

LOCALISM BILL: SENIOR PAY AND REFERENDA

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1. This paper addresses two aspects of the Localism Bill in two areas:
 - (i) pay restraint and transparency; and
 - (ii) local referendums.

SENIOR PAY AND ACCOUNTABILITY

2. Chapter 6 of Part 1 of the Localism Bill in its current form (clauses 22-27) establishes a new regime of transparency, accountability and restraint in relation to local authority pay. As part of *“The Coalition, Our programme for government”* (May 2010), the Coalition had 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.”

3. In similar vein, in the draft Code of Recommended Practice for Local Government Data Transparency published in February 2011, Eric Pickles and DCLG have indicated that local authorities should publish an organisational chart including the names and responsibilities of staff paid over £58,200 (the salary level equivalent to the lowest Senior Civil Service pay band).
4. The desire for transparent pay policy statements is also, plainly, the result of concern that senior local authority staff are paid ~~too~~ much+. The Impact Assessment in relation to senior officer pay accountability, published by DCLG in January 2011, emphasised:

“There is increasing evidence that senior pay in local government and Fire and Rescue Authorities has escalated in recent years and that the process for determining senior pay lacks transparency and local democratic accountability to taxpayers. Without Government intervention, local taxpayers will not have the necessary information to hold relevant authorities or democratically elected members to account for decisions affecting senior pay.”

5. The interplay between these two concerns was evident in the comments made by Eric Pickles at the Second Reading of the Bill on 17 January 2011. For example:

“Mr Edward Leigh (Gainsborough) (Con): Within the ethos and context of localism, how are we going to deal with the scandal of 129 local government executives earning more

than the Prime Minister? Perhaps they should have to go back to their local people and ask permission before they are paid such outrageous salaries.

Mr Pickles: My hon. Friend makes a very moderate and reasonable point. I have suggested to chief executives that in order to demonstrate that they are on the side of the workers, they should take a 10% cut if they are earning more than £200,000 and a 5% cut if they are earning more than £150,000. In future, under this Bill, such remunerations will not be arrived at through cosy little deals between the leader and the applicant but must come before the full council, which will have to endorse them. I am pretty sure that common sense will rear its head and we will no longer see this ridiculous creep in the sums of money for chief executives, who will be more cognisant of their responsibilities.”

PAY POLICY STATEMENTS

6. Clause 22 of the Bill now provides:

“22 Pay policy statements

- (1) *A relevant authority must prepare a pay policy statement for the financial year 2012-2013 and each subsequent financial year.*
- (2) *A pay policy statement for a financial year must set out the authority’s policies for the financial year relating to –*
 - (a) *the remuneration of its chief officers,*
 - (b) *the remuneration of its lowest-paid employees, and*
 - (c) *the relationship between –*
 - (i) *the remuneration of its chief officers, and*
 - (ii) *the remuneration of its employees who are not chief officers.*
- (3) *The statement must state –*
 - (a) *the definition of “lowest-paid employees” adopted by the authority for the purposes of the statement, and*
 - (b) *the authority’s reasons for adopting that definition.*
- (4) *The statement must include the authority’s policies relating to—*
 - (a) *the level and elements of remuneration for each chief officer,*
 - (b) *remuneration of chief officers on recruitment,*
 - (c) *increases and additions to remuneration for each chief officer,*
 - (d) *the use of performance related pay for chief officers,*
 - (e) *the use of bonuses for chief officers,*
 - (f) *the approach to the payment of chief officers on their ceasing to hold office under or to be employed by the authority, and*
 - (g) *the publication of and access to information relating to remuneration of chief officers.*
- (5) *A pay policy statement for a financial year may also set out the authority’s policies for the financial year relating to the other terms and conditions applying to the authority’s chief officers.”*

7. As Bob Neill MP, Parliamentary Under-Secretary of State for Communities and Local Government indicated, at the Commons Committee stage on 3 February 2011:

“Of course, what we are doing in the clauses is not to prescribe what a council’s policy or levels of remuneration should be; we are simply prescribing that there should be a policy. What it is, how it is phrased and what arguments are made are entirely matters for the relevant council. If, for example, the council wishes to set out in its policy the reasons why it thinks appropriate remuneration should be paid and the nature of the job, that can be incorporated in the policy. To that extent, the “must” relates to the having of the policy, not the way in which it is drawn up.”

8. Importantly, these provisions are no longer exclusively concerned with *senior pay*, as they were when the Bill was first published. They now require transparency in relation to an authority’s lowest-paid employees and the relationship between chief officer and other remuneration.
9. Amendments along these lines originally canvassed by Labour MPs at the Commons Committee stage. As Jack Dromey MP explained in debate in Committee:

“How will a highly paid chief executive officer be able to defend excessively high pay if the public can also see what the lowest paid members of staff earn in contrast? How will a council be able to defend an outsourced contract as good value if the pay transparency statement shows that those working on the contract are excessively paid?”

10. The current Bill does not go so far as Mr Dromey had proposed (or as the Labour front benches continued to propose thereafter). However, it is a significant step in that direction.
11. It remains to be seen what stance any DCLG guidance will take in relation to issues of low pay. As Bob Neill MP indicated to the Public Bill Committee:

“We intend to ensure that, whatever happens, that guidance reflects the fact that councils may extend their policies not just to senior pay, but to pay levels further down the organisation.”

THE DEFINITIONS

12. Who is subject to this requirement to publish pay policy statements?
13. A relevant authority is defined in clause 27(1):

“In this Chapter “relevant authority” means—

- a. a county council,*
- b. a county borough council,*
- c. a district council,*
- d. a London borough council,*
- e. the Common Council of the City of London in its capacity as a local authority,*
- f. the Council of the Isles of Scilly,*
- g. the London Fire and Emergency Planning Authority,*
- h. a metropolitan county fire and rescue authority, or*

- i. a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies.”

14. The policy statement is concerned with remuneration. As to this:

- a. Remuneration, in relation to a chief officer and a relevant authority, is defined in clause 27(3) as follows:

“In this Chapter “remuneration”, in relation to a chief officer and a relevant authority, means—

- a. *the chief officer’s salary or, in the case of a chief officer engaged by the authority under a contract for services, payments made by the authority to the chief officer for those services,*
- b. *any bonuses payable by the authority to the chief officer,*
- c. *any charges, fees or allowances payable by the authority to the chief officer,*
- d. *any benefits in kind to which the chief officer is entitled as a result of the chief officer’s office or employment,*
- e. *any increase in or enhancement of the chief officer’s pension entitlement where the increase or enhancement is as a result of a resolution of the authority, and*
- f. *any amounts payable by the authority to the chief officer on the chief officer ceasing to hold office under or be employed by the authority, other than amounts that may be payable by virtue of any enactment.”*

- b. In addition:

“References in this Chapter to the remuneration of, or the other terms and conditions applying to, a chief officer include—

- a. *the remuneration that may be provided to, or the terms and conditions that may apply to, that chief officer in the future, and*
- b. *the remuneration that is to be provided to, or the terms and conditions that are to apply to, chief officers of that kind that the authority may appoint in the future.”*

- c. As to employees who are not chief officers, there is a very similar definition in section 27(6), save that the definition does not include: (i) payments made under any contract for services (i.e. it is limited to employee pay); or (ii) any charges or fees.

15. Chief officers are defined in clause 27(2):

“In this Chapter “chief officer”, in relation to a relevant authority, means each of the following —

- a. *the head of its paid service designated under section 4(1) of the Local Government and Housing Act 1989;*
- b. *its monitoring officer designated under section 5(1) of that Act;*
- c. *a statutory chief officer mentioned in section 2(6) of that Act;*
- d. *a non-statutory chief officer mentioned in section 2(7) of that Act;*

e. a deputy chief officer mentioned in section 2(8) of that Act.”

16. In relation to chief officers (but not other employees), the policy statement may also cover other terms and conditions. These are defined in clause 27(4):

“In this Chapter “terms and conditions”, in relation to a chief officer and a relevant authority, means the terms and conditions on which the chief officer holds office under or is employed by the authority.”

17. A policy statement must be approved by a resolution of the authority before it comes into force. Equally, it can be amended by resolution . even after the relevant financial year is underway. Once approved or amended, however, it must be published . and it must always be published on the local authority’s website. This is provided for in clause 23:

23 Supplementary provisions relating to statements

- (1) *A relevant authority’s pay policy statement must be approved by a resolution of the authority before it comes into force.*
- (2) *The first statement must be prepared and approved before the end of 31st March 2012.*
- (3) *Each subsequent statement must be prepared and approved before the end of the 31st March immediately preceding the financial year to which it relates.*
- (4) *A relevant authority may by resolution amend its pay policy statement (including after the beginning of the financial year to which it relates).*
- (5) *As soon as is reasonably practicable after approving or amending a pay policy statement, the authority must publish the statement or the amended statement in such manner as it thinks fit (which must include publication on the authority’s website).”*

18. A financial year is defined, for these purposes, in clause 27(8):

“financial year” means the period of 12 months ending with 31st March in any year.

19. The provision on amendments is an important one, as the following exchange in the Commons Committee on 3 February 2011 demonstrates:

“Mr Raynsford MP: ... There are circumstances where, because unforeseen requirements emerge, an authority decides that it needs to make a new appointment and it is impossible to fill that post without offering a pay level for that type of activity that is out of line with its existing pay policy. There appears to be no flexibility in the way that the clause is written for an authority to make exceptions in exceptional circumstances. I do not argue that it should be free to disregard its own policy; that is not right at all. But it is always unfortunate if policies are written so rigidly that there is no scope for variation

when there is good reason for it, even though there could be caveats about additional safeguards that would need to be deployed in such circumstances. The measure appears to be extraordinarily rigid. I can envisage such circumstances arising in the area of east London that I represent. The Olympics next year will put certain obligations and responsibilities on local authorities that may require additional appointments, and I can envisage the situation that I described happening in those very exceptional circumstances. I wonder why a degree of flexibility is not built into the provision. The Minister may well tell me that the guidance that the Secretary of State will issue—clearly, whatever he says, the Government do not entirely trust local authorities—will cover the question of flexibility.

Andrew Stunell MP: I thank the right hon. Gentleman for speaking long enough for me to know the answer to this question. May I refer him to clause 22(4)? It states: “A relevant authority may by resolution amend its senior pay policy statement (including after the beginning of the financial year to which it relates).” In other words, should such a circumstance arise, there is flexibility in the primary legislation for the authority to amend its policy, perhaps in relation to a specific post or more generally, so that it can make sure that an appointment complies with the policy, even if the policy has a little bulge on one side to accommodate the situation. ... Subsection (4) allows a local authority to adjust according to its local circumstances.”

GOVERNMENT GUIDANCE

20. Clause 24 of the Bill provides that local authorities must, in setting pay policy statements %have regard+to any guidance issued by the Secretary of State:

%24 Guidance

- (1) *A relevant authority in England must, in performing its functions under section 22 or 23, have regard to any guidance issued or approved by the Secretary of State.*
- (2) *A relevant authority in Wales must, in performing its functions under section 22 or 23, have regard to any guidance issued or approved by the Welsh Ministers.”*

21. Andrew Stunell spoke on this issue in Committee on 3 February 2011, on behalf of the Under-Secretary of State. He commented, in response to concerns that this provision was too directive:

“The intention is for the Secretary of State to publish guidance on the practical operation of the measures. The Bill, as it stands, does not include the level of remuneration that should be brought to the attention of a full council. With inflation and other matters that might come to bear, over the years what the appropriate figure should be could change. The clause simply gives the Secretary of State the capacity to set parameters for the proposals that a council needs to take into account. I do not think Henry VIII’s sleep would be particularly disturbed by the power. It has a practical application and is designed to ensure that the intention of the clauses can be realised.”

DETERMINATIONS ON REMUNERATION

22. The remainder of this section of the Bill is concerned with ~~the~~ determinations made by local authorities from April 2012 in relation to remuneration or terms and conditions. By clause 25, local authorities ~~must~~ comply with their pay policy statements when making determinations:

25 Determinations relating to remuneration etc

- (1) *This section applies to a determination that—
 - a. is made by a relevant authority in a financial year beginning on or after 1st April 2012; and
 - b. relates to the remuneration of or other terms and conditions applying to a chief officer of the authority.*
- (2) *The relevant authority must comply with its pay policy statement for the financial year in making the determination.*
- (3) *Any power of a fire and rescue authority within section 26(1)(i) to appoint officers and employees is subject to the requirement in subsection (2).*
- (4) *In section 112 of the Local Government Act 1972 (appointment of staff) after subsection (2) insert—
“(2A)
A local authority’s power to appoint officers on such reasonable terms and conditions as the authority thinks fit is subject to section 25 of the Localism Act 2011 (requirement for determinations relating to terms and conditions of chief officers to comply with pay policy statement).”*

WHO CAN EXERCISE THE FUNCTIONS?

23. Finally, clause 26 prevents these pay policy functions being exercised by the executive of a local authority, and prevents the passing of a resolution from being delegated by the local authority to a committee or an individual officer. It provides:

26 Exercise of functions

- (1) *The functions conferred on a relevant authority by this Chapter are not to be the responsibility of an executive of the authority under executive arrangements.*
- (2) *Section 101 of the Local Government Act 1972 (arrangements for discharge of functions by local authorities) does not apply to the function of passing a resolution under this Chapter.*
- (3) *The function of a fire and rescue authority within section 26(1)(i) of passing a resolution under this Chapter may not be delegated by the authority.”*

“LOCAL REFERENDUMS”

24. The Bill also contains a series of provisions for the holding of local referendums in principal local authorities (county councils, district councils, London borough councils, the GLA the Common Council of the City of London and the Council of the Isles of Scilly) (clauses 42-59). These are very detailed provisions and what follows below is a brief overview of Bill’s structure.

WHAT TRIGGERS A LOCAL REFERENDUM?

25. There are three ways in which a referendum may be triggered, under clause 42:

- (i) where the authority receives a petition signed (ordinarily) by at least 5% of local government electors for the relevant area (which may be the whole of the authority’s area, or one or more electoral districts) (and 1% or more of the electorate of each borough in a London-wide referendum) which states the question that the petitioner want to be asked, and the authority determines that it is appropriate to hold a referendum: cl. 42(2), 43 and 46-47;
- (ii) where the authority receives a request made by one or more members, determines that it is appropriate to hold a referendum, and makes a compliant resolution: cl. 42(3), 45-47 and 50;
- (iii) where the authority itself passes a relevant resolution: see cl. 42(4) and 51.

26. The Bill does now make provision for special case petitions (i.e. petitions in which the chief finance officer estimates that the cost of holding a local referendum would be more than 5% of the amount last calculated by the authority as its council tax requirement for that financial year, or which the proper officer determines have substantially been the subject of a recent referendum, or which trespass on matters for which there is already a statutory process). Where a petition is a special case petition, the local authority has discretion as to whether to hold a referendum . it must do so if it resolves that the referendum should be held: see clauses 42(2) and 49.

27. Where a request is made by petition or by authority members, the local authority may determine that it is not appropriate to hold a referendum, but only on the grounds in clause 47. These are:

- (i) that the authority thinks that action to promote or oppose the referendum is likely to lead to a contravention of an enactment or a rule of law;

- (ii) that the authority think that the matter to which the referendum question relates is not a local matter over which the authority or (for certain authorities) any of its partner authorities has an influence, or which affects the authority's area or its inhabitants; or
- (iii) that the authority thinks that the petition or request is vexatious or abusive.

WHAT HAPPENS AFTER A PETITION, MEMBER REQUEST OR RESOLUTION?

- 28. After making a determination under clause 46 in relation to a petition, the authority must notify the petition organiser and publish the determination. A refusal must give reasons, and those reasons must be published, unless the authority thinks it would be inappropriate to do so (clause 47(9)).
- 29. After making a determination under clause 46 in relation to a member request, the authority must publish a determination in such manner as it thinks fit. Again, a refusal must give reasons, unless the authority thinks it would be inappropriate to do so. If the authority determines that it is appropriate to hold the referendum, it must then resolve whether in fact to hold it.

ARRANGEMENTS FOR A REFERENDUM

- 30. The authority must, in the first place, decide the question to be asked in the local referendum. That is to be the question stated in the petition, resolution, or request, unless the authority considers that the question so stated is misleading (following consultation with the petition organiser or requesting members). By clause 52 of the Bill, the authority must publish its decision about the question to be put, and give reasons if it has substituted its own wording.
- 31. When should the referendum be held?
 - a. the starting point is to identify ~~the~~ trigger date, i.e. the date of receipt of the petition or request, or the passage of the relevant resolution (clause 53(6));
 - b. the ~~the~~ window for the referendum is between two months and twelve months from the trigger date (clauses 53(2) and (5); and
 - c. if another referendum or election is to be held in the whole or part of the local authority's area within six months of the trigger date, the local authority is to be held on the same

date as the other referendum or election unless the authority thinks that in all the circumstances it would be inappropriate to do so (clauses 53(3) and (4)).

32. What publicity is required?

- a. the authority must, ordinarily, publicise, in such manner as it thinks fit, the fact and date of the referendum, and the question that is to be asked (clause 54(1));
- b. if the referendum question relates to a matter over which a partner authority has an influence, the authority must inform the partner authority of these matters (clause 54(3));
- c. where a referendum is held in response to a petition or request, the authority may publish material ~~designed~~ designed to encourage support for or opposition to the question to be asked in the referendum, as long as in so doing it does not incur unreasonable expenditure (clause 54(4)-(5)).

33. The registered electors in the area in which the referendum is to be held are entitled to vote in a referendum (clause 55(1)). In all other respects, the conduct of referendum voting is a matter for the Secretary of State to prescribe by regulations (following consultation with the Electoral Commission). However, regulations cannot make provision as to the question to be asked, the limits of expenditure, the effect of the result of a referendum, or for the questioning of the referendum result in a court or tribunal. Nor can they create criminal offences (clause 55(6)).

34. What are the consequences of a local referendum? By clause 56, after the result is known:

- a. the authority must publicise the result (in such manner as it thinks appropriate);
- b. the authority must (assuming it has influence over the matter in question) consider what steps it proposes to take to give effect to the result; and
- c. if the authority decides to take no steps, it must publish that decision, with reasons.

(Similar obligations fall on partner authorities.)

COUNCIL TAX REFERENDUMS

35. Finally, Part 4 of Chapter 2 makes specific provision in relation to Council Tax referendums.
36. Billing authorities, major precepting authorities, the GLA and local precepting authorities must calculate their council tax levels for each financial year: see clauses 60-68. Thereafter:
- a. these authorities must determine whether their basic council tax for the financial year is excessive (see Schedule 5, clause 52ZB);
 - b. this determination is to be made in accordance with principles to be specified for a given financial year by the Secretary of State (see Schedule 5; clauses 52ZC-D);
 - c. if the increase *is* excessive, the authority must hold a referendum to approve or reject it, in accordance with Schedule 5. If the excessive increase is set by a precepting authority, this must be reported to the billing authority, which must hold a referendum;
 - d. the authority must also make substitute calculations if the increase is excessive. These substitute calculations will have effect if the proposed increase is rejected in a referendum or no referendum is held (see Schedule 5; clauses 52ZF, H, I and J).
37. The relevant provisions are included in a new Chapter in the Local Government Finance Act 1992: see clause 60 and Schedule 5 to the Bill.

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