Progress of the *Localism Bill*: Local government and community empowerment

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This note gives an overview of amendments to the local government and community empowerment parts of the *Localism Bill 2010-12* at report stage in the House of Commons and during its progress in the House of Lords. The Bill would introduce a number of new measures including: a general power of competence for local authorities, new governance arrangements, mayoral referendums in specified areas, new powers to help save local facilities and services threatened with closure and giving communities the right to bid to take over local authority-run services.

A number of changes to the Bill were made in the House of Lords. In particular, provisions relating to Shadow Mayors and local referendums have been removed from the Bill, and substantial amendments were made to provisions relating to local government standards.

The Bill would also make amendments to the planning and housing regimes. Further information on the Bill can be found in Library Standard Note SN/SC/06107, *Would the Localism Bill allow planning consent to be bought?,* SN/SC/05986, *Localism Bill: Planning*, and Library Research Papers prepared for the Commons Stages of the Bill, *Localism Bill: Local Government and Community Empowerment*, *Localism Bill: Planning and Housing* and *Localism Bill: Committee Stage Report*. A House of Lords Note on the Bill summarises developments on Report Stage in the House of Commons.

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1 Amendments during report stage (Commons)

The report stage in the House of Commons took place on 17 and 18 May.[1] A number of technical changes were made to the Bill as well as a few substantive changes. The substantive changes were as follows:

1.1 General power of competence

The Bill would introduce a general power of competence for local authorities.

- New Clause 12 (Clause 6 in HL Bill 71) and its related amendments would impose conditions on the use of the delegated powers in clause 5(1) in relation to the general power of competence;[2] these conditions would be extended to the fire and rescue authority provisions. Further amendments to clauses 8 and 9 give additional powers to Welsh ministers over the general power of certain fire and rescue authorities.[3]

- Amendments to the charging provisions for fire and rescue authorities (clause 9) would ensure that charges cannot be made for attendance at domestic premises in cases of malfunction of equipment.[4]

1.2 Standards

The Bill would abolish the current local government standards regime.

- An amendment to provisions relating to voluntary codes of conduct (clause 17(5) in HL Bill 71) would ensure that local authorities must publicise the adoption, revision or withdrawal of a code of conduct.[5]

1.3 EU Fines

The Bill would introduce provisions to allow the Government to require local and public authorities to pay EU fines if found responsible for the relevant infringement of EU law.

- New Clauses 13 and 14 (Clauses 34 and 35 in HL Bill 71) were inserted to ensure that fines could be charged to local authorities in an ongoing fashion if necessary.[6]

1.4 Community right to challenge

The Bill would introduce a new power to allow local communities the right to challenge how local authorities provide and run services.

- New Clause 16 (clause 73 in HL Bill 71) would insert a power for the Secretary of State to provide advice or assistance about the operation of the new power.[7]

1.5 Assets of community value

The Bill would introduce a requirement for local authorities to publish a list of local assets which local groups could then bid for if they were sold.

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1 The House of Lords Library has produced a detailed summary of the report stage – see House of Lords Library note, *Localism Bill,* 27 May 2011
2 HC Deb 17 May 2011 c198
3 Ibid c235-42
4 Ibid c242
5 Ibid c250
6 Ibid c250-1
7 Ibid c310

- New Clauses 17 and 18 (clauses 88 and 89 in HL Bill 71) would insert a power for the Secretary of State or Welsh Ministers to provide advice or assistance about the operation of the new power.[8]

1.6 London Governance

The Bill would make various changes to the governance of London.

- New Clause 20 (clause 200 in HL Bill 71) has been inserted to ensure that if the GLA carries out specified duties for commercial purposes, that it must do so through a taxable body to ensure parity with the private sector.[9] New clause 21 (Clause 208 in HL Bill 71) ensures that provisions relating to the transfer of assets remain tax neutral.[10]

Third Reading in the Commons took place on 18 May.

2 Second reading (House of Lords)

The Bill was given its First Reading in the House of Lords on 19 May 2011. During the debate on Second Reading on 7 June 2011, Government ministers indicated there were a number of areas where they would be prepared to consider amendments to the Bill as it went through the Lords. Opening the debate, Baroness Hanham said:

> During House of Commons considerations, parts of the Bill of course raised considerable debate-I appreciate that we will return to them again-such as aspects of the provisions on mayors, particularly shadow mayors, the impact of social housing reforms and the fine detail of some of the planning provisions. The Government consistently sought to build on common ground and consensus. In keeping with this, we will seek to make amendments, where they will improve the Bill, that arise from the discussion at each stage.
>
> I can assure noble Lords that the Government will continue to listen and, where possible, make amendments that are justified and supported across the House. There will be parts of the Bill on which we may not be able to reach agreement, but I hope that they will be few. My colleagues and noble friends Lord Taylor of Holbeach and Lord Attlee and I will want to take account of what is said and to develop consensus where possible.[11]

Speaking for the Opposition, Lord Beecham commented:

> There are some welcome provisions. The local government world has long called for a power of general competence, although candidly when asked what difference it would make, many of us have had some difficulty in identifying what the practical effects would be, given the existing powers to improve the environmental, social and economic well-being of areas. However, changes to small business rate relief and the housing revenue account, the latter building on work initiated by the last Government, and the promotion of a duty to co-operate are also being well received, and few except some estate agents will mourn the passing of home information packs.
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> But overall the Bill, studded with populist gesture politics, is redolent of the prejudices-indeed, it would not be an exaggeration to say some of the obsessions-of the

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8 Ibid c310-11
9 HC Deb 18 May 2011 c390
10 HC Deb 18 May 2011 c367
11 HL Deb 7 June 2011 c148

> Secretary of State. I cite, for example, provisions about chief executives and pay, or the banning of charge and reward schemes for waste collection. The Secretary of State takes to himself 142 powers and, in what seems a remarkable echo of the Public Bodies Bill, powers to abolish or amend by order up to 1,296 statutory duties. Even the vaunted power of general competence is qualified by Clause 5(3), giving the Secretary of State power by order to prevent local authorities doing anything he specifies.[12]

3 Committee stage (Lords)

3.1 Day one, 20 June 2011

Day one of the Lords Committee stage took place on 20 June 2011. The following report concentrates on those amendments that were debated during this stage. No amendments were made to the Bill although the Government announced a concession over the shadow mayor parts of the Bill.

Shadow mayors

The House of Lords debated amendments to the general power of competence provisions in clauses 1-8 of the Bill. Amendments to clarify the extent of the general power of competence were not accepted by the Government. However, during debate on these amendments, Baroness Hanham, on behalf of the Government, stated that the Government would accept amendments removing the requirement for shadow mayors from the Bill:

> ...the Government will be pleased to support amendments that have the effect of deleting from the Bill mayoral management arrangements; that is, mayors as chief executives and the concept of shadow mayors. In more detail, this means that we will delete mayoral management arrangements and we will be supporting Amendment 57 in the names of my noble friends Lord Jenkin of Roding, Lord Tope, Lady Scott of Needham Market and the noble Lord, Lord Beecham. We will also be supporting Amendments 62A, 66A, 84E, 87A to 87D, 108A and 187 in the names of my noble friends Lord True and Lord Howard of Rising, which complete the changes needed to delete mayoral management arrangements. I should add that deleting these provisions from the Bill will not prevent councils deciding to do away with the non-statutory post of chief executive should they choose to do so. Indeed, the newly elected mayor of Leicester has announced that he is proposing to do just that.
>
> In order to delete shadow mayors from the Bill, we will also support Amendments 69A to 69C, 73A, 74A, 75A, 77A, 77B, 79A, 81A and 84A to 84D, again in the names of my noble friends Lord True and Lord Howard of Rising. It is the Government's view that these amendments best achieve the removal of these provisions while retaining provisions needed for an effective process for creating city mayors.[13]

The announcement was welcomed by Peers.

General power of competence

Peers also moved a number of amendments seeking to clarify the extent of the general power of competence. No amendments were made, although Baroness Hanham, noted that "in effect...the general power of competence can be adopted in future if that is what Wales wants."[14] She also said that "we believe it would be inappropriate that local authorities

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[12] Ibid c151

[13] HL Deb 20 June 2011 c1062

[14] Ibid c1081. Legislative consent motions on the Bill were debated in the Welsh Assembly on 8 February 2011 and 14 June 2011

should be entirely free to change their governance arrangements" under the general power of competence.[15] She also noted that the GPC would not impact on the running of leisure services as there was already there was legislation which regulated that sector.

In relation to clause 7, Baroness Hanham confirmed that the general power of competence would not be made available to all parish councils, and that there would be some criteria in place to determine to which ones it should be extended. She noted that a draft statutory instrument produced by the Government provided for two conditions to be met:

> These are that two-thirds of the councillors are democratically elected and that the parish clerk has received training in the use of the new power. These criteria have been discussed with the National Association of Local Councils and other interested parties.
>
> Our aim is to ensure that eligible parish councils will be able to use the new power at the same time as other local authorities[16]

On clause 9, Baroness Hanham said the Government's intention was that it should not be possible for fire and rescue authorities to charge for core functions such as community fire safety or prevention activities.[17]

Lord McKenzie of Luton moved a new clause to give "the six integrated passenger transport authorities a general power in recognition that integrated transport authorities are single purpose authorities".[18] The new clause mirrored one that had been moved in the House of Commons during Committee Stage. Baroness Hanham said that discussions were taking place between the Secretaries of State for Communities and Local Government and Transport, and that she would discuss the need for the amendment with Lord McKenzie of Luton when the outcome of those discussions was known. The Amendment was therefore withdrawn.

Governance

The Committee also discussed amendments relating to the governance of English local authorities, and in particular whether the Bill should enable or require a local authority operating a mayor and cabinet executive to confer a local public service function of any person or body on its elected mayor, as allowed by proposed new Section 9HF. Lord McKenzie of Luton noted that the Delegated Powers and Regulatory Reform Committee had described the provisions as an 'inappropriate use of legislative power."[19] Responding, Baroness Hanham suggested that the House should come back to the issue at a later date.[20]

3.2 Day two, 23 June 2011

Shadow mayors

A number of changes were made to the Bill in accordance with Baroness Hanham's announcement during the first day of Committee relating to shadow mayors. The Government accepted Amendment 57, moved by Lord Jenkin of Roding (tabled by Lady Scott of Needham Market), that would remove the provisions for shadow mayors from

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15 Ibid c1084
16 Ibid c1127
17 Ibid cc1131-2
18 Ibid c1136
19 Ibid c1139
20 Ibid c1144

Schedule 2 of the Bill, as well as a number of consequential amendments.[21] Explaining the Government's position, Baroness Hanham said:

> We are happy to accept Amendment 57; I made clear my support for that previously in Committee. We recognise that there is great concern about the combination of the mayor and chief executive under the shadow arrangements and are content to support the amendment.[22]

Further amendments debated but not accepted by the Government included an amendment moved by Lord Beecham to clarify the Government's intentions relating to its proposed power to regulate the term of office of an elected mayor.'[23]

Other issues discussed in Committee, but that did not lead to amendments to the Bill, included:

Governance

Lord True moved an amendment to clarify "the relations between lower tier and upper tier authorities, and how we achieve localism where things are done to local people by higher tier authorities."[24] Lord Greaves moved an amendment to prescribe the extent to which central government retained "control and prescription of local authorities".[25] He also moved an amendment to "remove most of the central prescription about area committees and how they should work."[26] Lord Shipley moved an amendment to ensure that the chair of a scrutiny committee would come from the largest opposition group on the authority.[27] Lord Tope moved amendments that would remove the guidance or order-making powers of the secretary of State. Although she rejected the main amendment, Baroness Hanham agreed to look again at a number of amendments relating to the simplification and expansion of the definition of 'partner bodies' in relation to scrutiny committees.[28] Lord Willis moved an amendment to ensure that there would be a presumption that meetings of a local authority executive or a committee of the executive would be open to the public.[29] Lord Tope moved an amendment to increase the threshold for a referendum to be held relating to governance arrangements from 5% to 10%.[30]

Committee structure

Baroness Hanham said she had sympathy with an amendment moved by Lord Tope which would allow councils that wished to return to a committee structure to do so when they chose, rather than only allowing them to change the next council elections. The Amendment was withdrawn but Baroness Hanham agreed to consider the proposals further.

Predetermination

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21 HL Deb 23 June 2011 c1447
22 Ibid c1448
23 Ibid c1449
24 Ibid c1404
25 Ibid c1405
26 Ibid c1415
27 Ibid c1421
28 Ibid c1430
29 Ibid c1433
30 Ibid c1458

Lord Greaves moved a number of amendments that would clarify the wording in clause 14,[31] and about the application of the Bill's provisions to officers of a council.[32] Lord Taylor of Holbeach on behalf of the Government responded by providing definitions of the relevant words and phrases.[33]

Standards regime

Lord Beecham moved amendments that would preserve standards committees on councils.[34] Lord Tope moved amendments that would ensure that the Greater London Authority's standards regime would be shaped by both the mayor and the assembly.[35] Lord Taylor of Holbeach responded,

> The proposal ... that the new standards function set out in Chapter 5 of Part 1 of the Bill should be a joint duty of the Mayor of London and the London Assembly, as it now is-is one that we are open to considering and seems to have common sense behind it. I can see the benefit of ensuring that the mayor and the Assembly are given equal roles and responsibility for promoting and maintaining high standards.
>
> On Amendments 98A, 98B, 98C and 98D, we see that there is a specific issue here for the GLA in terms of the delegation of decision-making by the Assembly to employees of the authority and we are happy to consider it further.[36]

Lord Tope moved an amendment that would compel local authorities to have a code of conduct.[37] He noted that "for the Liberal Democrat benches, it is important to recognise a mandatory code of conduct ... that applies to all authorities and therefore to all councillors."[38] In response, Lord Taylor of Holbeach offered further discussion on the matter.[39] Lord Taylor of Holbeach also said that he would be happy to discuss before report the Bill's provisions on criminal sanctions for failing to declare interests.[40]

3.3 Day three, 28 June 2011

Pay accountability

The Government moved a number of amendments to clause 22, on senior pay policy statements. The amendments would remove the focus on senior pay and apply the requirement to produce a pay policy statement to all employees of an authority:

> Our amendments set out the requirement for relevant authorities to approve and publish a pay policy statement which, in addition to the measures already in the Bill, must set out an authority's policies on remuneration of its lowest-paid employees and the relationship between the remuneration of its chief officers and the rest of its workforce. As Will Hutton set out in his report on fair pay in the public sector, published on 15 March, there is value in ensuring that decisions about senior pay are taken in the context of similar decisions on lower-paid staff. Such an approach broadens the debate

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31 Ibid c1475
32 Ibid c1477
33 Ibid c1481
34 Ibid c1490
35 Ibid c1497
36 Ibid c1499
37 Ibid c1499
38 Ibid c1503
39 Ibid c1502
40 Ibid c1508

> beyond discussion about salary amounts of top earners and into whether the pay of those individuals is justified.
>
> These measures, therefore, further increase local democratic accountability and transparency over how decisions on pay are made, and embody the commitment given by Ministers to reflect on the measures in the light of Hutton's report. The measures seek to minimise the potential burden on authorities and ensure that decisions on pay remain ones for individual employers to take locally.[41]

The amendments were agreed as were a number of consequential amendments.

The Committee debated a number of other matters but in each case amendments were not accepted by the Government, although Ministers agreed to consider further some of the matters raised. These included the following.

Promotion of democracy and petitions

Lord Beecham argued that "This Bill purports to be about localism and local government, about involving people in the decisions affecting their lives and those of their community, about encouraging wider civic responsibility, so why does this clause remove a basic, not particularly elaborate, duty to promote exactly that?"[42] Responding on behalf of the Government, Lord Shutt of Greetland said "the duty has not yet commenced and therefore its repeal will have no significant impact on authorities. We therefore wish to remove it from the statute book as it would constitute, if it were to be enacted, an unnecessary burden on local authorities."[43] Baroness Hanham agreed to discuss further an amendment moved by Lord Greaves that would insert a new clause after clause 30 to protect urban open spaces.[44]

EU fines

Lord Wigley introduced a number of amendments relating to passing on of EU fines to local authorities and whether the fines could be imposed on Welsh authorities. Baroness Greengross moved amendments to make a clear statement of the principle on which the measure was based. Lord Jenkin of Roding moved an amendment to clarify whether private undertakings would be covered by the measure. Lord Best moved amendments to set up an independent arbitration body to apportion blame. Lord Empey raised the concern that although at present the Bill's provisions did not apply to Northern Ireland, they might in the future. Lord Newton of Braintree asked if the measure would be retrospective. Lord McKenzie of Luton asked if the measures would in the future be extended to Wales, Scotland and Northern Ireland, and moved a number of amendments that would provide additional safeguards for local authorities in the event of the powers being used. Earl Attlee on behalf of the Government agreed to consider these points further before report stage.[45]

Tax increment financing

Baroness Kramer moved a new clause that would link tax increment financing[46] to the Business Rates Supplement Act 2009. Lord Shutt of Greetland responded that the Government had committed to introducing TIF but that the House should not pre-empt the

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41 HC Deb 28 June 2011 c1639-40
42 Ibid c1648
43 Ibid c1650
44 Ibid c1671
45 Ibid cc1672-1702
46 See Library standard note SN/PC/05797, 7 March 2011

local government resource review that would conclude in July. The Amendment was withdrawn.

Non-domestic rates

The Lord Bishop of Birmingham raised concerns about whether councils would be able to stop giving discretionary relief to charities. Lord Shutt of Greetland confirmed that there would be no change.[47]

3.4 Day four, 30 June 2011

Local referendums

A number of amendments were made to the provisions in the Bill relating to local referendums. Lord Taylor of Holbeach on behalf of the Government moved a number of amendments relating to special-case petitions. He explained the amendments as follows:

> There are circumstances in which a referendum could be inappropriately expensive for a council or could cut across or effectively duplicate other statutory consultation processes for which there is also a statutory right to review or appeal. This would include planning applications. We therefore propose to remove the power of specification in Clause 47(5) and replace it with provisions that give councils increased flexibility to decline to hold a referendum in special cases. Those cases, defined as "special case petitions", are where: first, the cost of holding the referendum would be more than 5 per cent of the council's council tax requirement for that year; the referendum matter has been the subject of a previous referendum within the previous four years in that area; or the referendum relates to a matter subject to other statutory consultation processes for which there is a right to review or appeal.[48]

Lord Beecham, on behalf of the Opposition, queried the Government's assessment of the cost of referendums:

> Five per cent seems extraordinary and I wonder whether any proper estimate has been made-or any estimate at all-by the Government, or those advising them, about what the cost of a referendum, perhaps on a city-wide basis, or district council basis, to take a lower level, would be. It may be that, if we are going to have guidance of this kind, differential provision ought to be made according to the size of the authority; perhaps something on a per capita basis, rather than on a percentage of revenue.[49]

The amendments were agreed.

Further amendments were made that would affect the Greater London Authority.[50]

3.5 Day five, 5 July 2011

Council tax referendums

Earl Attlee agreed to look at whether the word excessive could be used in the referendum question. He said:

> The noble Lords, Lord Greaves, Lord Tope and Lord McKenzie, suggested that the word "excessive" in a referendum question might prejudice the result. Noble Lords

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47 Ibid c1728
48 Ibid c1867
49 Ibid c1877-8
50 Ibid c1953

> made me think hard about this point but inspiration arrived. It might be possible to ensure that referendum questions do not prejudice the matter, and we will consider this point over the Summer Recess.[51]

Earl Attlee also confirmed that the Government would consult the Electoral Commission over the question, and that the regulations to be laid under this section would be modelled on the *Local Authorities (Conduct of Referendums) (England) Regulations 2007*.[52]

The Committee agreed further amendments that would ensure:

- that only residents and not business voters are entitled to vote in any council tax referendum in the City of London.53
- that a referendum on a council tax rise is not triggered solely because of planned expenditure which has already been explicitly supported in a local referendum. The amendments apply where a qualifying local referendum is held across the whole of the billing authority area, the county council or the GLA. In such circumstances, an authority may be able to disregard qualifying expenditure that it estimates it will incur in taking steps to give effect to the result of that referendum when calculating whether an increase in council tax is excessive. This means an authority will not have to take this expenditure into account when determining whether it must hold a council tax referendum.
- that increasing levies, which have to be treated as part of the billing authorities and certain major precepting authorities' expenditure for council tax purposes but are outside their control, do not tip the balance in requiring an authority to hold a council tax referendum.[54]

Community right to challenge

During the debate, Lord Shutt of Greenland confirmed that responses to the consultation papers on the community right to challenge and the community right to buy would be published by 2 August 2011.[55]

Assets of community value

Baroness Hanham gave a resume of the provisions of the Bill.[56] She also agreed to look further at some of the amendments tabled, relating to the considerations that a local authority must take into account when arriving at final decisions on listing and ways of addressing concerns that have been expressed on behalf of landowners who make land or buildings available for community use.[57]

3.6 Day six, 7 July 2011

The Committee made a number of amendments to the Bill, as well as indicating where further amendments might be introduced on report.

Assets of community value

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51 HL Deb 5 July 2011 c1400
52 Ibid c145. The regulations are SI 2007/2089.
53 Ibid c148, 150
54 Ibid c150
55 Ibid c158
56 Ibid c225-7
57 Ibid cc243-4

Baroness Hanham tabled a number of amendments on the moratorium aspect of the provisions. She explained these as follows:

> Government's amendments to Clauses 82, 83 and 85 and the proposed new clauses to follow Clauses 84 and 87 ... are technical amendments that are intended to prove how the provisions will work in practice.
>
> The introduction in Amendment 147F of a new clause to follow Clause 87 is proposed in response to questions raised in Commons Committee about how sites which are split between two or more local authorities would be dealt with. The new clause would require local authorities to co-operate when making all decisions on a site located in more than one local authority area. That does not undermine what I said earlier to the noble Lord, Lord Beecham.
>
> Amendments 142A and 143ZB to 143ZD-the two sets of amendments to Clause 82-and the proposed new clause to follow Clause 84 contained in Amendment 147D are both about the operation of the moratorium. They ensure that the local authority is informed of a community interest group's intention to be treated as a bidder to buy the land, and require the local authority to inform the owner of a listed asset as soon as practicable that it has received such a request from a community interest group.
>
> Our second amendment to Clause 82, Amendment 143ZB, ensures that it will not be possible for a new owner to get the benefit of the protected period relating to the owner from whom the land was bought. That ensures that the moratorium conditions apply afresh to a new owner if they wish to sell. The amendments proposed to Clause 83, Amendment 147B and 147C, remove the surrender of the lease as a relevant disposal for the purposes of the community right-to-buy scheme. In practice, it is often difficult to decide whether a surrender of a lease has taken place; surrenders are often determined only retrospectively in the courts. Removing the surrender of a lease from the definition of a relevant disposal avoids those difficulties in the very small number of cases where surrender may occur... The proposed amendment to Clause 85, Amendment 147E, would enable the regulations to include an appeal against compensation decisions under the community right-to-buy scheme. The amendment will strengthen the protection for property owners affected by the scheme. [58]

She also agreed to consider further:

- an amendment that would make eligible a community organisation operating in the local authority area to make a community nomination;
- whether the definition of 'people;' as used in the Bill, was appropriate.[59]
- the Government's intentions relating to exempt disposals of land due to inheritance and gifts, and transfers between family members,
- what the terms "risk of closure" and "business" mean in the context of this provision;[60]
- the length of time of the moratorium.[61]

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[58] Ibid c407-9
[59] HL Deb 7 July 2011 c398
[60] Ibid c415
[61] Ibid c421

4 Report Stage (Lords)

Following Committee Stage, DCLG published two documents covering issues raised during Lords Committee stage: *Amendments made to the Localism Bill during Lords Committee* and *Government response to withdrawn amendments at Lords Committee*.

Consideration on report in the House of Lords began on 5 September 2011. Issues with which this note is concerned began to be considered on 14 September.

4.1 Day three, 12 September 2011

Fire and rescue authorities (charging)

Amendments 110 and 111 were made to accept the recommendations of the Delegated Powers and Regulatory Reform Committee to change the procedures to be followed when making orders relating to the general powers for fire and rescue authorities. Amendment 113 was accepted. This would retain the existing provision that means that fire and rescue authorities cannot charge giving of advice on request about preventing fires and means of escape in any premises.[62]

City powers

A new clause, as well as several amendments, was moved by Lord McKenzie of Luton. These would provide for the transfer of local public functions from a public authority to a permitted authority and would allow a number of the powers due to be applied to London to also be available to other cities and indeed other areas that met the criteria. The new clause was prompted by the Core Cities group, which explained them as follows:

> England's biggest cities will be able to make their case for new powers from central government to drive faster growth under new clauses to the Localism Bill which were welcomed by Cities Minister Greg Clark and Chris Murray, Director of the Core Cities Group, today. The Localism Bill aims to deliver a legacy of empowered cities that can drive private sector growth and jobs. The changes means city leaders, alongside the area's local enterprise partnership, can make the case for being given new powers to promote economic growth and set their own distinctive policies. This amendment opens the door to greater local control over investment to drive growth, for example for housing and planning, economic development, or pooling resources and effort across functioning economic areas. It means cities can be more joined-up about local investment, moving on from case by case funding applications, saving time and money.[63]

The amendments were agreed.

Integrated transport authorities

A new clause to the Bill; and related amendments, was moved by Earl Attlee. The amendments would:

> allow integrated transport authorities and their executive bodies, passenger transport executives, to properly undertake activities that benefit or contribute to their purposes. The enabling power goes beyond the existing incidental powers and can extend outside their geographical boundaries and immediate hinterland. These bodies are not

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62 HL Deb 12 September 2011 c553

63 Core Cities press release, 13 September 2011

> local authorities and will therefore not have the benefit of the general power of competence that is already contained in the Bill.[64]

Related amendments would also extend the broader powers to combined authorities and economic prosperity boards. The amendments were agreed.

Local authority governance

A number of amendments were agreed relating to the governance of English local authorities. These would:

- Remove the Secretary of State's powers to make regulations in relation to area committees and remove conditions, which previously applied to area committees, including the maximum area that a committee could cover.
- Remove prescription about matter which may be referred to a scrutiny by councillors who are not members of a scrutiny committee;
- Remove the link between local government scrutiny and local improvement targets in local area agreements;
- Place the scrutiny committees in non-unitary district councils into an equivalent position to those of other authorities by allowing them to hold partner authorities to account;
- Provide for local authorities to resolve to change their governance arrangements and implement those changes without any unnecessary delay;
- Insert a new clause into the Bill that removes in their entirety the current rules that stipulate that district councils may only resolve to change their scheme of elections during permitted periods.

4.2 Day four, 14 September 2011

The Government also made a number of commitments to consider other matters further.

Standards

An amendment moved by the Earl of Lytton would introduce a mandatory code of conduct for local authorities. Although the House rejected the amendment, Lord Taylor of Holbeach said:

> I am sympathetic to the proposal in Amendment 175 that there should be an obligation on local authorities to have a code of conduct, and that any such code should have some core mandatory elements to it. If the House is willing to give us space to consider this matter further, I am willing to take it away with a view to discussing it with noble Lords and seeing if we can come up with something suitable ahead of Third Reading.[65]

Further amendments were agreed that would:

- Ensure that a failure to declare or register pecuniary interests, , or a councillor voting on a matter where he or she has a pecuniary interest, will be a criminal offence only where the councillor does not have a reasonable excuse or where the councillor

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[64] HL Deb 12 September 2011 c569
[65] HL Deb 14 September 2011 c841

deliberately or recklessly provides information that he knows to be false or misleading;

- Tighten up the wording to ensure that councillors who are simply forgetful in their registering of interests are not criminalised.
- Move the detail of the interest requirements and criminal offences from secondary legislation to the Bill.

In response to questions, Lord Taylor of Holbeach also agreed to provide a position paper on aspects of the Bill's standards provisions top Peers in time for Third Reading.[66]

London

Amendments were agreed that would ensure that the Mayor and the Greater London Assembly would be given equal roles and responsibilities for promoting and maintaining high standards. Further amendments agreed would allow the Assembly and Mayor to delegate functions to a committee or member of staff.

4.3 Day five, 10 October 2011

Local Government Ombudsman

A Government amendment adding a new clause to the Bill was moved by Lady Hanham. The new clause gives the Local Government Ombudsman the power to operate shared services with other public sector ombudsmen and clarifies the organisation's ability to delegate functions to its staff.[67] Lady Hanham gave further details of the provisions in the new clause:

> Making provision for our public sector ombudsmen to share back-office functions makes sound, practical sense, providing as it does scope for better, efficient working. Moreover, making provision for public sector ombudsmen to share services, like a single point of contact for complaints from the public about public sector service failures such as social housing, has clear advantages for the public.[68]

The amendment was agreed.

EU fines

Substantial amendments to the provisions in the Bill relating to the power to require local or public authorities to make payments in respect of certain EU financial sanctions were moved by Earl Attlee.[69] The measures were

> ...about encouraging authorities not to incur fines for the UK in the first place. In the unprecedented circumstance that the UK is fined in relation to an infraction, it is about achieving compliance quickly, using a process which is fair, proportionate, reasonable and holds no surprises. We do not want to pay escalating fines to Europe. We have never incurred fines regarding an

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66 Ibid, c847
67 HL Deb 10 October 2011 c1352
68 ibid
69 HL Deb 10 October 2011 c1371

> infraction and do not see these provisions as a prelude to being more relaxed about infraction proceedings or fines.[70]

Earl Attlee noted that the Local Government Group and the Greater London Authority had worked closely with the Government on this issue and that Lord Tope and Lord McKenzie had made proposals about the designation of local authorities during Committee stage. He continued:

> I have combined these and taken them further so that the Minister would need to designate each authority by order, using the affirmative procedure and specifying the infraction case and related activities of the authority, before the Localism Bill's provisions could be used. The activities described must take place after the order comes into force and will relate to the authority's functions and obligations.
>
> This means that authorities can be designated only for something which is their responsibility. Only actions or failures to act following designation would be taken into account when deciding whether to pass on a fine, and only in relation to the specific infraction case. The designation order would cease to have effect when the infraction case was closed. This responds to concerns on retrospectivity raised previously and highlighted in Committee by my noble friend Lord Newton of Braintree. It puts in place a mechanism which will give authorities an early opportunity to put things right, to solve the problem, before any fine. It also means that this House and the other place will have the ability to test the rationale for the proposed designation in debate. If this does not provide sufficient incentive, and in the unprecedented circumstance that the UK is fined for failing to comply with EU law, we will establish an independent advisory panel before seeking to recover any fines.
>
> [...]
>
> Such a panel would be formed at the point of need, with relevant legal, topical and sectoral expertise for the specific case. The Minister would consult the panel on the procedure and timetable. The panel would receive representations directly from the Minister and from the authorities involved. It would carry out fact-finding and make published recommendations to the Minister, including on the fair apportionment of culpability.
>
> I remain strongly of the opinion that decision-making should remain with the Minister as an elected member of the Government with responsibility to make such decisions on resources. Any Minister acting against recommendations would need strong reasons for doing so should there be a subsequent judicial review.
>
> The amendments on the process reflect the new role of an independent panel and will enable the authority better to plan its finances by covering all possible payments up front: lump-sum, accrued and ongoing periodic fines. This transparency could be a big help, allowing the authority to weigh the costs of fines against the costs of speedy compliance.
>
> Any ongoing liability to pay towards a fine from the EU would end at the point where the authority demonstrated that it had taken all reasonable steps to comply. There is also provision for liability to be reduced-but not increased-if there is a change of circumstances.

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[70] ibid

> We are extending the provisions to cover reserved matters in devolved areas. I am grateful to the noble Lords, Lord Wigley and Lord Empey, who spoke on this, with others, in Committee. I can confirm to the House that the extension of the provisions to cover reserved matters, without prejudicing the performance of any devolved functions, has the full agreement of all the devolved Administrations. On the request of the Welsh Government, we are also providing a mirror power for Welsh Ministers to pass on EU fines to responsible public authorities exercising devolved functions in Wales. This replicates the UK provisions in their entirety, including designation by order.
>
> The rest of my amendments make changes to ensure that the clauses as a whole work together.[71]

The amendments were agreed.

Local referendums

Lord Greaves moved an amendment to remove Clause 42, which is the duty to hold a local referendum if a petition received by a council signed by at least 5 per cent of the electors in a ward, a county division, or the whole authority, is received. Other amendments were moved to remove the clauses in Part IV of the Bill which set out how the referendum procedures would operate. Lord Greaves argued that 'councils already have the powers to hold referendums when they want to do so, and...if passed, the referendums would only be advisory anyway. Councils could simply ignore them, and the whole thing would be a waste of money.'[72]

Lady Hanham said that the government would accept the amendments.

The amendments were agreed and the provisions relating to the holding of local referendums were removed from the Bill.[73]

Council tax referendums

Government amendments were agreed which implemented the recommendation of the Delegated Powers and Regulatory Reform Committee that regulations made under new Section 52ZQ, the rules for conducting council tax referendums, should be subject to the affirmative procedure.[74]

Community right to challenge

Government amendments were moved by Lord Shutt of Greetland which sought to improve the workability of the right and to clarify certain issues that arose in response to the recent consultation exercise. Lord Shutt explained the new provisions:

> Clause 69(2)(d) already gives the Secretary of State the power to add other persons or bodies carrying on functions of a public nature as relevant authorities. Amendment 197B ensures that these persons or bodies could include a Minister of the Crown or a government department. Amendment 197C ensures that if the duty is extended to a person or body that exercises

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[71] HL Deb 10 October 2011 c1372
[72] HL Deb 10 October 2011 c1407
[73] HL Deb 10 October 2011 c1413
[74] HL Deb 10 October 2011 c1420

> functions outside England, the right to submit an expression of interest will apply only to services provided by that person or body in England.
>
> Amendment 197D responds to a query raised by the noble Lord, Lord Patel, in Committee about whether a public or local authority could be a community body. This was never our intention. In line with the definition of a voluntary body in Clause 69(6), we are therefore amending Clause 69(8) to clarify that a public or local authority cannot be a community body.
>
> Amendments 197E, 197F, 197G and 197H are about enabling relevant authorities to determine timescales. They make changes to the provisions on the timescales associated with the community right to challenge in response to concerns raised by many local authorities, and others, during our recent consultation. These concerns focused on the difficulty of setting timescales nationally that could take account of the wide variations in services and circumstances and did not interfere with timescales for existing commissioning cycles. We agree with these concerns and are therefore amending the provisions to remove the Secretary of State's powers to set timescales in regulations and replace them with a requirement for relevant authorities to set these timescales instead. We intend to set out in guidance, to which authorities will need to have regard under Clause 73(2), the factors they should take account of in doing this.[75]

These amendments were agreed but amendments moved by Lord Greaves about the community right to challenge were withdrawn after Lord Shutt's comments about the regulations:

> I am aware of the concerns that noble Lords have expressed that this well intentioned community right might get hijacked by private companies that may have the experience and the resources to win contracts that might otherwise be awarded to community groups. There is a particular concern that local authority employees may abuse the right by expressing an interest as a proxy for private sector organisations. We intend to make provisions in regulations that will help to safeguard against these risks. These are set out in the policy statement that we made available in the House Library on 8 September, which I hope noble Lords will have seen. We have sought to balance the need for safeguards with the need to allow relevant bodies to take up the right and deliver real improvements for people using public services. We do not want to put disproportionate obstacles in the way of relevant bodies and risk harming the chances of good ideas from groups that are serious about delivering services seeing the light of day.[76]

Freedom of Information and contracts

An amendment was moved by Lord Wills which proposed a new clause which would make provision for any contract for a sum over £1 million made by a relevant authority with any person to include a freedom of information provision.

The amendment was disagreed after a division : Contents 17; Not-Contents 136.[77]

Land of community value

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[75] HL Deb 10 October 2011 c1423
[76] HL Deb 10 October 2011 c1434
[77] HL Deb 10 October 2011 c1456

Lady Hanham moved Government amendments which defined assets of community value:

> Amendments 202B and 202F place a definition of asset of community value on the face of the Bill. A building or other land is to be defined as an asset of community value if the following requirements are met: first, if its actual current use furthers the social well-being and interests of the local community, or a use in the recent past has done so; secondly, that that use is not an ancillary one, such as where farmland is used for the annual village bonfire; and thirdly, it is realistic to think that there will be a use which furthers social well-being in the future, whether or not this is exactly the same as existing use. This means that for an asset which already furthers social well-being or interest, it must be realistic that it will continue to do so. And for one which did so in the recent past, it must be realistic to think that there will be community use again within the next five years-and that is the period for which a listing would last.
>
> Amendment 202F clarifies that social interests can include cultural, recreational and sporting interests. Each local authority operating the scheme will refer to this definition when deciding whether a building or other land should be listed as an asset of community value, and in the light of these amendments we are proposing to remove, through Amendment 202E, the power for the Government to set out matters that local authorities must take into account in deciding whether a nominated asset should be listed. These amendments are in line not only with concerns that noble Lords have raised but, importantly, with the results of our recent consultation exercise, in which 80 per cent of respondents agreed that local authorities should have the power to decide what constitutes an asset of community value based on a broad definition and the list of exclusions.[78]

The amendments were agreed.

4.4 Day seven, 17 October 2011

A number of technical amendments were made to the part 9 of the Bill. Third Reading took place on 31 October 2011 and the Commons will consider Lords Amendments on 7 November.

5 Third Reading (Lords)

Third Reading in the House of Lords took place on 31 October 2011. A number of amendments were made to the Bill, including to provisions relating to local government standards and EU sanctions. Divisions took place on amendments relating to predetermination and provisions relating to littering from cars.

5.1 Predetermination

Lord Pannick moved amendments designed to clarify the provisions in the Bill relating to predetermination. He argued,

> The courts have adopted a sensible approach in this context and a local councillor can express strong views on an issue prior to the council meeting as long as he maintains an open mind in the sense that he is willing to listen to the competing arguments and the advice of officials at the council meeting before casting his vote. The courts have explained that the common law allows strong predisposition and the holding of strong prior opinions; it prohibits only predetermination, the closing of the mind and the unwillingness to listen to the debate before casting a vote. It is extremely unclear

[78] HL Deb 10 October 2011 c1464

> whether this distinction between predisposition and unlawful predetermination is being maintained by Clause 25 or whether it is, in some respects, being amended. It is so unclear that it will inevitably lead to protracted and expensive litigation, a process that will undermine rather than advance the Government's objective. That is the first objection.
>
> The second objection to Clause 25 which the amendment seeks to rectify is that it appears-I say "appears" because the clause is very difficult to interpret-to provide that as long as the local councillor says or does nothing at the council meeting to indicate a closed mind it is legally irrelevant what he or she may have said or done before the meeting to demonstrate a closed mind-that is, predetermination. For example, if at the council meeting the councillor says nothing during the debate but votes against the bail hostel, under Clause 25 there could be no legal complaint of predetermination. That would be so even though, on the way into the council meeting, he announces to the television news cameras outside that he is not interested in what is going to be said at the debate. That would be a substantial change in the law and one very much to be regretted.[79]

Earl Attlee responded on behalf of the Government. He said;

> I think that there is general agreement on the mischief that Clause 25 seeks to address: that councillors and candidates are receiving overly cautious advice from a variety of sources. All noble Lords accept the need to engage with the electorate, and I agree entirely with the comment by the noble Lord, Lord Pannick, about the courts. The courts do not have a problem at all; it is the advice being given that is the mischief.[80]

The amendment was disagreed on division: Contents 152, Not-Contents 196.

5.2 Standards

Following commitments made during the report stage in the Lords, Baroness Hanham introduced a number of amendments that would modify the standards provisions in the Bill. Introducing the amendments, she said:

> I am bringing back a package of amendments to modify the standards provisions in the Bill. All authorities will be required to have a code of conduct. Amendment 4 would put that in place, and local authorities must, as part of their duty to promote and maintain high standards of conduct, have a code of conduct. This requirement applies to parish councils as well as to principal authorities. That code of conduct must be in accordance with the Nolan principles of public life. Amendment 5 states that a code of conduct adopted by a local authority should be consistent with the seven Nolan principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
>
> The code of conduct will, in addition, have to include the requirement for members to register and disclose interests. Amendment 5 provides that the code of conduct must include the requirement for members to register and disclose their pecuniary and non-pecuniary interests. Noble Lords will recall that under Clause 34 a member will be committing a crime if, without reasonable excuse, they fail to declare or register a pecuniary interest or if they knowingly or recklessly provide false or misleading information about that pecuniary interest.
>
> Further, under Amendment 8 all local authorities will have to put in place a system to deal with allegations that members have breached the code. We are not going to

[79] HL Deb 31 October 2011 c1028
[80] Ibid c1038

> dictate to them what those arrangements should be. They could, for example, continue to have a voluntary standards committee or they could adopt an alternative approach, but they must have in place arrangements as I have outlined.
>
> To ensure that there is a strong independent element in these new arrangements, Amendment 8 also provides that a local authority must appoint an independent person through a transparent process and that, where a local authority has investigated an allegation, it must seek the independent person's view before reaching a decision about the allegation. It must then have regard to that view. We believe that this will ensure that there is a check on vexatious or politically motivated complaints.
>
> In addition, we have provided that a person against whom a complaint is made may also seek the views of the independent person. This will ensure that if a councillor feels victimised or pressured by a member or members of the council or the authority, he or she can have access to the independent person for a view.
>
> In an investigation, where a complaint was dismissed, that would be the end of the matter. Where a complaint was upheld, a council would then have a number of options open to it under existing provisions. These are not there by amendment; they are existing provisions. In relatively minor cases, the council might conclude that a formal letter or other form of recording the matter was appropriate. Where a case involved a bigger breach of the rules, a council might conclude that formal censure-for example, through a motion on the floor of the council-was required. In more serious cases of misconduct, the council might go further and use its existing powers to remove the member from the committee or committees for a time. We believe that this approach provides effective and robust sanctions, ensuring that the high standards of conduct in public life can be maintained, while avoiding the unnecessary bureaucracy of the standards board regime.
>
> The requirement for an authority to have a code of conduct applies to parish councils as well as principal authorities. However, recognising the administrative limitations of parish councils, the relevant district or unitary council will administer the scheme for them. I beg to move.[81]

The amendments were agreed.

5.3 Litter

Lord Marlesford introduced an amendment that would allow local authorities to make byelaws about litter deposited from motor vehicles. He said:

> I am not seeking to create a new offence; it has been an offence for 11 years to drop litter from vehicles under Section 87 of the Environment Protection Act 1990.
>
> The problem is that it is very seldom that anything can be done about it because it applies only to the person dropping the litter and at the moment there is no way of knowing who dropped the litter. My amendment would simply make the keeper of the vehicle responsible, as is already the case for parking and for speeding.[82]

Baroness Hanham responded on behalf of the Government. She said that there were "serious problems" with the amendment as "there are already penalty notices that can be given by enforcement officers." The amendment was disagreed on division; Contents 59, Not-Contents 140.

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[81] Ibid c1046-7
[82] Ibid c1062

A number of technical amendments were made to provisions relating to EU sanctions.

5.4 Mayoral development corporations

Earl Attlee introduced a number of amendments to the provisions. He noted,

> Amendment 61 requires the mayor to publish his reasons for not accepting comments made by an affected borough where those comments relate to the mayor's proposals for a mayoral development area. Amendment 62 requires the mayor to publish his reasons for not accepting comments made by an affected borough where those comments relate to an MDC's proposed planning functions.
>
> Amendments 64 and 65 are minor and technical relating to Clause 203 and put right minor inaccuracies arising from changes to the Bill. Amendment 66 would require the mayor to publish his reasons for not accepting comments made by an affected borough, where those comments relate to an MDC's proposals for non-domestic rate relief. Amendment 67 defines "affected local authority".
>
> Together these amendments would put an affected borough on the same footing as the London Assembly with the regard to the duty on the mayor to respond directly to any concerns it may raise.[83]

The amendments were agreed.

5.5 Council tax referendums

During a debate on government amendments relating to council tax referendums, Earl Attlee noted,

> We have a duty to consult the Electoral Commission. We are fulfilling that duty to make sure that the right processes are in place. However, the Chancellor recently announced a council tax freeze in England for 2012-13. We expect most if not all authorities to take up the freeze, in which case there will be no need for referendums next year, as the noble Lord, Lord Beecham, graciously recognised.
>
> The Government intend these provisions to become effective from 2012-13 onwards, subject to the Bill receiving Royal Assent in sufficient time. We will of course reflect on what the Electoral Commission has said as part of our ongoing engagement with it. Noble Lords should also remember that the Secretary of State will set the excessiveness level, which will have to be approved by another place, and if necessary a local authority can be put into a special category if it has any specific problems.

The amendments were agreed.

6 Other developments

6.1 Communities and Local Government Select Committee report on Localism

The Communities and Local Government Select Committee published its report on *Localism* on 9 June 2011.[84] The Committee commented:

> We welcome the Government's commitment to localism and decentralisation. We agree with the Government that power in England is currently too centralised, that each community should be able to influence what happens in its locality to a much greater extent, that there has been in the past too much central government

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[83] Ibid c1101

[84] Communities and Local Government Select Committee, *Localism,* HC 547 2010-12

> interference in the affairs of local authorities, and that public services have been insufficiently accountable to their local populations.[85]

Nonetheless the Committee said, "In our opinion the actions the Government has set out so far, both in the Localism Bill and in the programmes of individual departments, give an overall impression of inconsistency and incoherence."[86]

6.2 House of Lords Delegated Powers and Regulatory Reform Committee

The House of Lords Delegated Powers and Regulatory Reform Committee published its 15th report on the Education Bill and the Localism Bill on 16 June 2011.[87] The Committee reported on parts 1-3 of the Localism Bill, with consideration of the other parts of the Bill to follow at a later date. The Committee in its 16th report of 2010-12 (published 2=30 June 2011) reported on parts 4 to 8 and Government amendments. The issue of the number of regulatory powers in the Bill has been a theme running through consideration of the Bill, and the Committee made a number of recommendations relating to the delegated powers in the bill.

6.3 Policy papers

The Government issued *Assets of community value* and *Community right to challenge* policy papers on 12 September 2011, addressing some of the issues raised during Committee stage in the House of Lords. DCLG also produced a note about amendments during the Lords stages, available at http://www.communities.gov.uk/documents/localgovernment/pdf/1975838.pdf.

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85 Ibid p83
86 Ibid p81
87 HL 163, 2010-12