

Take Back Control Bill

This note represents our initial thoughts on our contribution to the promised Take Back Control Bill (TBCB).

1. The aim of Labour policy

- 1.1 Paradoxically, English devolution has been regarded as a matter of central government policy, and too often characterised as local government reform. Central government decides which powers and resources it might be willing to devolve or delegate, under which circumstances, and to which bodies. Local government has no formal role, and only a very limited informal role, in shaping this policy. Consequently, local authorities can only respond to the central agenda. While this has enabled some slow and limited progress, the current 'deals' always reflect the priorities and interests of the centre and can always be removed by the whim of the centre.
- 1.2 We understand that Labour now wishes to change this relationship, giving local government defined rights, duties, and powers, which cannot casually be removed. Local authorities will have, by right, enhanced powers to shape their local areas, to create larger bodies to meet the needs of wider geographies, and to gain new powers and resources. Collectively, local authorities should have a role in shaping government policy and become partners with the centre in developing English devolution. In essence, this would signify a fundamental transition away from reform of local government, to creating devolved government in England.
- 1.3 In addition, Labour wishes to empower communities below the level of combined local authorities and current local authorities.
- 1.4 We understand that it is not intended that the TBCB will alter London's unique devolution status. English devolution also fits within a wider vision of UK constitutional change which provides for the protection of constitutional rights and the representation of English 'regions.' Neither of these issues are addressed in detail in this note.

2. Our work

- 2.1 Our focus is on two aspects of the new and empowered role of local authorities. However, in considering the scope of the TBCB, in our view it should broadly do three things, first; consolidate and simplify the devolution arrangements in England, second; enhance those arrangements, and third; protect the rights and powers of devolved and local government in England, through ensuring their 'constitutional autonomy'.
- 2.2 The importance of the 'constitutional autonomy' of local authorities was recognised in the report of the UK Commission on the Future of the UK. It is also implicit in the speeches by Keir Starmer, Lisa Nandy and other shadow ministers which promise to provide communities with the right to request new powers, for Westminster to explain why powers have not been devolved and to plan for further devolution, and the power to enable local authorities to create Combined Local Authorities and wider structures.

2.3 English devolution is explicitly linked directly to Labour’s broader objective of closing the gaps – in productivity, health, income, wealth, education etc – that exist between and within England’s regions. This aim not only requires devolution of the appropriate powers but, crucially, ensuring that each part of England has the financial resources required to achieve ‘levelling-up’.

2.4 In this note we set out our initial thinking on how the powers of local authorities should be reflected in the TBCB, and how the TBCB might set out both the aim of closing the gaps within England, as well as provide for a formula for the distribution of resources to ensure that this can happen. At this stage we are less concerned with the detail of which powers are settled at which level than we are with the relationship between different levels of sub-national and national government.

3. Constitutional autonomy

3.1 In our view, “constitutional autonomy” in this context means:

- i) That devolved and local government in England has an exclusive power to initiate action within their competences; and
- ii) That this exclusive power¹ cannot be interfered with or taken away by another constitutional actor.

3.2 In order to create this constitutional autonomy, the TBCB2 must do the following:

- 1. Set out that the UK Government cannot exercise or interfere with the competences of local or devolved government in England (save in certain limited circumstances, discussed below.)
- 2. Entrench those powers/responsibilities devolved by the TBCB. That is, it should set out the procedure by which Parliament can remove or reduce those powers/responsibilities (such as through a super majority or other procedure which is more difficult than amending or repealing ordinary legislation).
- 3. Entrench the TBCB itself, so that the entrenchment protecting the powers of local and the devolved government in England cannot be circumvented by simply amending the TBCB.

3.3 Protecting the constitutional autonomy of local and devolved government in England in this way would, in our view, facilitate a change in the relationship between the UK and sub-national governments, from a supervisory to a cooperative one.

¹ Although a consent mechanism could allow local authorities to agree with proposed changes, there would also need to be robust inter-governmental structures to facilitate cooperation in these kinds of matters.

² These proposals differ from the model of entrenchment, through a reformed House of Lords, proposed by the Commission on the Future of the UK which, currently, are to apply mainly to the constitutional relationships between the devolved administrations and the UK government, rather than English devolution. In any case, the TBCB needs to establish effective entrenchment before reform of the Lords might have been achieved.

4. Empowering local authorities

4.1 England has many layers of local authorities, including parishes, districts, counties, unitaries, metropolitan boroughs, combined local authorities and a unique arrangement for London. It is impossible to provide each with its own constitutional status.

4.2 An inherent tension in English devolution is that it must create bodies of sufficient size and geographic reach to exercise sub-regional economic development and governance powers, as well as ensuring that powers lie at a sufficiently local level to empower people and their communities, rather than simply create a new layer of remote decision-makers. This tension can only be resolved by giving the appropriate level of local government much more influence over the ability to form sub-regional or larger bodies, and more responsibility to empower local communities.

4.3 We suggest that the TBCB's constitutional focus should be to empower 'upper tier' unitary, county and borough councils. This is the only level of government which exists in a broadly similar form in every part of England. These local authorities should:

- have the right to exercise defined powers in their own areas,
- have the right to draw down additional powers to their areas,
- enjoy the constitutive power to form combined authorities,
- be subject to a legal duty of subsidiarity to enable districts, parish, and other local bodies to exercise powers at the most appropriate level.

4.4 In what follows, 'local authority' means these upper tier councils unless explicitly mentioned otherwise.

4.5 The TBCB will provide for each of these rights and duties.

4.6 It would require government to set out in the TBCB which additional powers will be enjoyed by local authorities and to identify those additional powers that might be exercised. It would set out the circumstances under which additional powers might be refused and the responsibility of central government to work with local authorities to enable them to do so.

4.7 The underlying principle is that once a power has been devolved it could only be taken away in prescribed circumstances such as a catastrophic failure of governance.

4.8 It would enable local authorities to form Combined Local Authorities (CLAs) and to pool existing powers as desire. The right to determine the membership and geography of CLA, and whether there should be an elected mayor, should lie with local authorities (notwithstanding that central government may set out the powers that are available to CLAs of different size and capacity – see below)

4.9 The duty of subsidiarity would set out how local authorities should exercise the duty, the ability of local people to challenge, and any oversight to be exercised by central government. (CLAs would also be subject to a duty of subsidiarity – see below)

5. Combined Local Authorities

5.1 There is broad agreement that some (but not all) aspects of skills, infrastructure, strategic planning, transport, net zero and other elements of economic development are best exercised above local authority level. CLAs shaped by local authorities are the vehicle for doing so, and CLAs in turn should be able to work together to create wider bodies if needed.

5.2 CLAs would gain their powers and resources from two sources. Firstly, from the pooling of powers (including new devolved powers) that are devolved to local authorities. Secondly, from additional powers made available to CLAs from central government.

5.3 Central government has a legitimate interest in ensuring that powers are devolved appropriately, but over prescription from the centre can slow progress, be ineffective and cut across local democracy. The TBCB should provide a framework that facilitates a collaborative relationship between local authorities and central government. Local authorities and CLAs would work with central government within a framework of right, and not be subject to individual 'deals.

5.4 In like manner to the approach to local authorities, the TBCB should

- set out what additional powers will be devolved by right to CLAs, subject only to meeting minimum criteria of capacity to exercise them effectively,
- set out what additional powers may be requested by CLAs It would set out the circumstances under which additional powers might be refused and the responsibility of central government to work with local authorities to enable them to do so,
- enable CLAs to work together to pool powers over a wider geography.

5.5 This approach will produce a 'messy' devolution, but within a broader framework which imposes a necessary level of coherence across devolved and local government in England. Not all CLAs will cover the same population, economy, or geography, but this approach is more likely to ensure that each CLAs reflects the needs of its areas and popular local geography than the top-down imposition of uniform structures. The policy framework creates strong disincentives to the formation of perverse or dysfunctional structures. However, should these emerge, they can always be reformed at a later stage.

6. The duty of subsidiarity

6.1 The need to exercise some powers at a regional or sub-regional level must not take powers away from lower levels of upper tier and district authorities. Both local authorities and CLAs would be subject to a duty of subsidiarity in which they set out which of their powers could be exercised at a lower level and how this will be achieved. For example, the holding of strategic transport powers should not prevent the devolution of, for example, Low Traffic Neighbourhood policy to district, parish, or community level.

6.2 The TBCB should provide for:

- both local authorities and CLAs should be required to consult on and publish a community empowerment plans,
- the power of local communities and councils to challenge the plan,
- the legal powers required to devolved powers to a local level.

7. The fair distribution of resources

7.1 Tackling the inequalities between and within England's regions will require a fair distribution of resources, sufficient not only to meet immediate needs but also to reverse historic deprivation and lack of investment. At the same time, devolution will not succeed unless local authorities can rely on the sufficient, predictable, and consistent funding that underpins their autonomy.

7.2 Constructing a formula for fair funding is complex and contentious and could not be on the face of the TBCB. A fair funding formula is also likely to encompass a variety of different sources of revenue and capital including current local domestic and business taxes, possible future local taxes (e.g., a tourism tax), various forms of planning gain (including from increased land values), the proceeds of economic growth (including the retention of business rates') the retention of some proportion of locally raised national taxation, and redistribution of taxation through central government. Account will also need to be taken of national funding that has not been devolved – for example, some part of research funding. This will also be too complex for the TBCB (and aspects might in any case be more appropriate for a future Finance Bill).

7.3 The agreement of a new funding formula should not be only a matter for central government. It should be designed through a statutory consultation process with a representative body of local authorities. (This body could be based on local authorities or on CLAs, although until all of England is covered by established CLAs, a local authority-based body will be the only available option.)

7.4 Hence the TBCB should:

- place a responsibility on the government to ensure that each part of England has access to sufficient resources to close historic inequalities,
- place a responsibility on the government to create a mechanism through which a funding formula to achieve that responsibility can be agreed between central and local government,
- provide for the creation of a representative body of local authorities with a statutory duty and right to agree a funding formula with central government (and to provide a resolution if this is not possible),

- protect an agreed funding formula from arbitrary change by central government (for example where it is not agreed by the local authorities' representative body) by requiring explicit parliamentary approval,
- provide for the different fiscal mechanisms by which local authorities can enjoy greater fiscal autonomy.

8. The scope of policy devolution

8.1 Much of Labour's discussion of devolution has been concerned with economic policy. In the past Labour has looked to wider policy devolution, including health, social care, and the creation of pooled public service budgets. At the current time, upper tier local authorities have gained new statutory roles on Integrated Care Partnerships with responsibilities to improve health and social care and to tackle underlying health inequalities.

8.2 The framework we have outlined here would work for a much wider range of policy issues as and when a Labour government chooses to widen the scope of devolution.

9. Accountability

9.1 Devolution creates new challenges for political and fiscal accountability. Whitehall's role as the collective accounting officer for public funding has already created constraints on devolution. As more powers and funds are devolved, the risks and the need for more effective accountability will grow. But if accountability is upwards to the centre, then devolution will be hampered.

9.2 A new framework should enable current accounting officers to satisfy their responsibility provided they have followed proper procedures in devolving powers and resources. At the same time, far more robust audit and accountability mechanisms should be introduced for local authorities and combined local authorities through the creation of a new statutory audit body with appropriate intervention powers.

9.3 Beyond fiscal accountability, empowered local authorities and CLAs should be subject to more robust scrutiny from elected councillors, local citizens and, for CLAs, member local authorities. This might be done by establishing robust minimum standards (including autonomy, resources etc) for the current local scrutiny regime.

9.4 The TBCB should:

- enable national accounting officers to devolve their statutory responsibilities to appropriate officers in local authorities or CLAs,
- create a new statutory public audit office for local authorities and CLAs with intervention powers, and enable central government, after consultation with the representative body of local authorities, to publish minimum standards for local scrutiny,

- establish principles for the operation of local government including standards of conduct in public life, transparency and openness to scrutiny by public and media.

10. The central governance of England

- 10.1 As the report on the Future of the UK identified, the conflation of the government of the UK with that of England does not work well for either England or the union. Machinery of government questions lie outside the scope of the TBCB, but it is clear that devolution within England will not happen effectively without creating a more effective and joined up system of English governance at the centre.
- 10.2 All the elements of English domestic governance that are currently scattered across a mixture of UK, British, England and Wales and England-only departments need to be effectively coordinated, perhaps under the leadership of an England office (and perhaps a Secretary of State for England). HM Treasury should engage more clearly with the government of England as a whole, and less with individual departments.

11. UK constitutional reform

- 11.1 We understand that wider UK constitutional reform lies outside the TBCB, and we have not considered this in detail. However, our proposals are consistent with those of the Commission on the Future of the UK. The creation of a representative body of local authorities would enable England to be represented within a Council of the Nations and Regions (and without the need for an elected regional body or individual). The establishment of a fair funding formula with appropriate devolved powers would make progress on the achievement of shared economic and social right. The clearer delineation of England's domestic governance would clarify English interests in intra-governmental structures and discussions.