

## Localism Bill

### House of Lords Third Reading

31 October 2011

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

The Bill includes measures for local referendums to be held on a range of issues, including local authority governance arrangements (e.g. directly elected mayors), council tax increases and neighbourhood development plans.

### IMPORTANT RECOMMENDATION TO PARLIAMENT

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On 27 October we wrote to the Parliamentary-Under-Secretary of State for Communities and Local Government to express our **serious concerns** about the proposal to hold referendums on council tax increases in spring 2012. There is, in our view, simply not enough time before then to adequately ensure that the necessary regulations are well drafted, campaigners are ready to engage with voters, and electoral administrators are properly prepared.

We **strongly recommend** that these referendums are not required to be held until spring 2013. We would welcome either assurances from the Government, or an amendment to the Localism Bill<sup>1</sup>, to this effect. There are more details below.

### TIMETABLE FOR COUNCIL TAX REFERENDUMS

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It is important that conduct rules and other relevant regulations are made well in advance of when they will first need to be used at these local referendums.

***The Government should commit** to following the important principle which has been widely accepted since 2007, that regulations, including conduct rules, should be clear no later than six months in advance of the date of the first poll to which they will apply.*

The Government currently intends that the first **referendums on council tax increases** could take place no later than the first Thursday in May 2012, following publication of budget proposals for the 2012/13 financial year.

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<sup>1</sup> For example, by amending the Bill to prevent Sections 72-79 and Schedules 5 and 6 from being commenced until after May 2012

Given that there is now at most six months until any referendums might take place, we are very concerned about the apparent lack of progress which has been made towards providing a clear policy and legislative framework for the conduct of these polls.

To date, we have only seen a very small part of the draft secondary legislation which will be required for the referendums, and have not yet seen details specifically of the legislation for the conduct of the referendum polls or the regulation of any campaign activity. This legislation will also need to specify the referendum question, and consultation on the intelligibility of the proposed question will not finish until 9 December.

It is clear that a number of novel factors mean these referendums could be particularly complex:

- It is possible that multiple referendums could be held within and across both billing and precepting authorities, with voters taking part in as many as five referendum polls.
- Local authorities and referendum campaigners will have little time to develop and communicate potentially complex and technically detailed information and arguments to voters.
- There will also be very little time for electoral administrators to put in place new plans to hold referendums or to revise existing plans to take into account the combination of referendum polls with polls for scheduled local government elections.

Given these factors, the lack of progress towards confirming the detailed framework for the delivery and regulation of the referendums, and the limited time remaining before the first of these proposed referendums may be required to be held, **our assessment is that there is a high level of risk that any council tax referendums held in Spring 2012 may not be well run.** Requiring any council tax referendums to be held in May 2012 may also increase the risk to scheduled local government elections.

While we remain committed to working closely with the Government to ensure that these challenges are addressed for referendums after 2012, the Electoral Commission's advice is that these local referendum provisions should not be introduced for spring 2012. There is, in our view, not enough time before then to adequately ensure that regulations are well drafted, electoral administrators are properly prepared, and campaigners are ready to engage with voters.

It should be noted that we do not have the same concerns about the proposed referendums on local authority governance in 11 English Cities in May 2012, as the conduct rules will not be significantly different from the existing rules, and the process of assessing the intelligibility of the referendum question has been completed.

***The Government should provide a clear commitment to not hold these referendums until Spring 2013. Parliament will want to consider whether the Localism Bill should be amended to prevent the provisions relating to council tax referendums being commenced until after May 2012.***

## GENERAL COMMENTS ON THE BILL

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### Consistency of delivery

Existing electoral legislation already provides a framework within which referendums on changes to local authority governance may take place.<sup>2</sup> The Localism Bill provides for new categories of local referendum to be held, and gives the Secretary of State powers to make regulations on the conduct of these referendums.

It is important 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 possible, there should be consistency in the rules across the various local referendums.

***The Government should therefore develop a generic conduct order for the administration of 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

The Commission does not have a regulatory role in respect of the spending limits on campaigning at existing local referendums. The Bill provides for the Secretary of State to make regulations about the limitation of expenditure in connection with referendums on local authority governance, council tax increases and neighbourhood development plans.

***Parliament will want to consider whether the new referendums proposed in this Bill are likely to attract significant levels of donations and campaign spending. If so, it may be appropriate to apply a regulatory framework along the lines of that in the Political Parties, Elections and Referendums Act 2000 (PPERA), which apply to national and regional referendums and is regulated by the Commission.***

### 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.

***Parliament will want to consider seeking assurance from the Government that appropriate funding and resources will be made available to meet these additional responsibilities.***

## FURTHER INFORMATION

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

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<sup>2</sup> Local Authorities (Conduct of Referendums) (England) Regulations 2007