HOUSE OF COMMONS
LIBRARY

Localism Bill: Local government and community empowerment

[Bill No 126 of 2010-11]

RESEARCH PAPER 11/02 11 January 2011

The *Localism Bill 2010-11* was introduced in the House of Commons on 13 December 2010. This Paper summarises the local government and community empowerment sections of the Bill. Aspects of the Bill relating to planning, housing and London are summarised in Research Paper 11/03. The Bill is due to receive its second reading in the House of Commons on 17 January 2011.

The Bill would give effect to the Government's commitment to localism by devolving greater freedoms to local authorities and communities. This includes introducing a general power of competence for local authorities, a community right to challenge and the right for communities to bid for community assets. It also introduces new rules imposing council tax referendums when a council sets an excessive council tax, and strengthens rules relating to local referendums for other matters. These issues are summarised in this Paper.

Other matters in the Bill covered by this paper include: changes to business rate legislation and governance arrangements for local authorities, including the introduction of mayoral referendums in certain cities; the abolition of the standards regime in England; the clarification of the law relating to predetermination; and the introduction of new rules relating to the publication of salaries of senior council officials.

Chris Sear
Keith Parry

Recent Research Papers

10/77	Savings Accounts and Health in Pregnancy Grant Bill: Committee Stage Report	18.11.10
10/78	Daylight Saving Bill [Bill 7 of 2010-11]	01.12.10
10/79	European Union Bill [Bill 106 of 2010-11]	02.12.10
10/80	Economic Indicators, December 2010	07.12.10
10/81	Police Reform and Social Responsibility Bill [Bill 116 of 2010-11]	09.12.10
10/82	Loans to Ireland Bill [Bill 125 of 2010-11]	13.12.10
10/83	National Insurance Contributions Bill: Committee Stage Report	14.12.10
10/84	Unemployment by Constituency, December 2010	15.12.10
10/85	Armed Forces Bill [Bill 122 of 2010-11]	17.12.10
11/01	Postal Services Bill: Committee Stage Report	07.01.11

Research Paper 11/02

Contributing Authors: Chris Sear, Local Government, Parliament and Constitution Centre
Keith Parry, Local Government, Parliament and Constitution Centre
Elena Ares, Science and Environment Section
Oliver Bennett, Science and Environment Section

ISSN 1368-8456

Contents

Summary

The *Localism Bill* will implement the Coalition Government's policy of decentralisation of power to local authorities and local communities. It has been introduced at a time of cuts to local authority budgets as announced in the local government finance settlement in December 2010. A separate Library Research Paper, *Localism Bill: planning and housing*, Research Paper 11/03, has also been published covering the housing, planning and London elements of the Bill.

The Bill is part of the Government's 'Big Society' agenda. It seeks to empower local authorities by making a number of changes to the way in which local authorities operate. The Bill introduces a general power of competence for councils. This would allow them to take any action provided it is legal. This new power would replace the well-being powers available to local authorities under the Local Government Act 2000, which have been widely seen as under used. The Government intends that the new power will actively encourage innovation which the Government sees as particularly important at a time of cuts to budgets.

The Bill will also make changes to the governance arrangements of local authorities, by allowing them to return to the committee system of governance abolished by the Local Government Act 2000, and also allowing for mayoral referendums in the twelve largest cities in England. This has proved a controversial aspect of the Bill as previous experience has not indicated a strong desire on the part of the public for mayors to run major cities (other than in London).

The Bill would abolish the requirement for local authorities to adopt a model code of conduct, instead introducing a voluntary code; and also abolishes Standards for England (previously the Standards Board for England) which oversees the current code. Instead, the Bill will introduce a requirement for local authorities to introduce a register of interests for members, as well as a new criminal offence of failing to declare a relevant interest. This element of the Bill has been criticised by the Committee on Standards in Public Life.

The Bill will introduce a requirement for local authorities to prepare and publish a pay policy for senior officers. The Bill will also introduce a new power to pass on the cost of EU sanctions to public authorities (including the Greater London Authority) in cases where the authority's actions have led to such sanctions. The Bill would make changes to the business rates regime in the areas of business rate supplements, discretionary reliefs and small business rates relief, as well as confirming the Government's commitment to waive substantial and unexpected backdated business rate liabilities suffered by certain port businesses.

The Bill will introduce a number of measures designed to empower communities. The current power to hold local referendums on issues of local interest will be enhanced, although the result of such a referendum will not be binding on the council. A new requirement to hold council tax referendums when the local authority introduces an excessive council tax will also be introduced. The Bill will provide for a community right to challenge, which will allow community groups to challenge the way in which their local authority runs and delivers its services. Councils will also be required to prepare a list of community assets, which will not be able to be sold until community groups are given the opportunity to prepare a bid for such assets. However, the duty imposed by the previous Government to promote democracy and accept petitions will be repealed.

1 Introduction

1.1 The Bill

The *Localism Bill* was introduced on 13 December 2010 and has its second reading in the House of Commons on 17 January 2011. The explanatory notes to the Bill were published on 16 December 2010. An Impact Assessment for the Bill is expected in time for Second Reading but was not published at the time of writing.

The Bill will implement one of the main policies of the Coalition Government, namely its commitment to localism. The Bill covers a large number of areas affecting local government and contains 207 clauses and 31 schedules. It:

- gives councils a general power of competence;
- set out the types of governance arrangement which will apply to local authorities and allows for mayoral referendums in specified areas;
- gives new powers to help save local facilities and services threatened with closure, and give communities the right to bid to take over local authority-run services;
- abolishes the Standards Board regime;
- gives a power for the Government to require local and public authorities to pay EU sanctions if found responsible for infringements of EU law;
- requires public bodies to introduce a senior pay policy document;
- makes changes to the business rate regime including allowing local authorities greater discretion over rate relief; and
- gives residents the power to instigate local referendums on any local issue and the power to veto excessive council tax increases.

Much of the Bill is enabling and therefore the detail of many of the provisions in the Bill will subsequently be specified in powers given to the Secretary of State to make regulations. Housing and planning aspects of the Bill are covered in a separate Library Research Paper. The majority of the Bill as covered by this Paper extends to England, although certain provisions relate to Wales. The Bill is expected to complete its passage through Parliament by November 2011.[1]

On publishing the Bill, Eric Pickles, Secretary of State for Communities and Local Government, noted in a written ministerial statement that:

> The legislation will set the foundations for the Big Society by radically transforming the relationships between central government, local government, communities and individuals. The provisions will devolve greater power and freedoms to councils and neighbourhoods, establish powerful new rights for communities, revolutionise the planning system, and give communities much more control over housing decisions.
>
> The Bill will expand councils' freedom to act in the interest of their local communities through a new general power of competence. This long awaited new power will mean that rather than needing to rely on specific powers, councils will have the legal

[1] See *Department for Communities and Local Government draft structural reform plan*, July 2010

> reassurance and confidence to innovate and drive down costs to deliver more efficient services.
>
> Powers for councils will be accompanied by greater powers for local people to hold their local authorities to account and to shape their local area. There will be a new right to challenge to take over services; a new right to bid to buy assets of community value such as libraries, public houses and shops; and a new right to veto excessive council tax rises through a referendum.[2]

1.2 Local government funding

The Bill has been introduced against a background of spending cuts as announced in the Comprehensive Spending Review (CSR) of 20 October 2010[3] and in the local government finance settlement of 16 December.

The local government finance settlement introduced cuts for local authorities, although for 2011/12 the maximum was set at an 8.9% reduction in revenue spending power. The main points were:

- Formula grant to all local authorities in England, including police forces, will fall by 9.9% in 2011/12 and 7.3% in 2012/13.
- Formula grant to local authorities, excluding grants to the police, will fall by 11.6% in 2011/12 and 7.5% in 2012/13.
- In its briefing on the announcement, the Local Government Association (LGA) suggested that the formula grant would fall by 12.1% in 2011/12. This figure is the fall in the formula grant element funded by the Department of Communities and Local Government (DCLG) and excludes the Home Office police grant element.
- Total revenue spending power of non-police local authorities will fall by 4.5% in 2011/12 and 3.3% in 2012/13.
- In order to ensure that no local authority was faced with a reduction of more than 8.9% in revenue spending power, a transition grant of £85m has been provided by DCLG.
- The total central government funding for all local authorities in England, Aggregate External Finance (AEF), will fall by 2.7% in 2011/12. This includes ring-fenced grants for frontline education.[4]

Baroness Margaret Eaton, Chairman of the LGA, commented that councils would be hit by the CSR, as would the residents they serve. She considered that:

> We have to be honest about their impact. Town halls will now face extremely tough choices about which services they can keep on running. These cuts will cause real pain and anxiety for millions of people who use the services councils provide, from keeping children safe to ensuring that streets are clean.[5]

Implementing the CSR will create challenges for local authorities. A number of councils have already announced that they are looking at savings by merging either functions or indeed

---

2 HC Deb 13 December 2010 c64-5WS
3 Cm 7942, October 2010
4 For further information see Library Standard Note SN/SG/5081, *Local Government Finance Settlement 2011/12 & 2012/13 – initial analysis*, and the DCLG local government finance settlement page.
5 LGA press release, *LGA responds to spending review*, 20 October 2010

whole organisations. For example, Babergh DC and Mid Suffolk DC have voted to introduce a single local authority covering the whole of south and central Suffolk,[6] and in London reports suggest that a 'super council' involving Westminster, Hammersmith and Fulham and Kensington and Chelsea would be created through the merger of all their services.[7] Responding to this development, Eric Pickles has commented that:

> This is exactly the sort of innovation that will help councils to protect hardworking families and the most vulnerable. By sharing back office services, they'll be able to protect the frontline - and even improve the choice and services that's on offer to local residents.[8]

Anna Turley, Deputy Director of the New Local Government Network (NLGN), has said that:

> The localism bill is not the thing that will define local communities for this new era. It will be the cuts that will define what services local authorities continue to provide. It will be the cuts that will decide the quality and how they are delivered. It will be the cuts that will force people onto the streets as they did in Lewisham, and it will be the cuts that forge a new generation of local, politically engaged people seeking a means through which to defend and reshape their local communities.[9]

The Bill aims to implement the Government's stated objective of introducing localism by decentralising powers to local authorities. Nonetheless, the Bill makes no provision for local collection of taxes or local retention of business rates, and it has been commented that without such financial decentralisation there remain central controls which local authorities will find difficult to surmount. The *Financial Times* for example has argued that "Eric Pickles...hands councils responsibility without taxation: authorities will wield the axe of government cuts but have few enhanced powers to raise local taxes. Without revenue, local democracy is hollow".[10] The *Daily Telegraph* however noted that:

> Local government needs to be able to raise more of the money it spends, because nothing will concentrate the minds of local voters more effectively. Mr Pickles argues that councils must earn the right to raise more of their revenue. Given that decades of being told what to do by Whitehall have dulled the self-reliant instincts of local government, that is probably a sensible approach.[11]

1.3 Other recent initiatives affecting local government

The CSR is not the only initiative that will affect local authorities over the next few years. The Bill will pass through Parliament at the same time as the Local Government Resource Review takes place, starting in January 2011. The Government White Paper, *Local growth: realising every place's potential*,[12] will also provide strong incentives for councils to support long term growth in their communities.[13] The Government's Green Paper on *Modernising commissioning* seeks to open up public service markets to social enterprise, mutuals and co-operatives.[14]

---

6 "Councillors at two Suffolk town halls have approved ground-breaking plans to merge their local authorities into a single district by 2013", *LocalGov.co.uk*, 6 October 2010
7 "London 'super council' moves nearer", *LocalGov.co.uk*, 22 October 2010
8 *Ibid*
9 "Deprived areas hit hardest", by Anna Turley, *NLGN*, 15 December 2010
10 "Power to the local", *Financial Times*, 15 December 2010, p12
11 "A first step in handing power back to the people", *Daily Telegraph*, 13 December 2010
12 Cm 7961, October 2010
13 See DCLG, *Business rates information letter (10/2010): general rating information*, October 2010
14 Cabinet Office, *Modernising Commissioning: Increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery*, 2010

1.4 Localism and decentralisation

What is localism?

There has been some discussion about the meaning of localism. The NLGN has commented:

> ...Localism and decentralisation are overlapping but separate concepts, and they suggest different strategies for public service reform. Localism can be taken to suggest a move to devolve power to local government as a primary democratic institution. Decentralisation is more about giving power to individuals and communities.
>
> 1.6 The two concepts can lead to very different policy conclusions. A localist might be sceptical of free schools because they weaken democratic control over education, while a decentraliser might support the same policy because it appears to give parents more choice. A localist would favour giving councils a large degree of influence over all local public services through area-based budgets, while a decentraliser might prefer to go beyond the council and make services directly accountable to individuals through individual budgets. Such approaches are not necessarily mutually incompatible, but issues of clarity about democratic accountability and coherence across local public services are likely to come to the fore.[15]

Politically, there seems to be less dissent about the need to localise or decentralise than there is over the methods by which this can be achieved. The Labour Government made a number of moves towards more decentralisation of services. David Miliband, then the Local Government Minister, referred to his belief in 'double devolution' in 2006, i.e. devolving from central government to local government, and from there to citizens, neighbourhoods and the third sector.[16]

Hazel Blears, then the Secretary of State for Communities and Local Government, further formulated these principles in the Communities in control: real people, real power white paper. This stated that "there are few issues so complex, few problems so knotty, that they cannot be tackled and solved by the innate common sense and genius of local people. With the right support, guidance and advice, community groups and organisations have a huge, largely latent, capacity for self-government and self-organisation".[17]

Ms Blears has more recently suggested that many of the principles in the current Bill were in the process of being implemented by the Labour Government. In an article in the *Municipal Journal* (*MJ*) she noted:

> This is not a new agenda, by any means. Local groups across the country have, for many years, been working to make a difference to their communities – from growing food, to building and managing co-op homes, caring for older people, running nurseries and play groups, tackling chronic diseases, and getting people back to work".[18]

On election as Leader of the Labour Party, Ed Miliband was reported as saying, "we need more decisions to be made locally, with local democracy free of the constraints we have

---

15 Communities and Local Government Select Committee, *Memorandum from the New Local Government Network (NGLN) (LOCO 024) to the Communities and Local Government Committee on the Government's plans for localism and decentralisation*, 2010, p3

16 "More power to the people, urges Miliband", *Guardian*, 21 February 2006

17 *Communities in control: real people, real power*, Cm 7427, 9 July 2008, piii

18 "Big society is just clever branding", *Municipal Journal*, 18 November 2010, p13

placed on it in the past, and free of an attitude which has looked down its nose at local government".[19]

The views of a number of MPs were expressed in the National Association of Local Council's pamphlet, *What is localism*.[20] Bob Neill, Parliamentary Under-Secretary of State at the DCLG, commented "Our priorities in government are very simple: localism, localism and localism". Hazel Blears, in the same publication, linked the concept to the Labour Government's Total Place initiative, and Clive Betts, Chairman of the Communities and Local Government Select Committee (CLG Committee), expressed his view that "decisions should be taken at the lowest level possible". However, he argued that "it will require ministers to make a long term commitment to non-interference. It is fundamentally unhelpful to announce localism as a way forward and the next day say how councils should organise their refuse collection".[21]

Localism and the big society

The Coalition's concept of localism is linked into the Conservative Party's vision of the 'Big Society'. The Big Society formed part of the Conservative Party's election manifesto for 2010, which stated:

> We will not succeed in building the Big Society, or in building a new economic model, unless we stop government trying to direct everything from the centre. We will get nowhere with yet more top-down state control. [22]

The Coalition document, *Building the big society*, was also clear that:

> We want to give citizens, communities and local government the power and information they need to come together, solve the problems they face and build the Britain they want. We want society – the families, networks, neighbourhoods and communities that form the fabric of so much of our everyday lives – to be bigger and stronger than ever before. Only when people and communities are given more power and take more responsibility can we achieve fairness and opportunity for all.[23]

The Prime Minister announced four big society pilot areas in July 2010. These are Sutton, Windsor and Maidenhead, Eden Valley in Cumbria and Liverpool.[24]

A number of commentaries on the Big Society have been published. The New Economics Foundation has commented that the implementation of the Big Society should be inclusive, encompassing not just empowerment but also equality, by giving everyone the chance to contribute to society.[25] The Commission for Rural Communities undertook an evidence gathering session which showed that "despite difficult challenges and economic circumstances... [rural organisations] provide evidence of ambition, innovation and hope that the Big Society will provide a valuable policy vehicle to attract a new respect and support for initiatives and organisations working with local and vulnerable communities".[26] The British Association of Settlements and Social Action Centres have commented that in order to make the Big Society work:

---

19 "Ed's localism pledge", *Municipal Journal*, 30 September 2010, p1
20 NALC, *What is localism*, 2010
21 *Ibid*, p19
22 *Invitation to join the government of Britain: Conservative Party manifesto 2010*
23 *Building the big society*, Cabinet Office, 2010
24 See for example "David Cameron launches Tories' 'big society' plan", *BBC News website*, 19 July 2010
25 *Ten big questions about the Big Society and ten ways to make the best of it*, NEF, 2010
26 *Rural economies intelligence report: the Big Society*, Commission for Rural Communities, 2010

Government needs to:

- Support the development of a supply of new financial products aimed at community organisations
- Encourage local authorities to play a key role in investing directly in the set up of local bonds.

Community organisations need to:

- Effectively assess and embrace risk
- Improve their understanding of the range of financial investment models that could be used to build resilience
- Develop competent and financially literate leaders to build key relationships and steer community organisations through these challenging times.[27]

Speaking at a Labour Party conference fringe event, John Healey, noted, "I don't think we should completely reject the concept of Big Society. At its best, it stands for everything that Labour is about...community empowerment". However, he went on to state that councils flourish well when the public policy framework and public funding framework is in place: "It doesn't seem to me the prescription should be to cut funding and society".[28]

Andrew Stunell, Parliamentary Under-Secretary of State at the DCLG, gave additional context to the Bill's publication in a written answer:

> The plans set out in the Localism Bill will help build the Big Society by radically transforming the relationships between central government, local government, communities and individuals. Local people are best placed to judge which Big Society initiatives work in their area – and to promote them locally.[29]

Localism and local government

Devolving power to local areas does not, however, mean that central government no longer has a role. Eric Pickles, in evidence to the CLG Committee, noted:

> I think we are wanting to pass powers down, but of course there's always going to be a need for a Department for Communities and Local Government or similar because I think there is the need for an advocate role inside Whitehall for local government...[30]

Emeritus Professors George Jones (London School of Economics) and John Stewart (Birmingham) have argued that, "decentralisation through localism should also be seen as a condition of good governance at the national level. It reduces the burdens on central government, focusing all its resources on issues that can be dealt with only at that level".[31] They went on to say that "no definitive boundary can be drawn between centralisation and decentralisation or between centralism and localism. Localism and 'Big Society' are

---

27 BASSAC, *Future of community organising depends on sustainable financing*, 2010

28 "Don't dismiss big society warns Healey", *Municipal Journal*, 30 September 2010, p2

29 HC Deb 21 December 2010 c1306W

30 *Uncorrected transcript of oral evidence taken before the Communities and Local Government Committee: The work of the Department for Communities and Local Government*, Monday 13 September 2010. At the time of writing the transcript is not yet an approved formal record of these proceedings and neither witnesses nor Members have had the opportunity to correct the record. To be published as HC 453-i, 2010-11

31 Communities and Local Government Select Committee, *Memorandum from Emeritus Professor George Jones and Emeritus Professor John Stewart (LOCO 001) to the Communities and Local Government Committee on the Government's plans for localism and decentralisation*, 2010, p3

concepts and broad approaches to governing, rather than specific and concrete policies". [32] They also expressed a warning that "past experience shows it is easier to announce a policy of decentralisation than to ensure it happens...even when the initial policy is accompanied by measures of decentralisation it is not long before the operations of departments reassert the dominant centralist approach".[33] In oral evidence to the CLG Committee, Professor Jones further commented that:

> Localism is the polar opposite of centralism. Centralism is where governmental decisions are taken at one place in the centre. Localism is where governmental decisions are dispersed to the representative councils that have been elected by the people locally. We have always been localists as champions of local government. When you start to raise "double devolution" or the "Big Society" or decentralising grants, you're doing it below local government. That's sublocalism. They should not be allowed to get away with the misuse of language appropriating "localism".
>
> Q67 James Morris: For you, "sublocalism" is a form of centralism in a sense. Is that what I'm hearing? What do you mean by "sub-localism"?
>
> Professor George Jones: It's the idea that you decentralise power down to entities below-sub-local government. We have a system of representative democracy in this country: MPs in Parliament; councillors elected for local authorities. That's our democracy. The Government seems to want to pass governmental decision making beneath local authorities to the GPs and to other entities. It's a very amorphous association.
>
> Q68 James Morris: Do you think that's a bad thing?
>
> Professor George Jones: I think it's very bad for central Government to be doing it, to be pressing it, to be sending community activists out to do it. This is a proper role of local government. Indeed, I would say we need a statute that lays a duty on local government to promote this sort of localism. They're the people best able to encourage it and to support it, and to make up for any deficiencies that may happen when you promote it. I think there has been a lack of forethought by Government in promoting this extensive decentralisation to these various associations and entities. There are big problems about them. They can't be settled in Whitehall, but they could be dealt with and managed by local authorities.[34]

1.5 Reaction to the Bill's publication

Caroline Flint, the Shadow Secretary of State for Communities and Local Government, has been quoted by *Public Service* magazine*:*

> Labour's shadow CLG Secretary Caroline Flint said that the Tories' belief in localism was "cynical and unfair" and their plans rung hollow when at the same time they are cutting local government by 27 per cent on average over the next four years.
>
> "It's offering councils devolution while holding a gun to their head," she said, adding: "Labour is in favour of giving people a greater say in the way their local communities and services are run. Some aspects of the Localism Bill build on reforms we made to local government in recent years. The reality is though the coalition's decision to hit

---

32 *Ibid*, p7

33 *Ibid*, p16

34 *Uncorrected transcript of oral evidence taken before the Communities and Local Government Committee*, *Localism*, 15 November 2010. At the time of writing the transcript is not yet an approved formal record of these proceedings and neither witnesses nor Members have had the opportunity to correct the record. To be published as HC 547-ii.

> lower and middle income neighbourhoods with the heaviest cuts in the next 12 months will inevitably impact on the vital frontline services families rely on, jobs and growth".[35]

On publication, the Chairman of the LGA, Margaret Eaton, commented

> It is essential that councils are freed from the bureaucracy imposed on them by Whitehall so that they can get on with the job of serving their local areas. The Local Government Association is pleased that the Government has taken on board its proposal to introduce a General Power of Competence which will let councils innovate and address local issues without having to seek new legislation first. Locally elected councillors and residents know their areas best and giving them control of planning and housing will help ensure our towns, cities and villages can flourish in a way which meets the needs and aspirations of the people who live there. The LGA will now be seeking to work with the Ministers to ensure this bill delivers both the Government and councils' aims of putting residents and councillors in control of their local areas, and does not create any unintended new burdens.

The LGA said:

> With this bill, the government aims to significantly decentralise power and decision-making. In particular we welcome the implementation of the General Power of Competence for councils which the LGA has lobbied for, the recognition of councils' central role in planning and the possibility of broad devolved powers for councils with directly-elected mayors.[36]

The LGA went on to highlight some of the Bill's main issues:

> The dismantling of the current complex, bureaucratic and inefficient housing finance system, following a long campaign by LGA, is very welcome. The potential for micro-management contained in the detail of the reforms will however limit the impact of Ministers' policy. We will be working to ensure this important reform unlocks efficient management of housing operations and assets locally and gives local government the housing settlement the sector has campaigned for. The Bill also reflects policies to help people at neighbourhood level take a greater role in public services and planning – these are ideas we support in principle. However, the drafting demonstrates how challenging it has been for the Whitehall machine to translate Ministers' policies into legislation. We will work to improve the detail by supporting constructive amendments to ensure that the Bill fully reflects the Government's localist agenda and reduces, rather than adds to, the red tape and complex processes facing local people and councils. It is clear that Whitehall still has some way to go in understanding and implementing the "post-bureaucratic age" so enthusiastically championed by Ministers. We would encourage Parliament to scrutinise the many powers within the Bill for Ministers to make regulations and issue guidance, as we believe many of these are unnecessary and contrary to the spirit of localism.[37]

Clive Betts, Chairman of the CLG Committee, was quoted in *Public Finance* as saying "on the one hand, the Bill introduced sweeping new powers for councils, yet on the other sought to 'micromanage' them over bin collections":

> I'm still not sure where the narrative is about localism, where the philosophy is, and how you link together lots of disparate initiatives into a total strategy' ... Betts added that the proposals could run into difficulties over how a 'community' is defined in law

---

35 "It's devolution with a gun to the head", *Public Service*, 13 December 2010
36 LGA, *Localism Bill: LG Group on the Day Briefing*, 13 December 2010
37 *Ibid*

> and said that the GPC [General Power of Competence] could also fall down in the courts. 'Hopefully this will be a good step forward – but then the Labour government thought it got it right with the power of wellbeing, but the courts cast a shadow over it. You can't make anything lawyer-proof, but you have to make sure things are as well defined as possible – otherwise they end up in legal actions.[38]

Simon Parker, Director of the NLGN, has said that the Bill is "the most important piece of legislation for local government in a generation" which would "bring an era of radical change and innovation, driven by the burning platform of unprecedented cuts". Toby Blume, Director of the community support charity Urban Forum, noted that while he was pleased to see new rights given to neighbourhoods, it would be important to ensure that marginalised groups are equally able to get involved.[39]

The National Association of Local Councils (NALC) has in general welcomed the Bill:

> NALC has long argued that empowered local people coming together to take more responsibility for their community through local councils is a tried and tested and trusted model of grassroots neighbourhood action.
>
> Councillor Michael Chater, Chairman of NALC said: "We agree with the Coalition Government in that we want to see services delivered and representation at the most local level possible. We want to see a fundamental shift in power being transferred from central government to communities and local government. We want to see double devolution from central government to principal authorities and to local councils and communities. And we want to see our local councils up and down the country taking advantage of these new powers and continuing to make a real difference to the lives of people in their area."
>
> He continued: "Our 9000 local councils in England are already at the frontline of the localism and the Big Society agenda, and where people and communities wish to set up new councils there should be no barriers to doing this. After all this should be about encouraging but not dictating to local communities.
>
> "However it is without doubt a difficult and challenging time for local government and public services. But our local councils and their 80,000 local councillors continue to be at the heart of communities delivering much needed representation and services at significant value for money for residents. The current localism and Big Society agendas and commitment from the Coalition Government to the unlocking the potential of the first tier of local government creates a significant opportunity for our communities".[40]

The Centre for Local Economic Strategies (CLES) has said that the Bill is "light on local government":

> The rhetoric of the Localism Bill suggests a move in power away from the centre and towards local government and local communities. Whilst there is much in the Bill about decentralising to local communities, the powers allocated to local government are less clear. If anything, the Bill appears to marginalise the enabling, facilitation and advisory role of local authorities within place. As with much emerging government policy, including the Work Programme, there is a real lack of an 'honest broker' in decentralisation aspirations. Questions remain as to: who promotes service delivery

---

38 "Betts criticises 'contradictory' Localism Bill", *Public Finance*, 14 December 2010

39 *Ibid*

40 NALC press release, *New powers give welcome boost to grassroots councils*, 13 December 2010

opportunities; who provides capacity building support for community groups; who procures services; and who supports communities to deliver.[41]

2 The general power of competence

2.1 The Bill

Clauses 1 to 7 of the Bill provide a general power of competence for local authorities in England. In doing so, Schedule 1 repeals the well-being powers in the *Local Government Act 2000* as far as they relate to England. The power for local authorities equates to those of an 'individual with full capacity', and the only limits or restrictions placed on the power are statutory. The Bill also allows authorities to charge for, and trade in, services offered under the general power, in line with the powers already available to them under sections 93 and 95 of the *Local Government Act 2003*. However, authorities cannot trade in services that they already have a statutory requirement to provide, but may charge enough to recover costs for discretionary services.

Clause 5 gives a wider power to the Secretary of State to remove or change any statutory provisions that prevent or restrict the use of the general power, and to remove similar provisions that overlap with the general power. The clause also allows the Secretary of State to restrict what local authorities can do under the general power, or to provide conditions under which the power can be used.

These powers can only be used following consultation (unless the power is used to amend a previous order under this clause) and any orders made under the this clause will be subject to legislative reform order procedure, which allows parliament to decide whether the procedure for the order should be negative, affirmative or super-affirmative.

Clauses 8 and 9 relate to fire and rescue authorities, and insert new sections into the *Fire and Rescue Services Act 2004*. Clause 8 gives a general power of competence to fire and rescue authorities when in pursuance of their statutory duties, and Clause 9 allows fire and rescue authorities to charge for services, but with a number of restrictions: for example, the authority must consult before deciding on any such charges; the charges must not exceed the cost to the authority of the action they are taking; and charges cannot be imposed for extinguishing fires except at sea.

2.2 Background

The general power of competence for local authorities is a new power intended to give such authorities the ability to act in the best interests of their communities, even if specific legislation does not give them the power to take the action they intend. Thus, no action - except for raising taxes - will be beyond then power of local government, unless that action is prevented by law. Grant Shapps, Minister for Housing and Local Government, has confirmed that it is "a 'general power of competence', meaning councils can do whatever they want as long as it meets what residents want and is legal".[42] The power replaces the well-being power introduced in the *Local Government Act 2000*, which is accordingly being repealed apart from in Wales.

It should be noted that a number of commentators use the phrase "power of general competence" rather than "general power of competence". The *Local Government Chronicle* (LGC) notes that "no doubt lawyers will argue whether the expressions mean the same", and in general this Research Paper takes the approach that as a whole they do have similar meanings. Nonetheless, the LGC goes on to argue that the 'power of general competence'

---

41 CLES Bulletin 80, *Localism Bill*, December 2010

42 CLGD press release, "*Grant Shapps: Government cutting councils free from 'nanny state apron strings*'", 24 November 2010

is the stronger formulation and that it interesting that the Conservatives (while in opposition) preferred to use 'general power of competence', which is a "more generic power to do something".[43] Giving evidence to the CLG Committee, Professors John Stewart and George Jones also noted the discrepancy between the two formulations:

> Professor John Stewart: Much will depend on the actual terms of that power of general competence. It's interesting; we don't understand why everybody in the past has always talked about the power of general competence. The Government is now speaking about a general power of competence. Our naturally suspicious minds wonder if there is a significant difference between the two. I think many people thought the power of wellbeing was giving local government, virtually, a power of general competence...
>
> Professor George Jones: I hope you will probe the Department for CLG on why they have called it the general power of competence, rather than what it has been for years- the power of general competence. Is it to allow wiggle room for the judges? We want to keep the judges out. You need to get them to explain why they made the change.[44]

The introduction of a general power of competence for local authorities was a Conservative Party policy while in Opposition. The publication of *Control shift: returning power to local communities* in February 2009 signalled this policy as well as the Conservative Party's commitment to decentralisation.[45] David Cameron, in an article in the *Guardian* written at the same time as *Control shift* was published, commented that:

> It is both patronising and absurd that councils can only act on a local issue if they have a specific mandate to do so. We're going to change that by trusting local authorities with a "general power of competence" that will free them to carry out any lawful activity on behalf of their community. That way, instead of endlessly looking up to Whitehall for permission, our councils will be looking to local people for direction.[46]

Control shift expanded on this commitment:

> Any action that local councils take without specific statutory backing can be struck down by the courts on the grounds that it is 'beyond their powers' ('ultra vires'). The result is that, even if a local council – in response to local people – wants to take action to address a specific local problem, it may not be able to do so, simply because it has no specific statutory power to take the action in question. The Local Government Act 2000 tries to address this problem by giving local authorities a power to do anything which they consider likely to promote or improve the economic, social or environmental well-being of any part of their area. In defence of this approach, the current Government argue that the breadth of this well-being power "is such that councils can regard it as a 'power of first resort'".
>
> However the scope of action permitted to councils under this power is not clear, and cautious legal departments in many local authorities are wary of using the power for fear of costly and time-consuming legal challenge. As a result the Government's own research shows that only a small number of authorities have used the power of wellbeing as a power of first resort; many local authorities have not used it at all. We will therefore introduce a new general power of competence which gives local

---

43 "Power of competence: real freedom?", *Local Government Chronicle*, 11 March 2010, p5

44 *Uncorrected transcript of oral evidence taken before the Communities and Local Government Committee*, *Localism*, 15 November 2010. At the time of writing the transcript is not yet an approved formal record of these proceedings and neither witnesses nor Members have had the opportunity to correct the record.

45 Conservative Party, *Control shift: returning power to local communities*, February 2009

46 David Cameron, "A radical power shift", *Guardian*, 17 February 2009

> authorities an explicit freedom to act in the best interests of their voters, unhindered by the absence of specific legislation supporting their actions. No action – except raising taxes, which requires specific parliamentary approval – will any longer be 'beyond the powers' of local government in England, unless the local authority is prevented from taking that action by the common law, specific legislation or statutory guidance.
>
> **We will give the general power of competence real meaning by allowing councils specifically to:**
>
> - **carry out any lawful activity;**
> - **undertake any lawful works;**
> - **operate any lawful business ; and**
> - **enter into any lawful transaction.**
>
> **In addition, we will ensure that all these actions can be taken at the lowest possible level (i.e. by the councils nearest to the citizens) by including town and parish councils within the categories of local authority that are given the new power ...**[47]

The Coalition Government subsequently announced in its *Programme for Government* that it "will give councils a general power of competence".[48]

The CLG Committee recommended in their 2009 report on the *Balance of power* that "...if local government is able to accumulate evidence that the wellbeing powers are falling short of a power of general competence to the extent that they are impeding its local leadership role, then ... the Government should introduce a power of general competence for local government.[49]

Following the Bill's publication, the *Local Government Lawyer* said:

> Concerns have meanwhile been raised about whether the general power of competence at the heart of the Bill will really deliver new freedoms and enhance local authorities' ability to collaborate with other organisations.
>
> "In practice, there was no great gap in local authority powers and it is hard to identify examples of what an authority can now do which it could not do before," said [Peter] Keith-Lucas. "But there are real gaps in the powers of other public bodies to collaborate with local authorities and the Bill contains no new powers for such other public bodies."
>
> Tony Child, public law partner at Beachcroft, highlighted the wording of the general power of competence, which will allow authorities to do "anything that is not specifically prohibited by law".
>
> He said: "That sounds radical, but of course existing legal constraints are fairly significant. Given the size of cuts to local authority budgets, local authorities need something truly radical but also user-friendly to make a real difference to their ability to balance their budgets and maintain services".[50]

---

47 Conservative Party, *Control shift: returning power to local communities*, February 2009, p14-15

48 HM Government, *The Coalition, Our programme for government*, May 2010, p12

49 Communities and Local Government Select Committee 6th report of 2008-09, *The Balance of Power: Central and Local Government*, HC 33-I, 12 May 2009

50 "Lawyers key to helping councils make most of freedoms contained in Localism Bill", *Local Government Lawyer*, 16 December 2010

2.3 Well-being and the London Authorities Mutual Ltd (LAML)

The introduction of the general power of competence is intended to give greater freedom to local authorities who were perceived as not taking advantage of the well-being principles introduced by the *Local Government Act 2000*. A report for the Communities and Local Government Department said that

> Use of the Well-Being Power remained limited over the life of the evaluation as local authorities had a tendency to use more specific powers to achieve their goals. Early uses of the Power tended to emphasise economic and environmental goals. Social uses emerged later. There was no evidence of local authorities balancing the economic, social and environmental impacts and outcomes of a decision to use of the Well-Being Power in line with sustainable development principles.[51]

The report also noted that "lawyers played a critical role in encouraging or discouraging use" of the power,[52] and the general concern shown by many local authorities on the use of the power was highlighted by the then-Minister, John Healey, who felt that local government was not making full use of powers that it had. The CLG Committee in its 2009 report on the *Balance of Power* commented that:

> 64. We are clear that local authorities need both sufficient formal powers and more general autonomy to pursue a leading local leadership role. We are encouraged that a number of councils have embraced the potential offered by the well being powers to pursue this agenda aggressively. We note, by way of examples, the decision by Essex County Council to open the first council-run post office to save it from closure; Kent's decision to launch Kent TV, among other initiatives; the ambitious programmes Westminster and Manchester both have to combat worklessness; the provision by North Yorkshire County Council of a broadband network; and Lancashire County Council's innovative restorative justice models.
>
> 65. We urge more councils to test the strength of the assertion by the Secretary of State that "the power of well being is virtually a power of general competence" and her commitment to "look very closely at the power that exists, how much it is being used, what it is stopping people from doing, and if it is stopping people from doing things which would be beneficial and are proper things for them to do then obviously I want to examine whether any changes would be necessary".[53]

John Healey criticised local government in a speech at the May 2008 Institute for Public Policy Research (IPPR) conference for not making full use of the powers it had. "By all means make the case for more power, more freedom, more innovation", he said. "But also make use of those you already have". In oral evidence to the CLG Committee, Hazel Blears, the then-Secretary of State, emphasised the same point: "My challenge to local government is that where there are powers before asking for more powers let us make sure that we are using all the powers we have got to their fullest extent".[54]

The difficulties with the well-being provisions as laid out in the 2000 Act were highlighted by the case of the London Authorities Mutual Ltd (LAML), set up by 10 London authorities. In a case that went to the Court of Appeal, London authorities were blocked from forming the mutual firm in a ruling that councils acted beyond their powers and broke procurement rules.

---

51 DCLG, *Evaluation of the take-up and use of the well-being power*, *Research summary*, 2008, p1

52 *Ibid* p2

53 Communities and Local Government Select Committee 6th report of 2008-09, *The Balance of Power: Central and Local Government*, HC 33-I, 12 May 2009

54 Communities and Local Government Committee - Minutes of Evidence, *The Balance of Power: Central and Local Government*, HC 33-II, 2008-09, Ev 105

The LGA commented:

> The judgement has created wide concern within local government about the scope of the well being power, Section 2 Local Government Act 2000, and Section 111 Local Government Act 1972. At a time of recession and public spending pressures, where it is vital councils have the confidence to innovate, the LAML judgement seriously undermined council confidence in the well being power as a wide, general power of first resort. The government responded to the LAML judgement by introducing an amendment to the Local Democracy, Economic Development and Construction Bill, in October 2009. This was passed, and creates specific powers to enable councils to establish mutual insurance arrangements. This does not resolve the uncertainty which has been created about the limits of the well being power. Although the well being power has encouraged some councils to introduce new activities, there has been uncertainty about its exact scope. This concern has been very much amplified by the recent judgement. This has increased interest in the idea of a power of general competence for local government, which would be broader and create greater certainty.[55]

Nonetheless, there have been some notable uses of the well-being power, including a social housing scheme in Wakefield, a waste transfer station in South Hams and the establishment of an employment agency in Greenwich.[56]

2.4 Views and responses

The LGA has supported the concept of a general power of competence for some time. In its response to the *Strengthening local democracy* consultation paper the LGA commented:

> Councils have been criticised by Ministers and civil servants for not making greater use of the well-being power. The recent Appeal Court judgement indicates why councils may have appeared risk averse. It also does not help promote the use of the well-being power that the statutory guidance has not been updated to take account of the Local Government Act 2003. This changes the financial framework within which the well-being power can be exercised, including new powers to charge for services and to trade ... We and the CLG Select Committee have called for a power of general competence for local government which would genuinely support innovation and response to local wishes. We encourage the government to develop proposals for a power of general competence for local government, and a framework to remove statutory provisions which conflict with it.[57]

The LGA published a draft *Local Government (Power of General Competence) Bill* in March 2010.[58] The draft Bill sought to advance understanding of how a power of general competence would best be expressed in law, and whether such a power could be established in law in a way which could over-ride other legislation which conflicts with it, and ensure greater flexibility and certainty.[59] The introduction to the draft Bill noted that:

> Support for a power of general competence for local government has been a longstanding policy of the Liberal Democrats. It was a Labour government which introduced the well being power, taking steps to provide a clear, general power within

---

55 LGA, *Draft Local Government (Power of General Competence) Bill*, 2010, p4

56 For more information on these and other uses of the power, see DCLG, *Practical use of the well-being power*, 2008

57 LGA, *Strengthening Local Democracy: Response of the Local Government Association*, 2009, p5

58 LGA, *Draft Local Government (Power of General Competence) Bill*, 2010

59 *Ibid* p4

> the *Local Government Act 2000*. The Conservative Party's recent *Control shift* policy paper advocates a general power of competence for local government.[60]

The proposal was supported by the CLG Committee, which recommended the introduction of such a power, but only if local authorities could show that they were unable to use the available well-being powers effectively. The Committee noted that the introduction of the power was welcomed by a number of local authorities, including Warwickshire and Birmingham.[61]

The *New Law Journal* (NLJ) expressed some caution about the concept. It noted that "there is a huge gap between articulating this idea and delivering a power which will actually be different in practice from the well-being power, which some saw as general competence in all but name".[62] The NLJ felt that to clarify the purpose of the power it needed to be seen as a 'power of first resort', thereby giving a clear message that a defensive and cautious approach to the new powers is no longer appropriate or necessary. The NLJ also noted that:

> enacting such a power raises various technical problems. Unlike other systems which started from the position of enacting a power of general competence and then attaching restrictions and limitations to it...we are faced with the more difficult task of grafting a power of general competence on to an existing system of detailed powers with express and implied restrictions and limitations.[63]

2.5 The *Ultra vires* principle

Ultra vires in this context means "beyond the legal power or authority" of a local authority. The principle of *ultra vires* in relation to local authorities dates back to the 19th century. Tony Byrne in *Local Government in Britain* wrote that "the justification of the *ultra vires* principle is that it protects the community against possible tyranny, extravagance and hare-brained or politically-motivated adventure by its local council...it could be argued that the ballot box is a sufficient safeguard and that the operation of the *ultra vires* rule is too restrictive".[64]

The Bill does not specifically deal with the *ultra vires* principle, but a number of commentators have suggested that the principle does not have a place once local authorities have a general power of competence framework within which to work. Nigel Keohane of the NLGN in *Going nuclear* commented that "the Government should not seek to define new freedoms but instead abolish the *ultra vires* principle and leave councils free aside from actions that are expressly forbidden by statute".[65] The *Local Government Chronicle* however commented that "Many would say the ability to challenge the actions of local authorities as being ultra vires by judicially reviewing them through the courts is a check to be retained".[66]

Nicholas Dobson, a lawyer specialising in local and public law, and communications officer for the Association of Council Secretaries and Solicitors, writing in the *Law Society Gazette*, noted that "It is true that appropriate care in the lead up to, and taking of, local authority decisions should make successful challenge less likely. But if *vires* confidence continues to

---

60 *Ibid* p5

61 Communities and Local Government Committee, *The Balance of Power: Central and Local Government*, HC 33, 2008-09

62 Colin Crawford, "Beyond well-being", *New Law Journal*, 5 February 2010, pp168-170

63 *Ibid*

64 *Local government in Britain*, Penguin, 2000, p77

65 Nigel Keohane, "Going Nuclear? A general power of competence and what it could mean for local communities", *NLGN*, August 2010, p4

66 "Power of competence: real freedom?", *Local Government Chronicle*, 11 March 2010, p5

approach flatline across many local authorities, the proposed general competence power could be just the thing to return it to healthy zigzag".[67]

The former director of the NLGN, Chris Leslie, has written that "these are crucial issues about the freedoms of elected councils to save money, bulk purchase or even supplement their income. As things stand, local authority solicitors will have an even greater tendency to say 'no' to policy officers and elected members who want to think laterally".[68]

3 Governance

3.1 Governance arrangements

The Bill

Schedule 2, part 1 inserts a new part 1A into the *Local Government Act 2000* setting out new governance arrangements for English local authorities. Permitted arrangements are as follows:

- Executive arrangements involving, as now, either a directly-elected mayor with cabinet or an indirectly-elected leader with cabinet (chapter 2).

- Committee system (chapter 3). Under the committee system it will, for the most part, be for authorities to decide on their decision-making structures.[69] For instance, an authority may decide that full council will discharge all of its functions or decide to delegate certain functions to a committee, sub-committee or an officer. There will also be scope for authorities to discharge their functions jointly with other authorities or that certain functions will be discharged by another authority. The Secretary of State, however, is given power in the Bill to specify by regulation any functions which may not be delegated but which must be exercised by the full council. Authorities operating the committee system will not be obliged to operate a formal overview and scrutiny committee. However, where they choose to do so, the Secretary of State may prescribe by regulations how the system is to operate.[70]

- Prescribed arrangements (chapter 1). The Secretary of State is given power to prescribe by regulation new forms of governance arrangements (whether executive or non-executive) that may be operated by local authorities in order to discharge their functions. A DCLG memorandum notes that this provision is designed to ensure that local authorities are not confined simply to the specified forms of governance but may request permission to adopt an alternative form if it seems more appropriate.[71]

Procedures for changing governance arrangements are set out in chapter 4. A resolution of the authority is required for it to change its governance arrangements (section 9KC). The Bill sets out the requirements for informing local electors of the proposed move which takes effect after the next local election. A referendum is required where the authority has adopted its present form of governance through a referendum (section 9M). Referendums will also be required: (a) where the authority itself resolves to make the change subject to a referendum, (b) following receipt of a valid public petition seeking a referendum on a particular form of governance, (c) following a ministerial direction or order.

---

67 "Local government: general competence to restore vires confidence", *Law Society Gazette*, 25 March 2010

68 *Municipal Journal*, 18 June 2009, pp14-15

69 As provided for in part 6 of the *Local Government Act 1972*.

70 For further information see Library Standard Note SN/PC/4818, *Overview and scrutiny in local government*, last updated 23 August 2010.

71 *Ibid*, p10

Views and responses

The *Local Government Act 2000* introduced executive arrangements in place of the committee system for most local authorities in England and Wales. Two of the three executive leadership models available involved directly-elected mayors. The introduction of a mayoral system required prior approval by local referendum, and the Act also provided for local residents to be able to trigger a referendum by petition.

The *Local Government and Public Involvement in Health Act 2007* reduced the leadership options for English councils to just two: directly-elected mayor with cabinet and indirectly-elected leader with cabinet. Councils could now adopt a mayoral system by simple resolution without the need for a referendum.

The Bill implements the Coalition's stated intention of giving councils the option of returning to the committee system that was in place before the *Local Government Act 2000*. Andrew Stunell announced on 20 September 2010 that:

> For the last decade councils have been forced to implement a one-size fits all model of government. This Government will let councils and communities decide how to organise themselves. We don't presume to know more than local people about how their area should be run. The Coalition Government is committed to localism and pushing power away from Westminster and back to local communities. We're not going to be micro-managing, second guessing and interfering in local affairs anymore.[72]

The LGA stated in it's *On the day briefing* that:

> The system of governance in a local area should be a decision for the local authority and its residents, at their own initiative, rather than for the Secretary of State.[73]

The policy of allowing a return to the committee system has led to some debate concerning the extent to which executive arrangements have proved effective. The Committee on Standards in Public Life in June 2010 said that "many of those who submitted evidence to us agreed that the new [executive] arrangements have, as intended, provided greater clarity about the decision-making process". However, the Committee went on to note that in many local authorities "the scrutiny function is not working as intended", particularly where scrutiny committees have focussed more strongly on policy development than challenging the council's decisions.[74] The Committee concluded that the "deficiencies" in the present arrangements are "a matter of some concern" and that effective scrutiny should be a priority for all councils.[75]

However, a policy briefing from the Centre for Public Scrutiny (CfPS) states:

> We strongly believe that the cabinet/scrutiny split constitutes the most effective, flexible and proportionate form of governance for local authorities, and that the overview and scrutiny function has – contrary to what some commentators have said, and further to considerable research we have carried out on this topic – proved itself up and down the country by bringing a new attitude and approach to accountability in local authorities, making a significant impact and opening up decision making. The forthcoming Health and Social Care Bill will be extending scrutiny powers in recognition of the value of independent scrutiny. However, we realise that localism means that

---

72 DCLG press release, *Stunell tells councils they can return to the committee system as Whitehall steps out of local affairs*, 20 September 2010

73 LGA, *Localism Bill: LG Group On the Day Briefing*, 13 December 2010, p4

74 Committee on Standards in Public Life, *Local leadership and public trust: openness and accountability in local and London government*, June 2010, p3

75 *Ibid*

> authorities should have the freedom, based on local democracy, to choose their own governance arrangements, and so want to ensure that in those authorities who do wish to change, the benefits of a culture of scrutiny will continue, even if the structures may not.[76]

The CfPS has indicated that a number of authorities are likely to take the opportunity to return to the committee system. It has drawn attention to an Audit Commission report from 1990 which analysed the system in some detail.[77]

Peter Keith-Lucas, writing in the *MJ* in July, highlighted a number of possible problems with the change, should councils take that route:

> The original leader and cabinet model in the Local Government Act 2000 left a council with considerable discretion in setting the balance of power between it and the leader. At the 'strong' end of the argument, a council with a majority party could give the leader power to appoint a single-part cabinet and delegate executive powers extensively to individual cabinet members. But the model could equally accommodate a balanced authority without a majority part, enabling the council to elect a balanced, multi-party cabinet... The immediate problem is that, while the 2007 Act has already required county, London borough and metropolitan authorities to introduce the stronger leader system, 201 district councils and 49 district councils with unitary powers are only just starting the process. They must start a process of public consultation on the choice between a stronger leader and a directly-elected mayor, leading to the publication and adoption by the end of 2010 of detailed proposals, to be implemented at their next annual meeting in May 2011.
>
> It would clearly be nonsense to maintain this requirement, only to move away from any form of leader and introduce a committee system. The coalition government has shown that it is prepared to fast-track legislation where necessary, as in the case of the Local Government Bill to prevent the implementation of unitary authorities in Devon and Norfolk, and now with the Academies Bill, for the extension of academy schools.
>
> So, it is understandable that members who favour a return to the committee system were confused and dismayed by the letter from local government minister, Grant Shapps, on 7 July. Citing the principle of economy, he announced that these 250 authorities would still have to incur the cost of the consultation and decision-making process to make the unwanted transition to stronger leader in May 2011.
>
> This is because the option of changing to the committee system will not be fast-tracked, but will be contained in the Decentralisation and Localism Bill. That Bill will only be published in the autumn, and will not be in force before late 2011. So, 250 authorities will be required to elect a stronger leader for a purported four-year term, but may then replace him or her with a committee system within 12 months.
>
> The reality of the choice between stronger leader and directly-elected mayor is underlined by another commitment of the Government, for mandatory mayoral referenda in each of the 12 largest cities in England. Yet, citing the principle of openness and transparency in government, the minister said that, in the Government's view, it would be reasonable for a local authority to limit its public consultation on what remains a fundamental change to a press release on the council's website,

---

[76] Centre for Public Scrutiny, *Policy briefing 4: changing governance arrangements*, December 2010, para 1.5

[77] Centre for Public Scrutiny, *"We can't go on meeting like this" – Audit Commission report from 1990 on the committee system"*, 14 October 2010

> inaccessible to the 30% of households without Internet access, or to those without the leisure to trawl their local council's website.[78]

3.2 Mayoral role and powers

The Bill

As stated above, schedule 2, part 1 inserts a new part 1A into the 2000 Act concerning governance arrangements for English local authorities. Chapter 4 covers executive arrangements and contains some significant provisions in relation to mayors.

Firstly, the Secretary of State may provide by order for a local authority to confer a "local public service function" of any person or body on its elected mayor.[79] An elected mayor may apply to the Secretary of State for such functions in his/her first year of office. The Bill's explanatory notes add:

> It is envisaged that the Secretary of State will specify in regulations that the information and evidence to be included in an application must demonstrate that the elected mayor's campaign for election to office was at least in part on the basis of requesting that the Secretary of State confer additional powers on the office of mayor.[80]

Secondly, the Bill provides that an elected mayor may propose to his/her authority that it adopt "mayoral management arrangements" whereby the mayor becomes the most senior officer of the authority, exercising some or all of the functions of the head of paid service (section 9HA(3)). Section 9HH gives the Secretary of State the power to amend by order any enactment for the purpose of enabling an authority to confer by resolution a head of paid service function on its elected mayor.

Background and reactions

Eric Pickles referred to Government plans to extend the mayoral role in a written statement in October 2010:

> We will put local councils in the driving seat to join up public services, pooling resources across the public sector to tackle social problems. We want elected mayors to trail-blaze such initiatives, not least since elected mayors in our cities will be embraced by the public if they have real power. So we will create the opportunity for mayors to bring together different devolved budgets and pool them with our national payment-by-results systems. Together, mayors will be able to help design services specifically targeted at the hardest-to-help families. They will be able to add their own budgets - social services, care, housing, health improvement - to the national programmes. This will give local communities the power to change lives, and help save money at the same time.[81]

The *Local growth white paper*, published in October 2010, referred to the role of mayors in economic matters:

> Mayors, with their strong, visible and accountable local leadership, will play an important role in ensuring that our biggest cities are genuine drivers of economic growth. These mayors will also work closely with neighbouring council leaders on issues such as transport, the strategic approach to planning and wider economic

---

78 Peter Keith-Lucas, "A recipe for confusion", *Municipal Journal*, 5 August 2010, p24

79 Section 9HF. Subsection (9) defines this as a "function of a public nature in so far as it relates to the provision of a public service in the local authority's area, or to the inhabitants of that area".

80 *Explanatory Notes*, p16

81 HC Deb 11 October 2010 c3WS

> priorities. This may include mayors chairing the board of local enterprise partnerships.[82]

Wider powers for mayors were strongly advocated by Lord Heseltine's Cities Taskforce in 2007,[83] and they have been recommended in reports from think tanks such as NLGN and the IPPR.[84] The LGA said in its briefing following publication of the Bill:

> The powers to transfer the functions of any public body to mayors where they exist potentially has huge significance. Public services need to put citizens in control of how public money is spent, either directly or through their locally elected representatives. This power could potentially support the delivery of increasingly accountable, cohesive and efficient public services.[85]

As to the question of combining the roles of mayor and chief executive, the *MJ* reported in October that Eric Pickles had written to his predecessor, John Denham, in the following terms:

> I have been clear that the dual structure of executive leader and chief executive is unsustainable, particularly in mayoral models...Having elected leaders and chief executives whose responsibilities often overlap is both expensive and unnecessary.[86]

The *MJ* reported that Mr Denham was "deeply concerned that the well-understood boundaries between the non-political and impartial chief executive and the political leadership of local authorities are going to be thrown away".[87]

The *MJ* also carried an article by David Clark, Director General of SOLACE (Society of Local Authority Chief Executives and Senior Managers) which said:

> ...as ex-elected member and a former chief executive, I am very much in the business of maintaining a separation between the political leadership and the managerial leadership of an authority, and avoiding the overt politicisation of the officer corps.[88]

3.3 Creating directly-elected mayors by order ("shadow mayors")

The Bill

The Bill allows the Secretary of State to provide by order that, on the relevant date, a specified authority changes to a mayor and cabinet leadership system (9N).[89] This is in connection with the Coalition Government's pledge to introduce elected mayors in the twelve largest English cities outside London. An order under section 9N must also specify the date on which a referendum is to be held concerning whether the authority should continue to operate the mayor and cabinet model, and certain other matters. Section 9MG enables the Secretary of State to make regulations governing the conduct of mayoral referendums.

The Bill provides that the leader of the local authority will become a "shadow mayor" on the relevant date specified in the order. Should the leader's post be vacant, the shadow mayor

---

82 *Local growth: realising every place's potential*, Cm 7961, October 2010, p11

83 Conservative Party Cities Taskforce, *Cities renaissance: creating local leadership*, 2007

84 See, for example, Nick Hope and Nirmalee Wanduragala, *New model mayors: democracy, devolution and direction*, NLGN, January 2010; Michael Kenny and Guy Lodge, "Mayors rule", *Public Policy Research*, Vol 15, Issue 1, March 2008

85 LGA, *Localism Bill: LG Group On the Day Briefing*, 13 December 2010, p4

86 "City mayors to pioneer executive leader model", *Municipal Journal*, 7 October 2010 p1

87 *Ibid*

88 David Clark, "Merging senior roles will 'politicise' local government, *Municipal Journal*, 7 October 2010, pp18-19

89 Of new part 1A of the *Local Government Act 2000* inserted by Schedule 2 of the Bill

will be the deputy leader or, failing that, a councillor specified or described in the order. Those authorities in which a mayor has been created by an order under section 9N, and subsequently confirmed by local people in a referendum, will be required to move to mayoral management arrangements (i.e. taking on the role of the authority's most senior officer) within a reasonable period after the first election of the mayor and, in any event, within the first term of office of the mayor (section 9HC).

Background and reactions

The Conservative Party's policy paper, *Control shift*, published in February 2009, signalled an intention to legislate to hold a referendum in each of England's twelve largest cities (outside London). The cities were listed in order of size as: **Birmingham, Leeds, Sheffield, Bradford, Manchester, Liverpool, Bristol, Wakefield, Coventry, Leicester, Nottingham and Newcastle-upon-Tyne**. The paper cited turnout in London mayoral elections as evidence that the mayoral system boosted democratic engagement. The benefits for citizens were said to be:

- Strong leadership;
- Improved clarity of municipal decision-making;
- Enhanced prestige for their city.[90]

The Coalition's *Programme for government* subsequently promised "…to create directly elected mayors in the twelve largest English cities, subject to confirmatory referendums and full scrutiny by elected councillors".[91] The Government has said that it intends to hold the mayoral referendums in May 2012.[92]

The plans have proved controversial in some areas. The *Yorkshire Post* reported:

> Bradford Council leader Ian Greenwood slammed the proposal as a "party political imposition" while the leader of Sheffield Council, Paul Scriven, said it was a "complete distraction".[93]

This latter point echoed criticism from Professors George Jones and John Stewart who wrote:

> This requirement would disrupt and distract these councils when they face severe cuts in expenditure, demanding all their attention. It denies choice to 12 of the most important local authorities and provides a precedent which could be extended to others.[94]

Further information on this subject can be found in a Library Standard Note – *Directly-elected mayors* (SN/PC/5000).

4 Predetermination

4.1 The Bill

Clause 13 of the Bill seeks to clarify the law on predetermination. The Bill will make it clear that if a councillor has previously given a view on an issue, this will not show that the

---

90 Conservative Party, *Control shift: returning power to local communities*, February 2009, p21
91 HM Government, *The Coalition, Our programme for government*, May 2010
92 HC Deb 15 December 2010 c815W
93 "Government on collision course as it foists mayors on big Yorkshire cities", *Yorkshire Post*, 12 December 2010
94 George Jones and John Stewart, "A patchwork quilt", *Municipal Journal*, 11 November 2010, p26

councillor has a closed mind on that issue. Therefore, if a councillor has campaigned on a particular issue, they will nonetheless be able to participate in council business relating to the matter.

4.2 Background and reactions

Predetermination in this context involves councillors making decisions on how they will vote in advance of hearing the arguments. It is therefore different from predisposition, where a councillor might have a view in favour or against a particular issue but has an open mind as to the merits of the arguments they hear before they make a final decision. This is often an issue in planning matters, where a councillor can campaign against a proposed development but finds that he or she is not allowed to participate in the planning committee/board relevant to that subject. This has proved a difficult concept for councillors and monitoring officers, particularly as it affects planning matters. Predetermination affects a councillor who has been elected on a particular platform – for example campaigning against the closure of a particular local asset. Advice to the Standards Board for England (now Standards for England) in 2007 noted:

> The basic legal position is that a councillor may not be party to decisions in relation to which he is actually biased (in the sense that he has a closed mind, and has pre-determined the outcome of the matter to be decided irrespective of the merits of any representations or arguments which may be put to him) or gives an appearance of being biased, as judged by a reasonable observer.[95]

The author went on to consider the democratic position of councillors who were elected on a particular platform:

> It is of the essence of local democratic politics that councillors or parties may seek election by declaring to the electorate what their policies will be if they are elected. It would defeat the object of the exercise if, once elected, they were then to be treated as being barred from participating in those very decisions which they may have been elected to take.[96]

LGA guidance explains the origin of concern over predetermination, in the context of planning applications:

> 6.4 Councillors, and members of the planning committee in particular, need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, members taking the decision will take account of all the evidence presented before arriving at a decision, and will avoid committing themselves one way or another before hearing all the arguments. To do otherwise makes them vulnerable to an accusation of partiality. Bias or the appearance of bias has to be avoided by the decision-maker. Whilst the determination of a planning application is not strictly a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), it is, nevertheless, a formal administrative process involving application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. There is an added possibility that an aggrieved party may seek judicial review on the way in which a decision has been arrived at; or complain to

---

95 In the matter of Part III of the *Local Government Act 2000* and the *Local Authorities (Model code of conduct) (England) Order 2001* and the draft *Local Authorities (Model Code of Conduct) (England) Order 2007*, advice by Philip Sales QC, 5 April 2007, p1

96 *Ibid*, p3

> the Local Government Ombudsman on grounds of maladministration; or that a member has breached the code.
>
> 6.5 In reality of course, members will often form an initial view (a predisposition) about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the planning committee's proceedings as set out in the paragraph above, is that members of the committee (at least those who are not councillors of the affected ward) should not decide or declare which way they may be inclined to vote in advance of the planning meeting, or before hearing evidence and arguments on both sides.[97]

As a result of these arguments, the code of conduct was amended in 2007 to allow councillors who held a 'predetermined' view to speak on the issue but not vote. The Conservatives signalled their intention to remove this rule in a *Green Paper*, *Open source planning*, in February 2010, which noted:

> In some councils, candidates standing for election have been advised by monitoring officers that "predetermination rules" mean they must avoid mentioning any controversial local issue, for instance relating to a proposed development, during their election campaign to prevent themselves being barred from voting on that issue if elected. This makes a mockery of local democracy and leads to unwarranted cynicism about politics and politicians. That is why we have said that we will legislate to ensure that councillors (while being properly prevented from advancing personal interests) have the freedom to campaign and represent their constituents, and then speak and vote on those issues without fear of breaking the rules of 'pre-determination'.[98]

On 10 June 2010 Eric Pickles told the House of Commons that "I am delighted to inform the House that it is our intention to repeal those regulations [relating to predetermination]. That means we can give local councils the thing that Members of Parliament so desire - that councillors with opinions can actually vote on those opinions".[99] A press notice from the DCLG on 14 November noted that "the rules on bias...have left many councillors uncertain about whether they have the freedom to speak and vote on the very issues on which they campaigned and were elected" and as a result the Bill will "clarify the law to give councillors the assurance they need to feel confident about campaigning on local issues and championing the rights of residents". At the same time, Mr Pickles announced that a new deterrent of criminal sanctions would be introduced so that anyone failing to register or disclose a personal interest that impacts on council business could face criminal sanctions.[100]

Grant Shapps subsequently said, "It is ridiculous that a community can vote for someone standing on a particular issue, only for that person to be barred from talking about it once in office. Councillors must be given the freedom to properly represent the views of their constituents".[101] *RenewableUK* said that the Bill would dramatically alter the rules for developing renewable energy projects: "We could be looking at a radically different planning process, with councillors allowed or even encouraged to campaign ahead of the decision, and the result in some cases being made by referendum".[102] Issues might arise about the choice of councillors to sit on the planning committee, if the applicant and others know which ones have campaigned for or against a particular development. The councillors would still

---

97 LGA, *Probity in Planning*, 2009
98 Conservative Party, *Open source planning green paper*, February 2010
99 HC Deb 10 June 2010 c444
100 DCLG press notice, *Freedom for Councillors to champion their communities,* 14 November 2010
101 DCLG press notice, *Grant Shapps: 2011 will be the year councillors become community champions*, 4 January 2011
102 RenewableUK press release, *Localism Bill: gamechanger for the renewable energy sector*, 13 December 2010

have to determine the application in accordance with the development plan unless material considerations indicate otherwise. Councillors who had campaigned against a development might find their decision overturned on appeal if it was not justifiable in planning terms.

Abolition of Standards for England (see next section) would not in itself change the position on predetermination.[103] Standards for England summarised case law, noting the extreme difficulty of the test on apparent predetermination:

> Unless there is positive evidence that there was indeed a closed mind, prior observations or apparent favouring of a particular decision is unlikely to be sufficient to establish predetermination.[104]

5 Local government standards of conduct

5.1 The Bill

Chapter 5 of the Bill, clauses 14 to 20, abolishes the local authority members' standards regime, including the model code of conduct that all councils and councillors have to adopt and give a commitment to abide by, as well as the Standards Board for England and statutory local authority standards committees. Local authorities will be free to adopt their own voluntary codes of conduct and establish voluntary standards committees if they so wish. The Bill also introduces a new criminal offence of failing to disclose or register a relevant interest without reasonable excuse for doing so. Councils will be bound by a duty to ensure that their members maintain high standards of conduct. The regime will be abolished on a day to be appointed by the Secretary of State. Until this point, the regime will operate as at present; after this date, no complaints can be made under the current procedure. Any ongoing investigations at the appointed date will be passed to the relevant local authority to complete.

The Bill also continues the requirement for authorities to maintain a register of interests of members, and gives the Secretary of State the power to make regulations to specify what will be included in the register. Clause 18 introduces a new criminal offence of failing to comply with the obligations which might be imposed by such regulations without reasonable excuse, and conviction of such an offence can lead to a fine of up to £5,000 and disqualification from being a councillor for up to five years. This is intended to make councillors accountable at a local level to their electorate.

The Memorandum from the DCLG to the Delegated Powers and Regulatory Reform Committee notes, "It is intended to specify certain permanent interests which must in all cases be registered (for example the councillor's home address) and to identify circumstances which will give rise to a subsequent obligation to declare and register an interest". Such an example might be when an item of council business relates to a matter in which the councillor has an interest.[105] The DCLG memorandum also notes that the instrument will identify the sanctions which the authority will be able to impose on a councillor who has not declared an interest, although this will not extend to disqualifying or suspending a councillor from office.[106]

---

[103] Standards Board for England, *Guidance on Lobbying*, [viewed November 2010]. Further detail is available in their *Guidance on predisposition and predetermination*, December 2009

[104] Standards Board for England, *Bias, Predetermination and the Code*, February 2010

[105] DCLG, *Localism Bill: Memorandum to the Delegated Powers and Regulatory Reform Committee*, December 2010, p25

[106] *Ibid*

5.2 Background

Part III of the *Local Government Act 2000* introduced a new ethical framework for members and employees of local authorities. This included a statutory code of conduct for councillors, and the creation of a standards committee for each local authority. It also established a new Non-Departmental Public Body, the Standards Board for England (later Standards for England), providing an independent mechanism for investigating instances of unethical conduct by local authority members, including any allegations that a code has been breached. However, local standards committees now do most of the investigation, with the Standards Board co-ordinating and monitoring.

The Labour Government issued model codes of conduct for different types of councillor in 2001.[107] However, the rules were criticised for making it very hard for a ward councillor to speak out in favour of local constituents. A common difficulty was that a councillor would be considered to have a prejudicial interest in a planning application in the area where they live. They would then be preventing from speaking or voting on the determination of the application. In an adjournment debate in May 2006, Andrew Lansley, then Shadow Secretary of State for Health, stressed the difficulties caused by the regime.[108]

Changes to the system were introduced into Part 10 of the *Local Government and Public Involvement in Health Act 2007*. Regulations made under the 2007 Act came into force on 8 May 2008 and set out the detail of how it was to work in practice.[109] The system became more locally-based, with the sifting of complaints and the bulk of the investigation and determination of cases carried out by local standards committees. The Standards Board subsequently changed its name to Standards for England to better reflect its revised responsibilities, and now acts as a strategic regulator and investigates only the most serious cases. In January 2010 the Adjudication Panel moved to become part of the General Regulatory Chamber, and therefore became part of a revamped tribunals service.

The model code of conduct was introduced in 2001 and updated in 2007. Local authorities had until 1 October 2007 to adopt it. Standards for England have issued guidance on the code, which is available on their website.[110]

5.3 Plans for abolition of the standards regime

The Coalition Government's *Programme for Government* said that "We will abolish the Standards Board regime".[111] This follows a long-standing Conservative commitment to abolish the regime. For example, Eric Pickles, then Conservative Shadow Minister for Local Government, noted before the general election in 2005 that the Conservative Party believed:

> that the Standards Board should be abolished, and we shall do that in our first month in office. We shall seek to repeal the secondary legislation within the first year. District auditors will continue to play their role in investigating financial impropriety in local government and the local ombudsman will continue to investigate complaints made by the public about administrative failures. The police, the Crown Prosecution Service and the courts will take the lead in investigating and prosecuting any breaches of criminal law.[112]

---

107 *The Local Authorities (Model Code of Conduct) (England) Order 2001* (SI 3575) Other Orders covered parish councils (SI 3576); National Park authorities (SI 3577); Police Authorities (SI 3578)
108 HC Deb 15 May 2006 cc821-8
109 *Standards Committee (Further Provisions) (England) Regulations 2009*, SI 2009/1255
110 Standards Board for England, *The model code of conduct: pocket guide*, May 2007
111 HM Government, *The Coalition, Our programme for government*, May 2010
112 HC Deb 1 February 2005 c229WH

A press release from Andrew Stunell in September 2010 confirmed that the standards regime would be abolished. Mr Stunell announced that:

> The new Government is legislating to make serious misconduct a criminal offence dealt with by the courts not committees. Councillors will have to register certain personal interests in a publicly available register. Ministers believe these changes will give voters the confidence that councillors who misuse their office will be effectively dealt with. While councillors themselves will have the confidence to get on with their job knowing they won't be plagued by petty allegations.[113]

The press release continued, "The Government intends to give the Local Government Ombudsman, the established body for investigating public complaints over the way they have been treated by their council, real teeth. For the first time local authorities will be legally compelled to implement the Ombudsman's findings", and continued by setting out the reasoning behind the Government's decision to abolish the regime:

> The Standards Board regime ended up fuelling petty complaints and malicious vendettas. Nearly every council had investigations hanging over them - most of which would be dismissed but not before reputations were damaged and taxpayer money was wasted. Frivolous allegations undermined local democracy and discouraged people from running for public office. That's why we are axing the unpopular and unelected standards board regime. Instead we will legislate to ensure that if a councillor is corrupt and abuses their office for personal gain they will be dealt with in the criminal courts. If a councillor behaves ineffectively or irresponsibly then it's a matter for the electorate not an unelected quango.[114]

However, the *Localism Bill* as introduced does not contain any increase in the powers of the Local Government Ombudsman, although the Government is continuing to look at the way in which the role of the Local Government Ombudsman can be strengthened.

On 1 December 2010, the Government published *Abolition of the Standards Board Regime*. This gave details of the proposed transitional arrangements as well as details of the replacement regime:

> **Proposed transitional measures**
>
> Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that their allegations would be properly dealt with. It also enables that if a member has an allegation made against them, they should have the opportunity to clear their name.
>
> The Government propose that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.
>
> Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date.

---

[113] DCLG press release, *Stunell - Corrupt councillors will go to court not Standards committees*, 20 September 2010

[114] *Ibid*

> The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The Government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).
>
> Further, the Government propose that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do is, for instance, to issue a councillor with a censure or a request that they undergo training.
>
> **The conduct regime in a post-Standards Board world**
>
> The Government is committed to maintaining high standards of conduct in office and will ensure that, in the absence of a statutory code of conduct, councillors do not abuse their office for personal gain by putting their personal interests before those of the general community or local area that they represent. Members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The Government intend that wilful failure to comply with these requirements will constitute a criminal offence.
>
> The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.
>
> The requirement to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.[115]

Bob Neill has said in a letter to Standards for England that "The Government considers that the Standards Board regime ... was inconsistent with the principles of localism. In addition there is a concern that the regime is a vehicle for vexatious or politically motivated complaints. The Government considers that it is the right and the responsibility of the electorate to determine who represents them and that the abolition of the regime will restore power to local people".[116]

Reaction to the proposed abolition has been mixed. Standards for England expressed its disappointment with the decision:

> We are very disappointed at the Government's decision to abolish the local government standards regime. Since 2007, Standards for England has dealt only with those matters which local authorities could not deal with themselves. Our recent review of this devolved local framework found that it is delivering increased confidence in the accountability of local politicians, improved member behaviour and contributing to better governance.[117]

Sir Christopher Kelly, Chairman of the Committee on Standards in Public Life, has criticised the move:

---

[115] DCLG, *Abolition of the Standards Board regime*, 2010, p3
[116] DCLG, *Letter: Abolition of the standards regime*,15 December 2010
[117] *Ibid*

> The proposals go well beyond the abolition of Standards for England. They involve the abolition of the national code of conduct for local authority members and remove the obligation on local authorities to maintain standards committees, chaired by independent people, to monitor standards and sanction aberrant behaviour. In future it appears that the only way of sanctioning poor behaviour between elections will be the criminal law or appeals to the ombudsman where someone's interests are directly affected by a decision. The Bill refers to a duty on local authorities to promote and maintain high standards. If this is to mean anything, in the Committee's view it is essential that there remains a national code of conduct so that both councillors and – most importantly – the public can judge what is acceptable behaviour and what is not. Leaving it up to each local authority to decide whether to have their own code and - if so - what it should contain, risks confusion. National codes of conduct govern the behaviour of MPs, civil servants and others in public life. Why are councillors judged to be different?[118]

In May 2009 a Standards Board survey showed 94% of councillors supporting the need to sign up to a code of conduct.[119] However, a columnist for Regeneration & Renewal supported abolition, which would put responsibility for assessing probity and professionalism "where it always should have laid - with electors".[120] Nonetheless, there have been concerns that reliance on elections to provide accountability will leave a gap in between elections. Jessica Crowe, Executive Director of the Centre for Public Scrutiny, made a similar point in evidence to the CLG Committee, saying that, "The ballot box is a very important one, but in between elections there need to be other forms of accountability".[121]

6 Pay accountability

6.1 The Bill

Chapter 6 of the Bill, clauses 21-26, requires local authorities to publish a senior pay policy statement for the financial year 2012-13 and subsequent years. The statement must include the policies relating to seven headings, including the level and elements of remuneration of each chief officer, the use of performance related pay and any bonuses which might be applicable. The first such statement must be prepared and approved before the end of March 2012, and must take into account any guidance published by the Secretary of State.

6.2 Background and reactions

The requirements of the Bill are in line with the Coalition's *Programme for government*, which stated:

> The Government believes that we need to throw open the doors of public bodies, to enable the public to hold politicians and public bodies to account. We also recognise that this will help to deliver better value for money in public spending, and help us achieve our aim of cutting the record deficit.[122]

The policy also ties in with the Government's requirement that all councils must publish data on items of spending above £500, as well as publishing contracts and tender documents in full.

---

118 Committee on Standards in Public Life press notice, *Public confidence in local government standards is at risk – Sir Christopher Kelly*, 14 December 2010

119 Standards Board for England press release, *94% in favour of councillors' Code of Conduct*, 28 May 2009

120 "Wilful quango cull won't save cash", *Regeneration & Renewal*, 25 October 2010

121 *Uncorrected transcript of oral evidence taken before the Communities and Local Government Committee*, *Localism*, 20 December 2010, to be published as HC 547-v, 2010-11

122 HM Government, *The Coalition, Our programme for government*, May 2010

The Local Government Association has said:

> Local councils are committed to transparency in the appointment and remuneration of staff. This is a matter for local discretion and the LG Group will work with the government to ensure that the requirements and guidance provide flexibility for councils to appoint and remunerate staff in a way that is locally appropriate.[123]

The Chartered Institute of Personnel and Development's report, *Transforming public sector pay and pensions*, noted that:

> If pay transparency is going to allow taxpayers and their representatives to hold public sector employers to account, then simply publishing job titles, salary levels and establishing arbitrary pay multiples is not going to be enough; they also need to know whether the pay of these employees reflects their contribution to the organisation. Otherwise the focus will be on the 'how much' rather than 'the what'.[124]

The report further noted that openness in the United States in some cases goes much further than the requirements spelt out in this Bill:

> Incidentally, there is a high degree of public sector pay openness in the United States under their freedom of information legislation. For example, the State of Utah is willing to provide names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers. And there is a publicly accessible online database that contains the exact salary of every state employee by name. Other states with a publicly accessible online database include Washington, Nebraska and California.[125]

The Public Sector People Managers' Association argued that:

> What, perhaps, is needed is a more considered approach to understanding the role and contribution that employees make to the organisation and whether, in the light of this, salary levels appear to represent value for money...and whilst greater pay transparency may be one aspect of better public sector pay management, this also needs to be accompanied by sound and effective governance arrangements, clear decision-making mechanisms and the use of appropriate pay structures, with clear performance and reward objectives.[126]

It has been said that publication of detailed information of this nature, rather than empowering those who do not currently have access to such data, could simply strengthen the power of those who know how to use the data. Matthew Taylor, Chairman of the Royal Society for the Encouragement of Arts, Manufactures and Commerce (RSA), for example, has said:

> Simply making more information available will not mean that people access more information and could in fact simply entrench advantage with those who understand how to access and use this information.[127]

---

123 LGA, *Localism Bill: LG Group On the Day Briefing*. 13 December 2010, p4
124 CIPD, *Transforming public sector pay and pensions*, June 2010
125 *Ibid*
126 PPMA, *What does the future hold for public sector pay and pensions?,* 2010
127 "Pass it on: The challenge for the Big Society is to spread civic engagement like a benign social virus", *Public Servant*, November 2010, p17

7 Other local government issues

7.1 Local democracy

Clause 27 of the Bill repeals Chapter 1 of Part 1 of the *Local Democracy, Economic Development and Construction Act 2009*, which required principal local authorities to promote understanding of the functions and democratic arrangements of the Council and other public bodies. Clause 28 removes the requirement for principal local authorities in England and Wales to operate a scheme for handling petitions to the authority.[128] The LGA has commented that:

> We are pleased that the government is taking steps to remove unnecessary specific duties on local authorities such as the requirement to respond to petitions and promote democracy. It is important that the overall burden of unnecessary duties and requirements on local authorities is reduced throughout this bill.[129]

7.2 Domestic waste reduction schemes

Clause 29 of the Bill will remove the powers of local authorities to introduce "pay as you throw". Instead, the *Explanatory notes* state "Local Authorities will still be free to introduce schemes which reward householders for waste reduction, under their well-being powers or general powers of competence, as appropriate, but will no longer need to complete the processes required under the *Climate Change Act 2008*".[130] The ability for up to five councils to introduce so-called 'bin taxes', or 'pay as you throw', was introduced in the *Climate Change Act 2008*. The Labour Government explained the policy as follows:

> Under the powers in the Act a maximum of five local authorities can pilot the schemes. Councils can come forward with their own schemes, for approval by the Secretary of State, that fit local circumstances. This approach will ensure that the impacts of incentives in England can be monitored and reported back to Parliament before a decision is made whether to roll them out more widely.
>
> Powers in the Act enable authorities to pay rebates to householders for good performance on recycling and waste minimisation. They also allow an authority, if it chooses, to collect incentive based payments from householders for their waste collection. To avoid placing additional burdens on local residents, the powers require that any pilot requesting payments from householders must return to residents all the revenue it collects. This means that residents as a whole will not be paying more. Authorities will also be able to pay back rebates, and collect any payments, through the Council Tax system, should they wish to do so.[131]

However, only one council made an application to introduce a scheme. On 8 March 2010 Bristol County Council applied to introduce a pilot, but the Coalition Government announced on 16 July 2010 that it "will not be further considering Bristol City Council's current proposal to pilot a waste reduction scheme under the *Climate Change Act*".[132]

---

[128] For background see Library Standard Note SN/PC/04856, *Petitions in local government*, last updated 16 June 2010
[129] LGA, *Localism Bill: LG Group On the Day Briefing*. 13 December 2010, p4
[130] DCLG, *Localism Bill: explanatory notes*, p27
[131] Defra, *Incentives for household recycling*, 2009
[132] Defra, *Localism Bill to be used to end trial 'pay-as-you-throw' schemes*, 16 July 2010

8 European Union fines

8.1 The Bill

Clauses 30-34 of the Bill relate to EU fines. The Bill allows the Secretary of State to require local or public authorities to make a payment in respect of any EU financial sanction imposed on the UK. In order to do this, the Minister must publish a statement of policy indicating the requirements by which an authority must make payments, as well as a determination of the amounts required to be paid. Before any authority becomes liable for the relevant amount, the Minister must publish a warning notice against which the authority can appeal, in advance of making a final EU financial sanction notice. This part of the Bill applies to county and district councils in England, London boroughs, the Greater London Authority and the Common Council of the City of London. However, the Minister can by order designate persons or bodies for the purpose of this part.

8.2 Background and reactions

The provision is an enabling provision designed to ensure that relevant authorities take responsibility for their actions, and as such fits in with the Bill's proposals for increased localism. Nonetheless, as an enabling power it remains possible that authorities that in the past would not have had to fund any infringements of EU law will now have to do so. At present national governments are responsible for paying EU fines of this nature; but, for the first time, this cost could now be passed on to other authorities.

It is not clear from the Bill under what circumstances this part will apply, or under what circumstances the Minister would designate others – either individuals or authorities – as being responsible for such fines. However, there are some potential cases in the pipeline to which this part may apply. For example, the UK is currently under scrutiny from the EU for failing to meet air quality limits in the London area. The UK strategy for meeting the limits submitted to the EU assumed that London's Congestion Charging Zone western extension would remain, but this was removed by the Mayor in December 2010. Other measures taken by the Mayor, such as limiting the scope of the Low Emissions Zone, are also predicted to have a detrimental effect on air quality.

The potential fines for the UK failing to meet these limited are estimated at £300m.[133] Air quality in London is the responsibility of the Mayor of London, so the Government is liable for the fine but does not currently have the powers to implement polices to address the problem. The new powers would therefore allow the Government to pass all or part of any fine imposed by the EU on to the GLA or the Mayor of London.[134]

The power has not been welcomed by local government sources. The LGA has said:

> We oppose any moves to order English councils to contribute to EU fines imposed on the UK government. The EU treaty clearly states that only governments are liable for fines. This measure, which has been imposed without any consultation with the sector, imposes a new regime for the government to impose fines extra judicially, by executive action. It will result in significant and unjustified financial strain on local authorities that are already facing extremely testing circumstances... The proposed clauses are unfair and unworkable, and it would be impossible to calculate fairly how to attribute any liability between the countries of the UK and between councils in England. We urge the Government instead to discuss with us how local and central government can work together to ensure the UK does not have to pay fines.[135]

---

[133] ENDS Report 419, *UK faces fines for neglecting air quality*, December 2010, p7
[134] *Ibid*
[135] LGA, *Localism Bill: LG Group On the Day Briefing*, 13 December 2010

9 Non-domestic rates

9.1 Business rate supplements

The Bill

Clause 35 contains amendments to the *Business Rate Supplements Act 2009* which are designed to ensure that all proposals for the imposition of a business rate supplement (BRS) must be approved by a ballot of all persons eligible to vote. At present a ballot is only mandatory where the BRS is to fund more than one third of the total cost of the project. The initial prospectus for a BRS will be required to state that there is to be a ballot, while the final prospectus will provide information on the results of the ballot.

Background

The *Business Rate Supplements Act 2009* gave effect to Labour's plans to introduce a power for upper-tier local authorities to levy a supplement on the business rates and to use those funds to support local economic development projects. In London, the rate supplement levied by the GLA is being used to part-finance Crossrail.

The power is a discretionary one and certain safeguards were incorporated into the legislation, for example, a cap of 2p per £1 of rateable value and automatic exemption for all properties with a rateable value (RV) of less than £50,000. However, the most contentious aspect of the scheme was that a ballot of ratepayers would only be a mandatory requirement where the scheme was projected to fund more than one third of the estimated cost of the project.

Conservatives and Liberal Democrats in both Houses sought to amend the Bill during its passage through both Houses in order to provide for a mandatory ballot of ratepayers.[136] The Conservatives' policy paper, *Control shift*, said they would give local firms a power "to back or block" a supplementary rate based on the Business Improvement District model. Following the general election, the Coalition's *Programme for Government* pledged to "stop plans to impose supplementary business rates on firms if a majority of firms affected do not give their consent".[137]

Views and responses

The arguments for and against ballots in all cases were rehearsed before and during the passage of the *Business Rate Supplements Bill* (later *Act 2009*). Sir Michael Lyons, who had recommended a BRS scheme in his report into local government, thought that it should not be made subject to a compulsory vote. This would, he said, make it more difficult to finance projects which might not be in the short-term interests of those affected but which would have widespread longer-term benefits. He also said that it would not be consistent with the accountability arrangements for other taxes.[138]

John Healey, then Labour Local Government Minister, argued at Committee Stage of the *Business Rate Supplements Bill*:

> Where other sources of funding are part of the package for a big project bringing wider benefits, and where there is a will to see investment from other sources so that such projects bring those wider benefits—just like Crossrail—those who argue for a ballot in

---

136 See House of Commons Library Research Paper, *Business Rate Supplements Bill: Committee Stage Report*, RP 09/12, 11 February 2010; House of Commons Library Standard Note, *Business rate supplements*, SN/PC/5137

137 HM Government, *The Coalition, Our programme for government*, May 2010, p28

138 Lyons Inquiry into Local Government, *Place-shaping: a shared ambition for the future of local government*, March 2007, p300

> all cases have to explain whether it is right that businesses should, in all those cases, have a vote and a veto on whether the project goes ahead?[139]

The CBI and other business groups had called consistently for firms to have a "proper say" in any decision involving the imposition of extra tax. Following publication of the Localism Bill, the Director General of the British Retail Consortium, Stephen Robertson, hailed the provision as a "major victory for the BRC on behalf of vulnerable retailers big and small".[140] Adam Marshall of the British Chambers of Commerce said:

> The Government's plan to give businesses a vote whenever a supplement is levied on business rates is exactly what Chambers of Commerce have campaigned for. We cannot have higher local business taxation in any area unless the local business community gives its backing – for example, to pay for a critical local transport project.

The LGA said in it's *On the day briefing*:

> The moves to require a ballot for all business rate supplements require the kind of mature partnership between councils and business reflected in the new local enterprise partnerships.[141]

9.2 Business rates: discretionary reliefs

The Bill

Clause 36 amends section 47 of the *Local Government Finance Act 1988* "...to replace the limited circumstances in which local authorities can currently grant discretionary relief with a broad power to grant relief to any local ratepayer".[142] In all but the circumstances specified, the billing authority must be satisfied that it would be reasonable to do so, having regard to the interests of local council tax payers. The billing authority must also have regard to any relevant guidance issued by the Secretary of State (or in Wales, Assembly Government Ministers).

Background

The present "nationalised" system of business rates allows local authorities little discretion. They administer the system but do not retain the revenues they collect (although that particular issue is due to be examined as part of the local government resource review commencing in January 2011). Discretionary relief may be granted by councils in certain specified cases, for example, individual cases of hardship. They may top up the mandatory relief available on premises occupied by charities, community sports clubs and certain types of rural business; and they may grant discretionary rate relief to certain types of non-profit making organisations.[143]

The Conservative Party's policy paper, *Control shift*, contained the following commitment:

> We will legislate to give local authorities a new discretionary power to levy business rate discounts – of whatever form they choose – as long as they can fund them from other local income or avoided costs. We will issue some light touch guidance to councils to ensure that they can deploy this new power without inadvertently breaching competition law. This power would apply to all precepting authorities, and authorities

---

[139] *Business Rates Supplements Bill*, PBC Deb, 27 January 2009 (morning), c122
[140] BRC news release, *Localism Bill means rates vote victory*, 14 December 2010
[141] LGA, *Localism Bill: LG Group On the Day Briefing*, 13 December 2010
[142] Taken from DCLG, *Business Rates Information Letter 11/2010*, 14 December 2010
[143] For further information see: Business Link, *Business rates relief*

> would be able to work together to fund a discount, rather than just the billing authority bearing all the cost.[144]

A Coalition Government announcement on 24 November 2010 indicated that the *Localism Bill* would:

> Give councils the power to set local discounts on business rates, provided that they are funded locally. This will give councils the ability to respond to local circumstances such as supporting the local pub or post office if they are struggling or encouraging new start-up enterprises. [145]

Views and responses

The *MJ* commented:

> The move will allow local authorities to respond to local economic circumstances to generate economic growth, for example, by allowing new technology start-ups to access discounts – potentially creating Silicon Valley-style specialist areas. The policy will also allow councils to support local pubs and post offices, still under threat from the fall out from the downturn.[146]

The NLGN has said:

> The ability to introduce business rates discounts will be a helpful tool for local authorities as they seek to encourage new business enterprises in their communities.[147]

9.3 Small Business Rate Relief

Background

The Small Business Rate Relief (SBRR) scheme was introduced following the *Local Government Act 2003*. Under the English scheme, the relief is available to businesses which occupy one property[148] with a RV of less than £18,000 (£25,500 in London). All ratepayers which meet these criteria are entitled to have their rates calculated using the small business rate multiplier. Additionally, properties with a RV lower than £6,000 are entitled to 50% relief; properties with RVs between £6,000 and £11,999 are entitled to tapered relief of between 0% and 50%. The cost of the relief is met by an increased multiplier for non-eligible businesses.

The Labour Government announced in its Budget of March 2010 a temporary increase in the level of SBRR. Following the general election of 2010, the Coalition Government announced that it would proceed with this measure. Between 1 October 2010 and 30 September 2011 eligible ratepayers occupying a property with a RV below £6,000 are entitled to receive 100% relief; those benefitting from taper relief are eligible for relief between 0% and 100%. Further information on SBRR can be found in a Library Standard Note, *Small Business Rate Relief* (SN/PC/4998).

---

144 Conservative Party, *Control shift: returning power to local communities*, February 2009, p13
145 DCLG, *Eric Pickles – Help to lift small business tax break take up*, 24 November 2010
146 "Small businesses to get tax reform", *Municipal Journal*, 2 December 2012, p9
147 NLGN, *The Decentralisation and Localism Bill: pre-publication briefing*, 13 December 2010, p13
148 Additional properties with rateable values below £2,600 are disregarded when considering applications for small business rate relief. However, the rateable values of all properties occupied by the ratepayer (including those with RV below £2,600) are added in when determining whether the ratepayer is below the qualifying threshold.

The extent to which eligible firms take up the available relief is not precisely known but the Federation of Small Businesses (FSB) has long campaigned for the scheme to be made automatic. Peter Luff (Conservative) introduced a private Member's bill in January 2009 which sought to make payment automatic.[149] However, the Minister, Sadiq Khan, argued at Second Reading that, without an application process, the burden of determining eligibility would transfer from the businesses, "...which know whether they meet the criteria, to the local authority, which might find it harder to determine.[150]

The Coalition's *Programme for Government* promised to "find a practical way to make small business rate relief automatic".[151] Eric Pickles announced in November 2010 that the Government would include provision in the *Localism Bill* for simplifying the process for SBRR by removing the legal requirement for ratepayers to submit an application form.[152] The accompanying press notice said that councils would be free to administer SBRR "in a way that best serves local businesses and local needs".[153] The Secretary of State also pledged that secondary legislation would be amended "to ensure that all eligible businesses in England automatically have their discounted bills using the small business multiplier".[154] The press release added that this would be "regardless of the number of properties that they occupy".[155]

The Bill

Clause 37 amends section 43 of the *Local Government Finance Act 1988* and removes the legal requirement for the ratepayer to make a formal application to the billing authority for relief. Should the Secretary of State in future prescribe conditions of eligibility that require an application to be submitted in certain cases in order to claim the relief, it will still be a criminal offence to submit a false application.

Views and responses

The Federation of Small Businesses welcomed these moves. John Walker, National Chairman of FSB, said:

> After rent and wages, rates are the biggest cost to many businesses and steps to help small firms automatically get the relief they are entitled to is welcome news. We have long been calling for small business rate relief to be made automatic and this cash injection will be of great help to many small businesses.
>
> The onus is now on councils to be creative and not needlessly make small businesses go through an application process when it is obvious they are eligible. We have developed excellent relations with councils across the country through our small business engagement accord and we will be urging them to use their new powers to ensure that all small businesses receive the relief that they are entitled to.[156]

9.4 Business rates and ports

The Bill

Clause 38 inserts a new section 49A into the *Local Government Finance Act 1988* which gives the Secretary of State the power to make regulations prescribing conditions for the

---

149 The *Small Business Rate Relief (Automatic Payment) Bill 2008-09*
150 HC Deb 6 March 2009 c1141
151 HM Government, *The Coalition, Our programme for government*, May 2010, p10
152 HC Deb 24 November 2010 cc38-9WS
153 DCLG press notice, *Eric Pickles – Help to lift small business tax break take up*, 24 November 2010
154 HC Deb 24 November 2010 cc38-9WS
155 DCLG press notice, *Eric Pickles – Help to lift small business tax break take up*, 24 November 2010
156 Federation of Small Businesses news release 2010/62, *FSB victory on small business rate relief*, 24 November 2010

cancellation of certain backdated non-domestic rates. The relief may only be given if the hereditament (i.e. unit of rateable property) is shown in the 2005 rating list, and as the result of an alteration made after the list was compiled. Paragraph 113 of the DCLG's memorandum to the Delegated Powers and Regulatory Reform Committee stated:

> The Government has already announced that it intends to prescribe conditions and that these are expected to include similar criteria to that of the existing eight year instalment scheme (which currently allows ratepayers that meet certain criteria to repay the backdated liability over eight years and benefit from the existing moratorium). Additionally, the relief will apply only to those who incurred the backdated liability following their property being formed, or split out, for the purposes of rating assessment from the rating assessment of another property, for which they were not liable to pay rates – thus focussing the cancellation on ratepayers who genuinely would have found the backdated liability unexpected.[157]

The regulations are to be subject to the negative procedure.

Background

Prescription rating (i.e. valuation of property using a centrally-set formula) was used in a number of nationalised industries, including Britain's larger docks and harbours, until it was ended by the *Local Government Act 2003*. The 2005 rating list was the first to value such property by conventional means. Unfortunately, after the list had been compiled, it became clear that a significant number of premises occupied by port-based businesses had not been separately assessed for rates but had been included in the port operator's assessment.

The Valuation Office Agency launched a ports review in May 2006 which took two years to complete. As a result of the review many port businesses, whose premises were now for the first time separately identified as rateable, were faced with substantial rates bills backdated to April 2005. Their plight was raised by campaigners both inside and outside Parliament. The Labour Government responded with a scheme which allowed companies in this position to pay their backdated rates liability over an 8 year period. Ministers insisted that waiving the liability completely would represent special treatment for those affected and would confer a disadvantage on other ratepayers. Further information on this subject can be found in a House of Commons Library Standard Note – *Business rates and ports* (SN/PC/5033).

The Conservative Party pledged in its general election manifesto to freeze these "punitive" backdated business rates on port businesses.[158] After the election, the Coalition Government introduced a moratorium on payments and, in the June 2010 budget, promised legislation to cancel bills where significant backdated liability has arisen because of separate assessment. This applied to any ratepayers in this position, not just port businesses. Some £175m has been set aside to pay for this commitment.[159]

The *Financial Times* reported that John Denham, former Communities Secretary, had said it was a "bizarre priority" to waive rates on companies, including some multinationals, while cutting costs across government: "They can't go around saying there's no alternative when they can find money for what nobody would suggest is fundamentally necessary or a top priority" he is reported to have said.[160]

---

157 DCLG, *Localism Bill: Memorandum to the Delegated Powers and Regulatory Reform Committee*, December 2010, para 113

158 *Invitation to join the government of Britain: Conservative Party manifesto 2010*, p25

159 DCLG press release, *Port tax rebate saving threatened industry*, 20 July 2010. See also HM Treasury, *Budget 2010 policy costings*, June 2010

160 "Labour criticises coalition's £175m waiver", *Financial Times*, 18 August 2010

10 Community empowerment

The Bill introduces a number of measures designed to empower the local community. These include referendums to approve or reject excessive council tax increases, powers for organisations to challenge local authority service provision, and powers to enable organisations to bid for community assets when they are put up for sale. The Bill also repeals some of the Labour Government's legislation in this area, including the requirement to promote democracy, to take into account petitions from local people and groups, and the well-being provisions of the *Local Government Act 2000*.

Responding to this policy, the LGA said:

> Many councils are already involved in moves to support local people, social enterprises and community organisations to take over the running of services and assets. The LG Group will wish to work with the government to ensure that the processes behind the right to challenge and right to buy do not stifle this good practice by imposing excessive process and regulation.[161]

The Centre for Local Economic Strategies has made a number of points about the community aspects of the Bill:

> The Localism Bill is based upon the premise that communities want to take control of the places in which they live and want to run local services such as libraries and post offices. The problem with this is that not all places and communities will have the desire, skills or leadership to take on this challenge. As we have found, in the shift from grant funding to contracting in the voluntary and community sector, the delivery of public services is complex and often bureaucratic. Historically, communities and small community groups have not had the turnover, skills or capacity to engage with the procurement process, let alone deliver public services. There is very little detail in the Bill as to how services will be transferred to community ownership, how communities will be supported to bid for opportunities, and how local government procurement will be simplified to enable communities to deliver services. Without this capacity building, surely service contracts will become dominated by multinational, private sector monopolies.
>
> There is also a challenge around accessibility to services if they are run by specific parts of the community where others are marginalised from the community or not part of the set up of voluntary and community organisations. There is a concern that services will simply favour those with a vested interest in the community. This could effectively exacerbate inequality.
>
> If government is serious about community delivery, this commitment needs to be accompanied by grant and capacity building support. After all, only about 80% of all voluntary and community sector organisations actually deliver public service contracts.
>
> These proposals are however based upon the premise that communities have the networks, relationships, and knowledge to influence change; the key components of social capital. In many localities community empowerment and development has been driven by 'usual suspects', something CLES has all too often found in the evaluation of regeneration projects and programmes. Developing neighbourhood plans, tendering for services, and bidding for assets are all things that require financial capital. The Bill

[161] LGA, *Localism Bill: LG Group On the Day Briefing,* 13 December 2010

> does not detail how communities finance these activities, nor does it provide any opportunities for 'seed-corn' financing.[162]

It has also been noted that it is not clear from the Bill what is meant by 'communities', or 'community groups'. Simon Jenkins writing in the *Guardian* has said:

> Move to the Bill itself and we see the need for more legally robust definition. There is a desperate attempt to delineate what a community is, in the form of wards, parishes and electoral districts. Within these vague boundaries are said to be a multitude of bodies not elected but 'relevant' to the Coalition's values: voluntary bodies, community bodies, charities, parishes, "two or more employees" of a local authority, and some other person as might be specified by the Secretary of State...there is no serious attempt to define the territorial entity that is to enjoy some novel power.[163]

John Findlay, Chief Executive of NALC, said in relation to the current Bill, "I believe these changes will be generally positive. But there is a challenge to translate these policy statements on the ground...All this is an opportunity for the future: empowerment at a local level. As you know, decision making is more effective at the local council level".[164]

Age UK has however expressed concerns that:

> The effective transfer of more control to local communities will need to ensure meaningful participation for the whole community. The Citizenship Survey 2009-10 showed that older people were less likely than younger groups to feel they could influence decisions locally and nationally and that the emphasis on community-decided approaches could mean that the loudest voices lead, without recognising the impact they may have on other people within their community.[165]

10.1 Local referendums

The Bill

Part 4 Chapter 1 of the Bill, clauses 39-55, relate to local referendums. The Bill ensures that a principal local authority must hold a local referendum on a local issue if certain conditions are met. These are receipt of a valid petition from local people, or a request from one or more members of the authority, or if the authority passes a resolution. The Bill also stipulates that the threshold for a valid petition calling for a local referendum is five percent of local electors for the area. However, order-making powers in the Bill will allow the Secretary of State to increase or decrease this threshold, although the Bill also allows an authority to hold a referendum even if this threshold is not met. The power allows the regulations to be different in a number of cases, for example for different areas or different types of authority.[166]

In general, authorities must allow a referendum when these conditions are met. However, Clause 44 sets out the grounds by which an authority may determine that it is not appropriate to hold a referendum. Such grounds might include for example, if the referendum relates to matters which are not local matters over which the authority (or partner authority) have an influence.

---

[162] CLES Bulletin 80, *Localism Bill*, December 2010
[163] "This Localism Bill shows Eric Pickles is Hazel Blears in super-sized wolf's clothing", *Guardian*, 15 December 2010
[164] NALC media release, *Localism in action*, 10 September 2010
[165] *Decentralisation and Localism Bill briefing*, Age UK, 2010
[166] DCLG, *Memorandum to the Delegated Powers and Regulatory Reform Committee*, December 2010, p27

Following the referendum, the authority must publicise the result in such a manner as it thinks appropriate. It must consider what steps (if any) it proposes to take to give effect to the result. If it decides to take no action, it must publish that decision together with its reasons.

The provisions do not currently apply to parish councils, but the Bill gives the Secretary of State power to make regulations to apply them to parish councils.

Background

Provision for various types of local referendum already exists in local government legislation. This includes the following:

- Parish polls which may be demanded at a parish meeting by a specified number of electors. These may be held on any question arising at the meeting but the result is not binding (*Local Government Act 1972*);

- advisory referendums which may be held by a local authority on any matter relating to its services or powers of well-being (*Local Government Act 2003*);

- mayoral referendums whose results *are* binding (*Local Government Act 2000*).

Referendums have become a regular feature of the local government scene since 1997 principally owing to the number of mayoral referendums which have been held (37 in England and 1 in Wales). Other (advisory) polls have been instigated by local authorities including four on levels of council tax and a number in connection with proposals for local government reorganisation.[167] Further information on these matters can be found in a Library Standard Note, *Local government: polls and referendums* (SN/PC/3409).

The Labour Government introduced a requirement for local authorities to run petitions schemes and to respond to local petitions. Petitions attracting a certain level of local support would trigger action by the council which might include any of the following: formal consideration of the petition, holding an inquiry, commissioning research, a written response, full debate or the appearance of a senior officer before the overview and scrutiny committee.[168] These provisions, which formed part of the *Local Democracy, Economic Development and Construction Act 2009*, came into force during 2010 but are now due to be repealed by Clause 28 of the present Bill. Further information on petitions can be found in a Library Standard Note, *Petitions in local government* (SN/PC/4856).

The Conservatives stated the following in their 2009 localism policy paper, *Control shift*:

> Under the Local Government Act 2003, local councils can choose to hold referendums on any local issue. But there is no mechanism for residents to petition for a local referendum per se.
>
> **We will give power to residents to hold local referendums on any local issue by legislating to ensure that a referendum is held in a local authority area if 5 per cent of local citizens sign a petition in favour within a six month period.**
>
> To minimise the cost of any such referendum, the poll would be held at the time of the next ballot in the locality (e.g. local elections, general election, European election),

---

[167] See Lords Select Committee on the Constitution, *Referendums in the United Kingdom*, HL 99 2009-10, April 2010, oral evidence, 13 January 2010, *Memorandum from Director of Democratic Audit*, para 16

[168] The threshold was to be determined locally but the Government set a maximum threshold of 5% of the local population.

> unless the council wished to finance a poll at an earlier date. The local Electoral Returning Officer would ensure the wording of the referendum question was fair and balanced, if necessary by obtaining the advice of the Electoral Commission.[169]

The pledge to introduce such a power was repeated in the Coalition's *Programme for government*.[170]

Views and responses

The arguments for and against referendums in general were examined by the House of Lords Select Committee on the Constitution in their 2010 report *Referendums in the United Kingdom*.[171] Key arguments in favour of local referendums are that:

- They give local people a greater say in the decisions which affect their lives; and
- by empowering people in this way, it promotes re-engagement with the political process.

Zac Goldsmith (Conservative), who has proposed a backbench bill on this subject,[172] has said that direct democracy provides a simple answer to the feeling of powerlessness and therefore disengagement among people. It allows them "to intervene on any local issue at a time of their choosing". However, in his view, the result of a poll must be binding, otherwise the exercise will be little more than "an expensive gesture".[173] Critics counter that a binding result (as in the Californian system) can burden councils with unmanageable financial commitments.[174]

A noted expert on constitutional matters, Professor Vernon Bogdanor, has suggested that local electors should be able to decide issues such as the size and shape of their council's budget or the organisation of schools within their authority. Allowing people to initiate action through petition can, he believes, yield real "double devolution", encouraging participation and helping to regenerate democracy.[175] By way of contrast, Dr Stuart Wilks-Heeg, Director of Democratic Audit, disputes the claim that local referendums boost democratic participation, citing relatively low turnouts in mayoral and other referendums.[176] The Lords Constitution Committee said it did not believe that referendums were "the most effective way of increasing citizen engagement with the local democratic process".[177]

Arguments against mandatory referendums triggered by popular vote include the following:

- they usurp the role of elected representatives in exercising their judgement on complex issues; and
- the interest of minority groups may be damaged since the result represents the will of the majority.

---

169 Conservative Party, *Control shift: returning power to local communities*, February 2009, p21
170 HM Government, *The Coalition, Our programme for government*, May 2010, p27
171 Lords Select Committee on the Constitution, *Referendums in the United Kingdom*, HL 99 2009-10, April 2010
172 *Local Referendums Bill 2010-11*, presented 26 July 2010
173 HC Deb 8 September 2010 c133WH
174 The NLGN has published a critique of local referendums. See Tom Symons, *What's the verdict on local referendums?* NLGN, 2009.
175 Lords Select Committee on the Constitution, *Referendums in the United Kingdom*, HL 99 2009-10, April 2010, Oral evidence, 20 January 2010, Memorandum from Professor Bogdanor, section 4
176 *Ibid*, para 16
177 *Ibid*, para 140

10.2 Council tax referendums

The Bill

The Bill introduces a new chapter (4ZA) and new sections into the *Local Government Finance Act 1992* which sets out methods by which councils should calculate their basic council tax requirement, and if it is deemed to be excessive, to provide for a local referendum. This is included as Schedule 5 of the current Bill, and the new Sections given below are to be inserted into the 1992 Act.

The intention of the Chapter is to ensure that excessive council tax increases are presented to the local electorate. This in turn ensures that any such increase will have to be defended by the authority and, if the local electorate disagrees with the council's arguments, they will have the ability to vote against the increase. If this is the case, the secretary of State must be informed in line with new Section 52ZO (of the 1992 Act) and in accordance with new Section 52ZN, any council setting an excessive council tax must prepare substitute calculations which are not excessive. This would then be used if the excessive increase is turned down by the local community.

New Section 52ZB sets out a duty on billing authorities, major and local precepting authorities to determine whether their basic council tax for a financial year is excessive. If it is excessive, then the council must hold a referendum to approve or reject the increase. New Section 52ZN stipulates that if the excessive increase is set by a local or major precepting authority, then this must be reported to the billing authority which in turn must hold a referendum, although the power will be available to the Billing authority to charge the precepting authority for that referendum. Nonetheless, this opens the prospect of a number of potential referendums in a county or district if the precepting authorities set excessive council tax levels.

The principles by which the excessiveness of any increase can be measured are to be determined by the Secretary of State, in a report which the Government intends will be debated at the same time each year as the local government finance settlement (Section 52ZD). The DCLG memorandum to the Delegated Powers and Regulatory Reform Committee noted that "the principles must constitute or include a comparison between the amount calculated by the authority as its basic amount of council tax for the year under consideration and an amount calculated by it as its basic amount of council tax for the financial year immediately preceding the year under consideration".[178]

However, the Secretary of State can specify circumstances where an authority would not have to hold a referendum. This would apply in cases where an authority could only discharge its functions effectively if it were allowed to increase council tax excessively. The same general provisions can also be applied to the Greater London Authority if it appears to the Secretary of State that any provider of the services paid for from the GLA council tax requirement could not meet its responsibilities for financial reasons.

Clauses 58-64 of the Bill cover the calculations that billing authorities, major precepting authorities and local precepting authorities must make to determine what their council tax level will be for a financial year. The Bill alters the current arrangement whereby councils set their budget requirement and then determine their council tax requirement, and provides new methods by which councils must determine their council tax levels and as a result removes the Secretary of State's power to cap an authority's budget. The explanatory notes state that "The principle effect of the clauses is to replace the obligation to calculate a budget requirement for a financial year with an obligation to calculate a council tax requirement".[179]

---

[178] DCLG, *Memorandum to the Delegated Powers and Regulatory Reform Committee*, December 2010, p30
[179] DCLG, *Localism Bill: explanatory notes*, p38

Once the level of required council tax has been determined, the authority must determine whether the increase is excessive and if it is, hold a referendum.

The calculation of the basic amount of council tax is set out in the schedules to the Bill. The Explanatory Notes indicate that the council tax requirement must be calculated as follows:

> 224. New section 31A [i.e. of the 1992 Act] requires a Billing authority to calculate its council tax requirement each financial year. A Billing authority is required to calculate its expected outgoings and income for the year under new section 31A(2) and (3). Where the authority's expected outgoings exceed its expected income the difference is the authority's council tax requirement for that year (new section 31A(4)).
>
> 225. New section 31A(5) to (9) specifies rules in relation to the calculations and new section 31A(10) enables the Secretary of State to alter the calculations and the rules by regulations. The calculations must be made before 11th March in the financial year preceding that to which they relate (new section 31A(11)).
>
> 226. New section 31B(1) requires a Billing authority to calculate its basic amount of council tax for the year by dividing its council tax requirement by its council tax base. A Billing authority's council tax base must be calculated in accordance with regulations made by the Secretary of State (new section 31B(3)) and this amount must be notified to the major precepting authorities that have power to issue precepts to the Billing authority within the prescribed period (see the definition of item T in new section 31B(1)).[180]

The same principles apply to major precepting authorities. The procedure also applies to the Greater London Authority, although it is slightly different because of the way in which the costs relating to the Metropolitan Police Authority is calculated.

Background

The main intention of these provisions is to increase the local accountability of a council, which will have to defend its decision on council tax to the electorate. It also removes the control previously exercised by the Secretary of State over local authority budgets, by removing the ability to cap those budgets. Since the mid-1980s successive governments have used a variety of capping powers in order to keep increases in council spending and/or council tax or rate levels within what they regard as acceptable limits. Sir Michael Lyons attacked capping saying that, "while it is born out of understandable motives, capping confuses accountability and can have perverse effects".[181] Labour ministers defended the practice, however, saying that capping powers were only used "to protect taxpayers from excessive increases".[182]

The Conservative Party in its *Control shift* paper, said:

> The problem with…'capping' is that it takes the power of decision about local spending and local taxation out of the hands of local voters, and hands it to remote central bureaucracies. **That is why a Conservative government will introduce a new system that uses local referendums to control the level of local taxation – providing a direct link between local residents and the spending decisions of the local authorities to whom they pay their council taxes. A referendum will be**

---

[180] DCLG, *Localism Bill: explanatory notes*, p39

[181] Lyons Inquiry into Local Government, *Place-shaping: a shared ambition for the future of local government*, Executive Summary, March 2007, p10

[182] DCLG press notice, *Government welcomes Lyons Report*, 21 March 2007

> **triggered if an authority proposes a council tax increase above the national threshold**.[183]

The Coalition's *Programme for Government* promised to "...give residents the power to veto excessive council tax increases.[184] A consultation paper on the practicalities of the proposed scheme was published on 30 July 2010.[185] In essence, any authority proposing to set a council tax increase above the limits set by the Government (and approved by the House of Commons) would be required to prepare a "shadow budget" in addition to its proposed budget. The shadow budget would be based on the maximum increase allowed within the Government's limits. Local electors then vote in a referendum and, if the proposed budget is rejected, the shadow budget is immediately adopted in its place.

An impact assessment in August 2010, published along with a consultation paper on the policy, noted that government intervention was necessary because:

> The current system gives no effective voice to local residents, instead empowering the Secretary of State to cap increases which central government considers to be excessive. Intervention is needed to shift the power to control council tax increases away from the Government, and towards local people".[186]

The policy objective is noted as being "To ensure that excessive council tax increases occur only where they have a clear mandate from local people".[187] The Government noted in the consultation paper itself that "until provisions for council tax referendums are in place, the Government reserves the option to use existing capping powers to protect council taxpayers from excessive increases where necessary".[188]

There have been a number of cases where council tax increases were voted on in a local referendum. Milton Keynes in 1999 voted in favour of a 9.8% increase in council tax, which, while the community were only given a number of council tax increases to vote on, was not the lowest percentage available. Such referendums have also taken place in Bristol and Croydon, although they differed in a number of respects.[189]

Views and responses

Eric Pickles called the plan "a radical extension of direct democracy". He said:

> Hardworking families and pensioners were left feeling powerless and frustrated in the past thirteen years, as council tax bills doubled while their frontline services like weekly bin collections were halved. If councils want to increase council tax further, they will have to prove the case to the electorate. Let the people decide.[190]

John Denham, then the Shadow Communities Secretary, responded:

---

183 Conservative Party, *Control shift: returning power to local communities*, February 2009
184 HM Government , *The Coalition, Our programme for government*, May 2010, p28
185 DCLG, *Local referendums to veto excessive council tax increases: consultation*, July 2010
186 DCLG, *Localism Bill – Provision for referendums to veto excessive council tax increases. Impact assessment – consultation stage*, August 2010
187 *Ibid*
188 DCLG, *Local referendums to veto excessive council tax increases: consultation*, July 2010, p9
189 DCLG press notice, *New people power to end the era of soaring council tax*, 30 July 2010
190 *Ibid*

> Labour had already reduced council tax increases to their lowest ever levels and it is years since any council needed to be capped. His referendum is claiming to solve a problem that need not exist.[191]

Professors George Jones and John Stewart wrote as follows to the *Local Government Chronicle*:

> The local budget is the result of a process of balancing expenditure priorities, which cannot be expressed in a simple yes/no question. It damages representative democracy since it destroys the whole point of local elections, if elected councillors see their judgments based on their electoral promises overturned in a referendum called by a minister.[192]

The impact assessment published with the local referendums consultation paper in July 2010 has considered the possible costs of such a measure, estimating that overall the costs across all authorities could be in the region of £960,000.[193] Prior to the publication of the Bill, the LGA reportedly criticised the referendum plans as "expensive and unnecessary". An article in the *Local Government Chronicle* reported:

> An LGA spokesman said there was a "tension between what the government is saying about localism and what has been announced. LGA vice-chair Richard Kemp estimated a referendum could cost £400,000 if it were carried out in a non-election year.[194]

The *MJ* reported in July that:

> The plan had been criticised by SOLACE elections chief, David Monks. He told *The MJ*: 'The idea of spending more than £100,000 on a referendum to put council tax up by X% is not a particularly good use of public money.'[195]

Responding to the DCLG consultation paper, London Councils also criticised the possible costs of the policy, noting that rather than giving local communities more say, few if any councils would actually be prepared to set excessive council tax levels:

> ...we believe these proposals are not substantially different to the current capping system but rather add a layer of complexity, cost and bureaucracy...An initial survey of our member authorities suggests that the costs of holding a local council tax referendum in a London authority could range from £250,000 to £500,000. This would divert resources away from local budget setting and service priorities. London also faces the possibility of a London wide referendum due to an 'excessive' change in the level of the GLA precept. Based on estimates received from boroughs, the cost of a London wide referendum on behalf of the GLA could be in the region of £13m ... All the costs and difficulties associated with the process of holding a local referendum are likely to prove a strong disincentive to local authorities to ever set a council tax increase which exceeds the thresholds set out by Government. In effect, this would mean that local referendums would centralise control in the same way as capping does currently. This outcome removes the ability of locally democratically elected

---

191 "Public to be given power to veto council tax bills", *BBC News Politics*, 30 July 2010
192 Letter: "Council tax referendums are damaging", *Local Government Chronicle*, 5 August 2010, p9
193 DCLG, *Localism Bill – Provision for referendums to veto excessive council tax increases Impact assessment – consultation stage*, August 2010, p3
194 "LGA launches attack on tax referendum proposals", *Local Government Chronicle*, 5 August 2010, p3
195 "Election expert rejects referendum plan", *Municipal Journal*, 15 July 2010, p3

representatives to properly respond to the needs of their local communities using the financial tools at their disposal.[196]

10.3 Council tax revaluation in Wales

The Bill

Clause 65 of the Bill amends the *Local Government Finance Act 1992* to give Welsh Ministers the power to determine by order the timing of council tax revaluations in Wales. The orders will be subject to the affirmative resolution procedure in the Assembly. This means Wales is no longer bound by the timetable for revaluations in Wales set out in the 1992 Act and can instead decide on its own timetable.

Background

The *Local Government Act 2003* implemented the Labour Government's commitment to introduce a regular revaluation cycle for domestic dwellings in respect of council tax. The Act provided for the revaluation in England to be completed before 1 April 2007 and for Wales before 1 April 2005.[197] There was also provision for a ten year revaluation cycle in both England and Wales but the Secretary of State (or in Wales the National Assembly) could require a shorter cycle by order.

The Welsh revaluation was carried out and took effect from April 2005. In England, however, David Miliband announced in September 2005 the postponement of the English revaluation and an extension to the remit and timescale of the Lyons Inquiry. Subsequently, the *Council Tax (New Valuation Lists for England) Act 2006* removed the statutory requirement for a revaluation in England by April 2007 and at intervals thereafter. The Secretary of State was given power to set the date for any future revaluation by order subject to affirmative resolution of the House. Labour ministers ruled out revaluation in England during the lifetime of the 2005-10 Parliament and, similarly, Coalition Government ministers pledged in September 2010 that there would be no revaluation during the 2010-15 Parliament.[198]

The 2006 Act did not affect the situation in Wales which remained tied to the provisions of the 2003 Act. Bob Neill announced by written statement on 3 December 2010 that Welsh taxpayers were entitled to the same "protection" as English taxpayers. The *Localism Bill* therefore includes provisions to cancel the legal requirement for a council tax revaluation in Wales that was due to take place in 2015 and devolve the power to Welsh Assembly Government Ministers to decide the timing of council tax revaluations in Wales, rather than being bound to the timetable set out in legislation passed following the *Local Government Act 2003*.

10.4 Community right to challenge

The Bill

The Bill introduces a number of new elements intended to empower local communities. Clauses 66-69 introduce a community right to challenge the services run by relevant authorities. The right will apply to voluntary or community bodies, parish councils and employees of relevant authorities. Such an organisation can make an "expression of interest" (EOI) to a relevant authority (a county council in England, a district council, a London borough council, or others carrying out public functions if specified by regulations) in running a service it provides. Following that EOI, the authority must either accept (with or

---

[196] London Councils, *Response to consultation on referendums to veto excessive council tax increases*, 17 September 2010

[197] The reason for the discrepancy in dates was that the National Assembly wanted to conduct a revaluation by 2005 but it was not possible, because of the sheer scale of the task, to complete the English revaluation to the same timetable.

[198] DCLG press notice, *No council tax revaluation tax rises pledge ministers*, 24 September 2010

without modification) or refuse the expression of interest, and if it is accepted, the authority must carry out a procurement exercise for the service in accordance with normal procurement rules. The authority must consider whether acceptance of the EOI, and how the procurement exercise, would promote or improve the social, economic or environmental well-being of the area. The authority must notify the relevant body of its decision, and if the EOI is accepted with modification or rejected set out its reasons for doing so; but it can only be rejected on grounds to be specified in regulations by the Secretary of State. Furthermore the Secretary of State may specify in regulations any services which are excluded from the community right to challenge.

Background and reactions

According to the DCLG, the community right to challenge opens the door:

> To a transformation in the way that local public services are run. Right to challenge gives community or volunteer groups, as well as parish councils and council employees delivering the service, new powers to challenge and take over a local service. This could include running children's centres, social care services and even improving transport links. Under the new law, councils must respond to this challenge and consider the positive impact the proposal could have on the community. If the proposal is turned down the council must publish the reasons for this. This new right puts voluntary and charity groups on the front foot when it comes to running public services and has the potential to open up new revenue for them.[199]

The introduction of a power to run local services was discussed by the Conservative Party during 2009 and early 2010. Caroline Spelman, then the Shadow Local Government Minister, said that this would "allow not-for-profit community groups to take over the running of struggling local facilities, from post offices to pubs and parks".[200] The press release listed a number of other institutions that could be covered, including libraries, lidos, playgrounds, parks, schools and school facilities. In Government, Andrew Stunell has also noted that the powers could be used to save pubs.[201]

There has been some concern about the effect of the policy. An article in the *Local Government Chronicle* has argued that it "raises the shadow of CCT":

> Michael Mousdale, a partner at law firm Trowers & Hamlins, said the new right, by triggering procurement processes for council services, could usher in a new wave of compulsory competitive tendering (CCT).
>
> "It is, if you like, CCT by the back door - but only if anyone can be bothered," he said.
>
> "It could be much broader in application, but what will stop a flood of CCT is that it must be triggered by a challenge and it is not compulsory," he added.
>
> Mr Mousdale added that while CCT had covered a limited number of services, the right to challenge could "cover everything".
>
> "The right to trigger the competitive bidding process may belong to the Big Society, but in competitive tendering the contracts are usually awarded to the private sector," he said.

---

[199] DCLG press notice, *Eric Pickles: Revolutionary new rights for communities will protect and transform local services*, 11 December 2010

[200] Conservative Party news release, *Helping local people save and run community facilities*, 19 November 2009

[201] See for example HC Deb 19 July 2010 c41W and HC Deb 29 June 2010 c531W

> CCT, a flagship policy of the Thatcher government in the 1980s, prioritised finding the right supplier at the cheapest price but was scrapped in 2000 in favour of an approach that emphasised value for money.
>
> Mike Bennett, assistant director general of the Society of Local Authority Chief Executive & Senior Managers, said the right to challenge could also mean only the most profitable council services were affected.
>
> "It could lead to innovation, but it could also lead to cherry picking," he said.[202]

An article by Andy Sawford, Chief Executive of the Local Government Information Unit, warned in the *Guardian* that:

> we must ask what will motivate more people to want to take over services or assets rather than have the council deliver them. Similarly, when community groups do get involved, how will we ensure that they are properly supported and that they are accountable in respect of service standards and use of public money?[203]

The memorandum from the DCLG to the Delegated Powers and Regulatory Reform Committee notes that the Department intends to consult on a number of aspects of the scheme, including the power of the Secretary of State to specify services which will be excluded from the right; the grounds on which an EOI may be rejected; and the various time periods applicable under these provisions.[204]

10.5 Assets of community value

The Bill

Clauses 71 to 88 require local authorities to maintain a list of community assets within their area. Nominations for listing may be made by parish councils in England or community councils in Wales, as well as by others who will be specified in regulations. Regulations will also specify the procedures to be followed when a nomination is received. The owner of the land will have the right to a review of the decision by the local authority, and regulations may include a right of appeal of the review decision. The list of assets must be published and made available to anyone who asks; a list of unsuccessful nominations, including reasons, will also have to be maintained by the authority.

The owner of listed assets cannot enter into a relevant disposal of the land unless each of three conditions is met:

- the owner must notify the local authority in writing of their wish to dispose of the land;
- either an interim or full moratorium period has been completed; and
- the protected period has not ended.

The meaning of "relevant disposal" is given in Clause 80 and is a disposal with vacant possession of a freehold estate or the grant, assignment or surrender of a lease granted for at least 25 years (see explanatory notes). This definition can be amended by the appropriate authority. Clause 83 of the Bill provides that such a listing will be a local land charge, administered by the local authority. The length of the moratorium will be specified in regulations.

---

202 "Spectre of 1980s CCT policy looms from bill", *Local Government Chronicle*, 16 December 2010
203 "The Localism Bill: the key points for councils", *Guardian*, 22 December 2010
204 DCLG, *Memorandum to the Delegated Powers and Regulatory Reform Committee*, December 2010, pp41-47

The Bill defines local authority as being a district council, a county council for an area where there are no district council, a London borough council, the Common Council of the City of London, and the Council of the isles of Scilly. This definition can be amended by the Secretary of State by order. In Wales, the Bill relates to a county council or a county borough council; again this can be amended by Welsh Ministers by order.

Background and reactions

This provision is seen by the Government as an important step in ensuring that community assets such as libraries and pubs are not closed down just because an authority or other organisation can no longer afford to keep them open. An answer from Andrew Stunell to a Parliamentary Question from Luciana Berger on 14 October 2010 gave more information about the Government's plans and the role of the Asset Transfer Unit, set up in 2009 by the Labour Government to give effect to some of the recommendations in the Quirk report, *Making assets work*.[205] The Unit continues to work to "promote best practice across England and provide advice and expertise on matters relating to asset transfer to communities". Mr Stunell said that "The Government are determined to put communities in a better position to respond to the closure of facilities that are important to them, and to the potential benefits offered by redundant buildings which they have plans to transform as community hubs".[206]

Eric Pickles has said:

> As part of our determination to shift power to local neighbourhoods, we will be acting to ensure that community organisations have a fair chance to bid to take over assets and facilities that are important to them, whether that is their village shop or last remaining pub, their community centre, children's centre or library, or a derelict site that could be transformed as a community hub.
>
> This provision gives communities time to put together their bid and raise the capital. Assets will then be sold on the open market at market value.[207]

One issue which may cause difficulties for the implementation of the Bill is that of restrictive covenants on pubs. If pubs are put on the asset register, current covenants may mean they cannot then be reopened by a rival. In order to counter this problem, the Government has announced that they will run a consultation exercise in 2011 to consider this matter. Commenting on the consultation proposals, Bob Neill said "Reviewing the use of this restrictive piece of red tape is another boost for localism and means that communities could use their collective powers to keep important hubs of community life open".[208] Greg Clark, Minister for Decentralisation, has said "the new law will ensure that social enterprises everywhere get a proper hearing, with councils formally obliged to consider their proposals without prejudice. Opening up to new ideas in this way has the potential to help deliver better results and make taxpayers money go further".[209]

The Scottish Executive in 2003 introduced a community right to buy for rural communities. The policy allows communities with a population of less than 10,000 in Scotland to apply to register an interest in land and the opportunity to buy that land when it comes up for sale.[210] Prior to the publication of the Bill, the idea of a 'right to buy', similar to the Scottish model, or to transfer assets was lobbied for by the local government community. However, some commentators have expressed a note of caution; Ann John, Labour leader of Brent Council,

---

205 *The Quirk review of community management and ownership of public assets*, 2007
206 HC Deb 14 October 2010 c370W
207 Speech by Rt Hon Eric Pickles MP to the Heart of the Community Conference, 2 November 2010
208 Hamish Champ, "Restrictive covenant consultation due by summer 2011", *The Publican*, 31 December 2010
209 "For the 'big society' to flourish, everyday heroes need influence", *Guardian*, 13 December 2010
210 *Part 2 of the Land Reform (Scotland) Act 2003: Community Right to Buy – Guidance*, Scottish Executive, 2009

has said, "some people want to be involved more and some don't, but many will not want to run services – that's what they pay their taxes for. You can't just ship things out for the community".[211]

Social Enterprise reported that the CEO of the Plunkett Foundation, Peter Couchman, welcomed the proposals as a "first step", but called for communities to have the right of first refusal for buildings and land on the register, along with a minimum six-month window for communities to prepare a bid for them and with access to "appropriate support and finance".[212] The *Financial Times* has noted that "the legislation...will not allow [communities] to buy the assets at a below-market price or deter competing bids".[213]

Mills-Reeve LLB, in a general briefing on the Bill, noted a number of potential problems with the policy:

> ... we are left gasping for a proper definition of "land of community value", which we are told will be determined in accordance with regulations. The effect of being on this list is that the owner of that land cannot dispose (i.e., sell the freehold or deal with a lease granted for more than 25 years) without first meeting three conditions. The details of these conditions will be prescribed at a later date but in essence they require the owner to notify the local authority of their intention to dispose of the land and wait until a specified period (to be prescribed in regulations) has passed in order to allow community interest groups to make a bid for the land. No details are yet provided of this bidding system but the moratorium period may be many months if community interest groups are allowed time to draw up business plans and obtain funding. Landowners may well be concerned by these provisions which restrict their right to sell their land when market conditions are optimum. On the plus side, compensation may be available to an affected landowner. However, there is no automatic right to this compensation and no guarantee it will be considered satisfactory.[214]

Sir Stuart Etherington, Chief Executive of the National Council for Voluntary Organisations, has been quoted as warning that "the transfer of assets is not without risk – to the asset itself or the organisation taking it on – so the implementation will need to be adequately resourced and sensitive to issues on the ground".[215]

11 Implementation of the Bill

The DCLG *Draft structural reform plan* indicated that the Bill should be passed by November 2011.[216] The Department's *business plan* indicates that the secondary legislation relating to the Bill will be completed by April 2012. A detailed memorandum has been presented by the DCLG to the Delegated Powers and Regulatory Reform Committee setting out the additional regulations that will be required once the Bill is passed.[217]

12 Extent

In general the Bill does not cover Scotland or Northern Ireland as local government is a devolved matter. However, discussions have been held between the Welsh Assembly Government and the UK Government to determine to what extent the Bill might apply to

---

211 Robert Bullard, "Its' going to be tough", *Local Government Chronicle*, 18 November 2010, p13
212 "Devil is in the missing detail warns sector on Localism Bill", *Social Enterprise* website, 14 December 2010
213 "Local groups to be given 'right to buy' assets", *Financial Times*, 14 December 2010, p2
214 Mills-Reeve, *Future perfect: updating you on planning issues*, December 2010, p4
215 "Local people to be given right to 'take over buildings'", *BBC News website*, 11 December 2010
216 DCLG, *Draft Structural Reform Plan*, July 2010
217 DCLG, *Localism Bill: Memorandum to the Delegated Powers and Regulatory Reform Committee*, December 2010

Wales. As a result, a number of aspects of the Bill relate to Wales as well as England. Certain parts of the Bill contain frameworks powers that devolve legislative competence to the Welsh Assembly, and two specific clauses relate only to Wales. In terms of the areas covered by this paper, the Bill allows for the devolution of local referendums on council tax levels, and the sections relating to predetermination, senior pay policy statements, business rate supplement ballots and discretionary business discounts, and the repeal of duties for local government to promote understanding of local democracy and make schemes for handling petitions, all apply to Wales. The pay accountability provision, and repeals relating to local democracy and petitions, will require a Legislative Consent Motion in the National Assembly.

The two Wales-only clauses are clauses 65, which gives Welsh Assembly ministers the power to decide when a council tax revaluation takes place, and thus gives the Ministers the same power as the Secretary of State over England; and Schedule 6, which leaves in place provisions relating to council tax capping, but only in Wales.[218]

[218] Wales Office news release, *Welsh Secretary welcomes Localism Bill to switch powers to communities*, 13 December 2010