

# Electoral Commission response to the Communities and Local Government consultation *Local referendums to veto excessive council tax increases*

## Introduction

1. The Electoral Commission is an independent body set up by the UK Parliament under the Political Parties, Elections and Referendums Act 2000 (PPERA). Our aim is integrity and public confidence in the UK's democratic process.
2. We issue guidance to Returning Officers and set standards for well-run elections. We also identify ways in which electoral services can be improved to ensure that elections are delivered consistently, professionally and with the elector as the primary focus.
3. We therefore have a direct interest in Communities and Local Government's consultation on the introduction of binding referendums to veto or accept increases in council tax which are in excess of the principle determined by the Secretary of State.
4. We welcome the opportunity to contribute to this process.

## Our approach to this consultation

5. The Commission is primarily concerned with the electoral process and ensuring that any referendum is well run. We will therefore respond restrict our response to matters concerning the implementation of referendums; namely, questions 2, 3, 4, 5 and 6.

## Responses to consultation questions

### **Question 2 – Are the Local Authorities (Conduct of Referendums) (England) Regulations 2007 the right model for organising and administering council tax referendums?**

6. We note that the Government intends to base the provisions for council tax referendums on the existing provisions for referendums held under the Local Government Act 2000 (LGA 2000) ("mayoral referendums") where relevant and appropriate. The Local Authorities (Conduct of Referendums) (England) Regulations 2007 (hereafter referred to as "the 2007 Regulations") set out the detailed rules for the conduct of these referendums including the questions to be asked, rules about publicity, restrictions on referendum expenses and the detailed conduct rules that apply in the case of a separate or combined poll. These rules are drafted in the same terms as equivalent secondary legislation for principal area elections, and parishes and communities elections.

Organising and administering council tax referendums on the basis of the 2007 Regulations will therefore provide a degree of familiarity for electoral administrators and Returning Officers tasked with running the referendums and consistency of approach.

7. On that basis adapting the 2007 Regulations for council tax referendums would seem a sensible and logical approach. However, more detailed consideration will need to be given to how the 2007 Regulations might be adapted to best ensure the effective organisation and administration of council tax referendums. We would also expect the necessary legislation to be in place at least six months before the earliest envisaged date for any council tax referendums.
8. We note that under Section 45 (8B) of the LGA 2000 the Secretary of State cannot make regulations specifying the wording of the question to be asked in a referendum without first consulting the Commission as to the intelligibility of that question.
9. The Commission regards the intelligibility of a referendum question as critical to engaging voters at any referendum and we would expect these provisions to be replicated in the case of the question(s) to be asked in council tax referendums. We have published documents setting our approach to assessing the intelligibility of referendum questions along with referendum question assessment guidelines, which we use to assess a question's effectiveness in presenting the options clearly, simply and neutrally. These documents are available on our website ([www.electoralcommission.org.uk](http://www.electoralcommission.org.uk)).

**Question 3 – Are there any practical difficulties in requiring council tax referendums to take place no later than the first Thursday of May?**

10. We understand that local authorities will be free to hold referendums at any point after the House of Commons has approved any principles set. We also understand that the requirement for referendums to take place no later than the first Thursday in May is to “ensure that the process is not subject to delay and that local authorities have certainty over their budgets as quickly as possible in the new financial year”.
11. We have some concerns about the possible impact of holding a council tax referendum in the weeks preceding scheduled local authority or other statutory elections on the electoral administration system and electors. According to the illustrative timetable set out at Annex A of the consultation paper, billing authorities would send out council tax bills and details of any referendum and supporting materials in March. If the date for the council tax referendum is scheduled to take place prior to the first Thursday in May, then either the two polls must be combined or their timetables will overlap. Either way, this places additional pressure on electoral administrators, as they would be required to split their resources between the respective polls.

12. Holding polls a few weeks apart, so that the timetables overlap, would also risk voter fatigue as well as voter confusion – for example if poll cards for the later election were issued around the same time as polling day for the referendum.
13. We note from the impact assessment that the first of these referendums will not take place until at least 2012. We assume that this has been decided as there would not be sufficient time to put the necessary legislation in place prior to November 2010 when (according to Annex A) the process of determining the level of council tax begins. We would have serious reservations about holding these referendums in 2011, especially considering the various electoral events already scheduled for 5 May.

**Question 4 – What are the advantages and disadvantages of holding a council tax referendum on the same day as another local referendum, or jointly with a local and/or general election? Current regulations allow for higher expenses per elector in a referendum than in a local election – would this raise any concerns if both votes are held on the same day?**

#### **Combination**

14. The Commission believes that each specific proposal for combined polls should be considered individually on its merits. Our priority is that voters and campaigners should be able to understand and easily participate in any scheduled polls held on the same day. We also want to ensure that those responsible for running the polls are able to do so effectively.
15. If it were decided that council tax referendums should take place on the same day as another local referendum, or jointly with a local and/or general election then it will be essential for detailed combination provisions are put in place well in advance of polling day – at least six months – to ensure that the polls can be administered effectively and in the interests of electors.
16. In our response to the CLG consultation on the combination of the 2009 European and local elections we presented evidence to show that holding two polls near to each other was potentially more confusing than combining these polls. While we appreciate that when to hold the referendum poll will be a matter for local Returning Officers, and that local authorities will be keen for the polls to be held early in order to clarify their financial position, we ask that these concerns be noted when deciding when selecting a polling date.
17. The Commission would be happy to provide further advice on the possible advantages and disadvantages of combination once the details of any proposal about council tax referendums and other electoral events are known.

## **Expenses**

18. Under the provisions of the Political Parties, Elections and Referendums Act 2000 (PPERA), the Commission has a role in monitoring compliance with certain types of referendums held in the UK. This role does not extend to referendums held under the LGA 2000, which are not subject to PERA campaign spending and donation controls. The Commission does not therefore have a direct role in respect of monitoring expenditure at such referendums, or hold data regarding spending at such referendums.
19. However, we are required to be consulted prior to the laying of draft regulations regarding the limitation of expenditure in connection with a referendum held under the LGA 2000 (and the creation of associated criminal offences). The Commission was last formally consulted on these by Government in 2007.
20. We are not aware of any concerns having been being raised by stakeholders regarding the currently different expenses limits for Mayoral referendums and local government elections. However, there may be a case for reviewing whether the expenses limits for Mayoral referendums and council tax referendums should be the same.
21. Currently in the event of a UK general election taking place on the same day as a local election and/or local referendum candidates may need to split some expenses between both campaigns. Similar arrangements would need to apply in cases where the regulated period for statutory elections overlapped with a council tax referendum.

### **Question 5 – What provision, if any, should be made for properties where the council tax payer is not a local elector?**

22. We note that the Government believes that the referendum franchise should extend to all local electors, not only those liable for council tax, on the grounds that “all benefit in some way from the provision of local services”. However, the consultation paper notes that such a proposal would “exclude council taxpayers who, for whatever reason, do not have a right to vote in local elections”. The Commission believes that matters relating to electoral franchise are for Parliament to decide upon. Consequently we do not hold a view on this question.
23. If the Government were to decide to allow council tax payers who were not Commonwealth or EU citizens to vote in these referendums then we would expect there to be a robust registration process in place. Also, the Returning Officer must ensure that relevant information about who can vote, how to vote and what they are voting for is readily available both in advance of the poll and at the polling station.

**Question 6 – Does the timetable in at Annex A provide sufficient stability and certainty for local authorities when planning budgets? Does it provide sufficient time to organise and administer referendums?**

24. The first part of this question does not fall within our area of expertise. As to the second part, we note that the timetable at Annex A envisages provisional council tax referendum principles being announced in late November/early December, with precepting and billing authorities planning to set “excessive council tax increases” drawing up shadow budgets and preparing material informing residents about the forthcoming referendum during the period December to March.
25. The effective organisation and administration of a referendum will depend on a number of key elements being in place at least six months before the start of the referendum period. These include a clear legal framework; clarity over the funding of the referendum; comprehensive guidance for electoral administrators and referendum campaigners; sufficient electoral service staffing levels; and a clear public awareness strategy for electors. In many cases, electoral administrators will also be planning for already scheduled statutory elections in May, which strengthens the case for these elements being in place as early as possible. The Commission would be happy to engage in discussions with CLG officials on these issues when appropriate.

**The Electoral Commission  
10 September 2010**