

## Localism Bill

### House of Lords Report Stage 5 September 2011

This briefing sets out the Commission's view on key issues arising from the Localism Bill ahead of its Report Stage in the House of Lords.

The Bill includes measures for local referendums to be held on a range of issues, including directly elected mayors, council tax increases, certain planning decisions and, following either a local petition or a resolution by the council, any 'local government matter'.

#### GENERAL COMMENTS ON THE BILL

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##### **Consistency of delivery**

Existing electoral legislation already provides a framework within which certain categories of local referendums or local polls may take place. The legislation includes provision for local referendums on changes to executive arrangements (the rules can be found in the Local Authorities (Conduct of Referendums) (England) Regulations 2007) and local polls (held under section 116 of the Local Government Act 2000).

The Localism Bill provides for various new categories of local referendum to be held, and gives powers to the Secretary of State to make regulations on the conduct of these new referendums. The Commission is keen to ensure that these events are delivered professionally and consistently across all local areas and in a way that meets the needs of voters. This means that, as far as is possible, there needs to be consistency in the rules across the various local referendums. Therefore, we recommend that the Government develops a generic conduct order for all local referendums, with specific clauses to cover the issues relating to a certain type of local referendum – e.g. how they are triggered – rather than bringing repeated, similar Orders before Parliament.

##### **Regulation of local referendums**

We note that while the Bill provides for the Secretary of State to make regulations about the limitation of expenditure in connection with referendums on executive arrangements, council tax increases and planning decisions, it specifically prohibits the Secretary of State from making regulations on this matter in relation to local referendums following a petition or resolution by the Council.

The referendums proposed in the Bill mostly follow the approach for existing local government referendums, which are not regulated by the Commission. While it may be appropriate for many such referendums to be regulated at a local level,

Parliament should consider whether in cases where the proposed referendums are likely to attract significant levels of donations and expenditures, the regulatory framework found in the Political Parties, Elections and Referendums Act (PPERA) would be more appropriate.

### **The referendum questions**

The Commission is currently required to comment on the intelligibility of the question for any referendum to be held under the PERA. The Commission is also required to be consulted on proposed questions for referendums on local authority governance arrangements before regulations are laid before Parliament.<sup>1</sup>

The Government is therefore currently consulting the Commission on proposed questions for future local authority governance referendums in England that would be held under provisions introduced by the Localism Bill.<sup>2</sup>

We are undertaking an assessment of the proposed questions to see whether voters would be able to easily understand and answer them. This process includes carrying out research with voters, taking advice from plain language and accessibility experts, and seeking views from interested groups and individuals. We expect to respond to the Government's consultation at the end of October.

We would welcome further information about how the Government intends to ensure that the questions for any local referendums, **other than** those on local authority governance, are intelligible and neutral.

### **Resources**

The potentially significant increase in the frequency of local referendums could risk increasing pressure on Returning Officers and electoral services teams in local authorities. We would welcome assurances from the Government that appropriate funding and resources will be made available to meet these additional responsibilities.

### **Consultation on conduct rules**

The Bill provides that the Electoral Commission must be consulted before any conduct rules for all of these new types of local referendums are laid before Parliament for approval. We welcome this approach, which is consistent with our current role in relation to local government election rules.

It is important that, for any new types of local referendum, regulations are made well in advance of when they will first need to be used. We strongly recommend that the Government follows the principle outlined in Ron Gould's report on the 2007 elections in Scotland and ensures that regulations are made at least six months in advance of the date of the first referendum that they apply to.

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<sup>1</sup> There are existing consultation requirements relating to referendums held under the Local Government Act 2000. Equivalent requirements will apply to referendums held under new provisions in that Act, subject to the enactment of the relevant provisions in the Localism Bill.

<sup>2</sup> The proposed questions would be included in regulations made under section 9MG of the Local Government Act 2000, which would be inserted by Schedule 2 to the Localism Bill.

## Clause 54 – Publicity for and in relation to local referendum

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We read with interest the debate on the fourth day of Committee Stage, regarding the ability for local authorities to publish campaign information for electors, and the request for the Commission's views on this provision.

We note that PPERA restricts the publication of promotional material by central and local government for a referendum held under that Act, and prohibits such activity in the 28-day period before the date of poll. However, clause 54 of the Localism Bill specifically allows local authorities to publish material campaigning for or against a question put in a referendum triggered by a petition or a request, without any similar restriction.

Parliament may wish to consider further the merits of a restriction on the use of public money for campaigning in local referendums, given the position in relation to 'PPERA referendums', especially in the period before the date of poll.

As the proposed referendums are not to be subject to PPERA regulatory controls overseen by the Commission, we would also welcome clarification from the Government on whether and how they intend expenditure by local authorities to be monitored, to ensure it is in accordance with the requirement in sub-clause 54(5)(b) for expenditure to be 'reasonable'; what the test of 'reasonable' expenditure would be; and what controls or sanctions would be appropriate should expenditure exceed what is determined as reasonable.

## FURTHER INFORMATION

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For further information, or to find out how to get involved in our assessment of the proposed questions for future local authority governance referendums in England, please contact Caroline Bolshaw, Public Affairs Manager on 020 7271 0632 or [cbolshaw@electoralcommission.org.uk](mailto:cbolshaw@electoralcommission.org.uk)