

Localism Bill

House of Lords Report Stage – Days 5, 6 and 7 10, 12 and 17 October 2011

This briefing sets out the Commission's view on key issues arising from the Localism Bill ahead of the remaining days of Report Stage 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, certain planning decisions and, following either a local petition or a resolution by the council, any 'local government matter'.

GENERAL COMMENTS ON THE BILL

Consistency of delivery

Existing electoral legislation already provides a framework within which certain categories of local referendums or local polls may take place. This legislation includes provision for local referendums on changes to executive arrangements¹ and local polls.²

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. 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 executive arrangements, council tax increases and planning

¹ Local Authorities (Conduct of Referendums) (England) Regulations 2007

² section 116 of the Local Government Act 2000)

decisions; but it prohibits the Secretary of State from making such regulations in connection with local referendums following a petition or resolution by the Council.

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 applies to major referendums and is regulated by the Commission.

Ensuring intelligible referendum questions

The Electoral Commission is required to comment on the intelligibility of the question proposed for any referendum to be held under PERA. The Commission must also be consulted before regulations including proposed questions for referendums on local authority governance arrangements are laid before Parliament. In accordance with this requirement, the Government is currently consulting the Commission on proposed questions for referendums on future local authority governance arrangements in England that would be held under provisions introduced by the Localism Bill.

We apply the same approach to assessing all proposed questions that we comment on. 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. This process takes 12 weeks, and we expect to respond to the Government's consultation at the end of October.

Where the Commission is required to be consulted on regulations for other local referendums proposed under the Localism Bill – including referendums on council tax increases and local planning issues – we will also assess and comment on the intelligibility of the proposed referendum questions.

The Government should make clear how it intends to ensure that the questions for referendums on 'local government matters' that may be held under the provisions of this Bill are intelligible and neutral. The Commission would be happy to offer firm guidance on how those involved should formulate and assess referendum questions, but Parliament should consider whether such guidance should be binding.

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.

Consultation on conduct rules

The Bill provides that the Electoral Commission must be consulted before any conduct rules for these new local referendums are laid before Parliament for approval.

The Commission welcomes this approach, which is consistent with our existing role in relation to local government election rules.

It is important that regulations are made well in advance of when they will first need to be used at one of these new local referendums.

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

Before Clause 52 – Role of the Electoral Commission in local referendums

Amendment 195BDA would require the Electoral Commission – when asked to do so by either a petitioner or the local authority – to determine the wording of the question in a referendum ‘on local government matters’, and whether there had been a similar referendum in that local authority area in the previous three years (this being a ground on which the local authority may refuse to hold a referendum).

As noted above, we consider it important that the Government should make clear how it intends to ensure that proposed questions in local referendums are intelligible and neutral.

The Commission’s existing role is to comment and make recommendations on proposed questions, but the Commission does not have the final say – the decision on the referendum question is ultimately for Parliament to make.

Where the referendum question is predetermined in legislation, it is feasible for the Commission to run our 12 week assessment process (as outlined above) and report to Parliament. It may be considerably more difficult for the Commission to conduct this sort of assessment if a significant number of local referendum questions were referred to us to determine. Also, if there are significant local factors that the Commission needs to consider, it might well take us longer than 12 weeks to assess the issue at stake, take a view on a proposed question, and then carry out the necessary research and analysis.

Parliament will want to consider whether this would be an appropriate role to give to the Commission given the implications of the approach proposed in this amendment for: the time needed to put in place local referendum arrangements; and the additional resources the Commission might need if required to carry out this role on any significant scale.

As an alternative, in order to ensure that local referendum questions are intelligible and neutral, we could develop our guidance on how those involved should formulate and assess the wording so that it is intelligible and neutral.

Clause 54 – Publicity for and in relation to local referendum

During the debate on the fourth day of Committee Stage, a request was made for the Commission's views on this provision, which relates to the ability of local authorities to publish material supporting one outcome or another in a local referendum.

PPERA restricts the publication of such 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. By contrast, in relation to a referendum triggered by a petition or a request, clause 54 of the Localism Bill contains no such restriction or prohibition – it specifically allows local authorities to publish material campaigning for or against a question in such a referendum.

The Commission can see the argument for allowing local authorities to put their views to electors in local referendums that focus specifically on the policies or actions of the local authority itself.

*However, **Parliament will want to consider** seeking clarification from the Government on whether – and if so, how – they intend expenditure by local authorities on such campaigning material to be monitored to ensure it is in accordance with the requirement in 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'.*

We have suggested above that Parliament will want to consider the general arrangements for regulating campaign spending at these referendums.

FURTHER INFORMATION

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