertake further work to identify its priorities for reforming local governance in advance of the December 2018 deadline.

What, if any, plans, does your authority have to inform the process of reform?

The process so far has been informed by:

- Our awareness of generally low interest among the population in being a community councillor and concerns about the sustainability of our 154 community councils. In the last community council elections in 2015, only 25/154 had places contested. In all others the number of nominations matched the places available. With over 80% of community councils formed through self-selection this undermines their representative purpose. Since 2015 we have had 76 interim elections (affecting nearly 50% of community councils) caused by community councils falling below the minimum elected membership. Presently we estimate only 60-70% of our 154 community councils are at their full membership level, leaving approximately 400 positions unfilled. While some are filled by co-option, many are vulnerable to resignations and subsequently being placed into abeyance pending further elections.

- Feedback we gathered from community bodies in 2016 and 2017 across Highland through focus groups and a large engagement event on how to support more community action and community-run services. This led to 5 changes being requested by them: to provide a single point of contact (SPoC) to support them (a 'Community Gateway' with 10 specific functions identified); to change attitudes in public bodies to be more positive and inclusive of community organisations; for our new community partnerships to get off to the right start; easy access to small grants; and a new look at community councils. In taking forward the SPoC idea we discovered several providers of support for community bodies locally and duplication of support often publicly funded, but resistance among providers to reform who should do what.
- The [findings of the Commission on Highland Democracy](#). This was an independent Commission, with Secretariat provided by the Council. The Commission set 7 challenges to improve democracy in Highland.
- The feedback from our Citizens' Panel on their interest in being involved in decisions affecting them. This shows an appetite for greater involvement. For example: 77% feel they have no or not very much influence over decision-making – 57% want to be; 68% interested in taking part in community discussions on how services are provided and making choices within budget limits. We are viewed positively on listening to local people and asking for ideas on how to do things better; but are viewed negatively on: being open and honest about funding choices, involving people in how we spend money and inviting challenge and different views to help make decisions. We have high levels of self-reported volunteering – 61% informally and 43% through organised groups.
- Our experience of using participatory budgeting (PB) in each of our local committee areas over the past 2 years and for discretionary grant funding, with an appetite now to use this for choices in our mainstream budgets, especially community services.
- Our experience of creating a new local community planning structure with partners. We have 9 community partnerships, with each of the 5 statutory partners leading in different areas.
- Workshops with Members locally from October 2017 to January 2018 to identify local options for strengthening local democracy. The themes emerging were: reviewing community councils; several area-specific local engagement initiatives; disaggregating some budgets to local committees; developing participatory budgeting (PB) from small grants to mainstream services; involving citizens in choices and solutions for affordable public transport (including more community transport schemes).

- Our experience of using disaggregated budgets to local committees (£26m of Community Services funding disaggregated to 8 local committees) and extending this to include car parking income.
- Critically reviewing the use of powers delegated to our 8 local committees. This showed considerable underuse of powers and issues of organisational capacity. This has led to improvement actions with Committee Chairs.
- Improving our deliberative processes - running training for Members, staff and some partners on 'Having community conversations that matter' (training delivered by Dr Oliver Escobar and Dr Claire Bynner was highly recommended by our Members participating and is to be rolled out).
- Running a seminar attended by 30/74 Councillors on the local governance review and local democracy (Malcolm Burr and Dr Oliver Escobar attended)
- Our experience of community asset transfers and undertaking a Lean review of our process to identify how to streamline it, find ways of supporting community bodies better and ensuring VFM in Council decisions, linked to our asset management and commercial strategies as well as our localism agenda. The review is informed by community groups.
- Our experience of effective scrutiny of local policing and local fire and rescue services.

The process will also be informed by:

- Engagement from July to September 2018 with the 154 Community Councils in Highland to review the community council scheme. This will include gathering views on changes affecting:
 - membership (a blended approach for election for some seats and selection for others and places for other community body reps);
 - geography and boundaries;
 - roles (e.g. community councillors as facilitators of public dialogue, legislative change for community councils to have incorporated status so they can run services and own assets). We will also include the local governance review questions in our engagement and feedback views for the national review. The methods of engagement will be an on-line survey, holding local engagement events and involving around 8 community council representatives (1 from each local committee area) to deliberate on the results and proposals for change with our Local Committee Chairs.
 - improving governance, including compliance with the code of conduct
- Introducing a new method of working with elected members and communities on making local service changes. This draws on good community development practice and the findings from the Commission on Highland Democracy. It should improve our deliberative processes and could involve PB on spending choices and priorities around mainstream services. The new

method was agreed by Council on 28th June 2018 following a redesign review of car parking.

- Internal discussions and proposals on workforce planning to support localism (staff numbers, job roles, location, competencies and attitudes required)
- Trialling a new type of redesign review – community reviews. This will involve co-reviewing services with citizens and community bodies. It could be about: understanding needs and expectations; setting standards; making choices within budget, including reducing budgets; co-designing services; and potentially commissioning with or by communities. 3 areas and 2 services (public transport and grounds maintenance) have been identified as trials.
- Potentially trialling a mini public approach to budget setting or as part of the community reviews above.
- Learning from good practice in our community partnerships and reviewing how community bodies are involved in some of them.
- Discussion on reform proposals initially within the Council's Administration (coalition of Independent, Lib Dem and Labour Members) prior to a planned discussion/debate at the October 2018 meeting of the Council.

Can you provide a list of the key themes/issues/reforms, and offer these in order of priority, that you want placed on the reform agenda?

The Council's views on this are not yet fixed, but key recurring issues (not yet prioritised) are:

- The need to reform the role, purpose, membership and requirements of community councils. Previously the Council had lobbied for community councils to have incorporated status as some are held back from taking on responsibilities for local services. More recently Members are concerned about the purpose, sustainability and representative nature of community councils. Two Members with experience of arrangements in England have questioned whether a Parish Council model might be appropriate in Scotland, devolving powers and funding and enabling local tax raising powers.
- Mainstreaming Participatory Budgeting.
- Improving the effectiveness of our local committees and finding ways of communities and community bodies being engaged in local decisions – either by informing Members in their deliberation or in more participative ways.
- Member and staff development in using deliberative processes.

- A review of how best to support community bodies as the current landscape is cluttered and inefficient. Councils are often the first point of contact for community bodies seeking support, but much of the resource is found in other public bodies operating at a national or regional level and not locally.
- In Skye and Sutherland, Members identified the need to improve governance around tourism development, especially around the local pressures created and infrastructure required. Local Members have had to step in as other public bodies have fallen short, even although the Council does not have a statutory tourism role.
- Members have spoken publicly at Council about their desire to see a more collaborative approach from HIE at both a strategic and operational level within Highland. A lack of appropriate engagement is seen by them as undermining their position as a regional development agency and community planning partner.
- Since Fire and Police Reform was introduced the Council has been seen as having good practice in the scrutiny of local police and local fire and rescue services. This demonstrates that with the right governance arrangements in place (both at full Council annually and each local committee twice a year), training of Members in good scrutiny and having local senior officers of national organisations who are open to challenge and value local scrutiny, this model could work for other public services which are currently not within local government control. However, the Council has also raised concerns about the influence it can have on decisions made nationally for these services.
- Members are still to consider other themes and are aware of other proposals they may well support, e.g. Tourist levy raised by Cosla and the Single Public Authority proposed by the Island authorities.

Proposed Bill on Incorporation of the European Charter of Local Self-Government Consultation

Introduction

On 29 June, 2018, Andy Wightman MSP lodged a proposal in the Scottish Parliament for a Bill to incorporate the European Charter of Local Self-Government into law in Scotland. As part of the first stage in introducing a Member's Bill, a public consultation is undertaken on the daft proposals. This consultation period ends on 21 September, 2018

Following analysis and refinement of the daft proposals, the MSP will then lodge his final proposal along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, he will then have the right to introduce a Member's Bill.

Aim of the Proposal Bill

This consultation paper sets out the background and rationale for a proposed Member's Bill to incorporate the European Charter of Local Self Government into Scots law. The purpose of the consultation is to seek views on:

- Whether you agree that the Charter should be incorporated; and
- Whether there are any legal questions that need to be addressed in the Bill.

This consultation paper provides some background to international treaties, the Council of Europe and the issues involved in incorporation. It then provides an outline of the proposed Bill before asking a number of questions which form the core of this consultation.

The European Charter of Local Self Government

The Charter is a treaty of the Council of Europe. The Charter was adopted in June 1985 and it is now in force in every member state of the Council of Europe. The UK signed the Charter on 3 June 1997, ratified the Charter on 24 April 1998 and it came into force on 1 August 1998.

Article 12 of the Charter provides that each signatory "undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter" with at least ten selected from a prescribed list. Each signatory is required to notify the Secretary General of the Council which of the provisions it has selected when it ratifies the Charter. In ratifying the Charter in 1998, the UK agreed to be bound by all the Articles of Part I of the Charter (Parts II and III relate to procedural matters) in relation to all 32 councils established by the Local Government (Scotland) Act 1994. In summary, its ten substantive articles:

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.

The rationale behind Incorporation of the Charter

It can often be difficult to hold Governments to account for any breach of an international treaty unless there are provisions within the treaty itself that explicitly create some kind of legal dispute mechanism.

By incorporating the Charter into Scots law, the fundamental purpose is to make it justiciable in the courts of Scotland. In other words, if any party believed that any of the provisions of the Charter were being breached by executive actions of the Scottish Government, or by laws passed by the Scottish Parliament, they would be able to take a case to a Scottish court to have the arguments heard and decided upon.

Method of Incorporation of the Charter

The MSP recognises that there is no one, standard way to incorporate international obligations and that his proposal raises a number of complex issues which would require to be reviewed fully before legislation was drafted. Those issues include:

- Method by which the Charter is incorporated. For example, should the Charter be incorporated in a schedule to the Act or would the Act reference the Charter? The method of incorporation would need to allow sufficient flexibility to incorporate any amendments to the Charter or changes to those provisions ratified by the UK;
- Complaints mechanism. For example, should any complaints in relation to breaches of the Charter be made through existing court processes or via a Commissioner created for the purpose; and
- Judicial remedies. What judicial remedies should be available where an executive action or legislation was found to breach the Charter? Should it be possible to declare an action or legislation incompatible with the Charter? How far might the legislation go in terms of specifying judicial remedies?

Consequences of Incorporation of the Charter

The proposal sets out the possible consequences of incorporation which would include:

- Enhanced status in law for local government;
- Legal guarantees of the status, powers and finances of local government;
- Providing citizens with the means by which to uphold the obligations of the Charter by empowering citizens to challenge any action of the Executive or Parliament which they consider violates the terms of the Charter;
- Fettering the discretion of the Scottish Government to exercise its executive powers and the Scottish Parliament to exercise its legislative powers in ways which violate international law as set out in the Charter;
- Incorporation of the Charter could have impacts on existing legislation or in relation to the status, powers and finances of local government; and
- Given the limited examples of where international law has been incorporated into domestic law, there may be unintended consequences. This consultation will allow for any unintended consequences to be identified and solutions highlighted.

COSLA's Position

A draft response to the consultation will be considered at the COSLA Leader's meeting on 31 August, 2018.

The report highlighted that Scotland and the UK are almost unique amongst western democracies because Local Government's basic powers and autonomy are not set out in law. While positive relationships often exist between national and local government and the parliament, the current position contrasts with common international practice where Local Government's basic rights are legally established (and often captured in a written constitution), and where national and local government require to work in partnership by default to exercise their respective roles effectively.

This is one of COSLA's longest held objectives has been to formalise local democratic government in the governance of Scotland. This 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, including in relation to local taxation and beyond.

COSLA believes that incorporating the Charter of Local Self Government into law in Scotland can fundamentally strengthen Scotland's overall system of democracy and create the foundations for an enduring and progressive partnership between national government, local government and communities.

The key highlights of Cosla's draft response are listed below.

1. Colsa agrees that the Charter should be incorporated into Scots law.

COSLA believes that incorporating the Charter of Local Self Government into law in Scotland can fundamentally strengthen Scotland's overall system of democracy and create the foundations for an enduring and progressive partnership between national government, local government and communities.

Cosla believed that Charter would deepen and Strengthen the Partnership between Scotland's Spheres of Government

Cosla considers incorporation of the Charter not to be an end in itself, but a huge opportunity to improve outcomes, empower citizens, and reduce inequalities for the whole of Scotland.

Doing so would not alter the structures of local government in Scotland, unilaterally change specific policies or laws, or make any other changes that are rightly a matter for democratic debate and discussion. Nor would it undermine the clear democratic mandate of national politicians to set outcomes and rights for the whole of Scotland.

However, it would ensure that all spheres of government work together with the communities they serve to deliver outcomes and improve lives in ways that work best for those communities, deliver the kind of democracy first envisaged in the founding days of the Parliament, and introduce rights which are already commonplace across Europe and beyond.

2. The Charter should be incorporated into Scots law as outlined and with some amendment.

Cosla recognises that there are a range of legal options associated with the precise manner by which incorporation can best be achieved, and which can be developed further as the prospect of a Members' Bill takes further shape. We look forward to supporting these further.

For the avoidance of doubt, it was the UK's membership of the European Union, not the Council of Europe, which was subject to the referendum in June 2016. Formally, by leaving the EU, the UK will join the existing 19 non-EU states which belong to the 47-member Council of Europe. Any action or legislation in relation to the Charter is therefore not affected by the Brexit process.

2. What do you think would be the advantages and disadvantages of incorporating the Charter into Scots law?

COSLA believes that incorporation of the Charter would deliver a number of benefits. In particular, while it would introduce for the first time the possibility of legal checks and balances in support of local democratic choices and control, we are clear that the significant practical advantages of incorporation lies in the positive impact that doing so would have on everyday culture and practice. This is because by clarifying the competencies of national and local government in the ways set out in the Charter, both spheres would need to commit to a new level of consensus and partnership working on shared issues, with an associated impact on the outcomes that national and local government can deliver together.

We believe that these positive impacts of incorporation would therefore include:

- More effective and efficient focus on local priorities
- Embedding a long-term partnership between spheres of government
- Enhancing the relationship between national and local government
- Enabling Participation and Engagement: Improving culture and practice:
- International Compliance:
- Introducing Legal Checks and Balances:
- Strengthening democracy and recognising the status and powers of local democratic governance.

3. Complaints about a breach of the Charter should be made through the courts

4. What judicial remedies do you think should be available where an executive action (or proposed action) was found to be incompatible with the Charter?

The court should be able to overturn the action (but not punish the authority)

5. What judicial remedies do you think should be available where legislation was found to be incompatible with the Charter?

The court should be able to strike down the legislation

Financial implications

6. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

(a) Government and the public sector - Some reduction in cost

(b) Businesses - Broadly cost-neutral

(c) Individuals - Broadly cost-neutral

Please explain the reasons for your response.

As we highlight throughout this response, incorporating the Charter into Scots Law is not a symbolic step or just a matter of democratic principle- we believe that it is an important key to unlocking better outcomes across Scotland.

If we are serious about delivering the outcomes set out in the National Performance Framework then COSLA believes that we should therefore be equally serious about modernising and improving the ways in which national and local government can work together to achieve this.

There is now a broad consensus that public service reform should focus on improving how local services can respond positively to local differences and circumstances rather than in traditional 'one size fits all' ways. As a country we already know that centralising services and exercising powers from the top down has not addressed persistent inequalities in Scotland. As the Christie Commission and others have highlighted, these inequalities carry significant social and financial costs that affect everyone in Scotland. We believe that incorporating the Charter can therefore help tackle the 'failure demand' that Christie highlighted, and in doing so improve the efficiency and effectiveness of local public services.

We accept that there may be some costs associated with introducing or testing the application of the Charter in the rare circumstances that a breach is felt to have occurred. However, these are trivial compared to the wider efficiencies that are achievable by improving outcomes in this way. We would also anticipate that any such costs are likely to be incurred during the early period following incorporation. Going forward, it is anticipated that once any historic elements are addressed then the policy making and scrutiny process would not require additional resourcing.

Equalities

7. **What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, race, religion and belief, sex, sexual orientation?**

Neutral (neither positive nor negative)

Sustainability

8. **Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?**

Yes