RESEARCH PAPER 00/44
6 APRIL 2000

The *Local Government Bill [HL]:* Local government leadership etc

Bill 87 of 1999/2000

This Bill, which is due to have its second reading debate on Tuesday 11 April 2000, would give local authorities the power to promote the economic, social or environmental well-being of their area and would enable them - although not, as the Bill now stands, compel them - to make new executive arrangements, separating executive and scrutiny functions, such as executive mayors.

Most of the Bill extends to England and Wales only. Paragraph 16 of Schedule 3 – dealing with parliamentary disqualification for members of Standards Boards – also extends to Northern Ireland.

The following Research Papers discuss other aspects of the Local Government Bill: RP 00/45 (electoral aspects); RP 00/46 (welfare services and social services functions) and RP 00/47 (the 'Section 28' debate).

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ISSN 1368-8456

Summary of main points

The *Local Government Bill* [HL][Bill 87 of 1999/2000] is due to have its second reading debate on Tuesday 11 April 2000.

Part I of this Paper offers an overview of the development of the Government's views on local government structures and standards and, particularly, on providing leadership and direction for local government. Part II describes the Joint Committee's scrutiny of the draft *Local Government (Organisation and Standards) Bill*, the precursor to the current Bill, and outlines the main points of the Bill as it relates to the executive arrangements and leadership of local government.

The *Local Government Bill* [HL][Bill 87 of 1999/2000] would give local authorities the power to promote the economic, social or environmental well-being of their area and would enable them - although not, as the Bill now stands, compel them - to make new executive arrangements, separating executive and scrutiny functions. Amongst other options, it would provide for executive mayors; options within the Bill include

- an elected mayor plus a cabinet of councillors
- an executive leader plus a cabinet of councillors or
- an elected mayor plus a council manager.

The Bill has raised some contentious issues, not least the questions of whether change should be compulsory or merely encouraged and whether the various models for executive arrangements which it proposes would add to or diminish transparency and openness. These issues are discussed in Part II of the Paper.

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I Forms of Executive in Local Government: The Government's agenda for reform

A. The 1997 labour manifesto

Over the past few years, the idea of a new role for local government has emerged: that of community leadership. An important aspect of this role is for councils to use their democratic mandate to bring together a range of different agencies and interests, including business, community groups and public agencies such as the police, the NHS and local quangos, in order to tackle persistent, complex problems like poverty, drug abuse, crime, poor health and run-down estates and town centres. This type of approach is (for example) envisaged for the mayor of London who, the Government hopes, will have a mandate to achieve change much stronger than his or her formal legal powers. Some have claimed, however, that the mayor will have insufficient powers to tackle the intractable problems facing the capital.

In its 1997 manifesto, the Labour Party set out its proposals for improving leadership within local government:[1]

> **Good local government**
>
> Local decision-making should be less constrained by central government, and also more accountable to local people. We will place on councils a new duty to promote the economic, social and environmental well-being of their area. They should work in partnership with local people, local business and local voluntary organisations. They will have the powers necessary to develop these partnerships. To ensure greater accountability, a proportion of councillors in each locality will be elected annually. We will encourage democratic innovations in local government, including pilots of the idea of elected mayors with executive powers in cities.

A pamphlet written by Tony Blair in 1998 warned that if local government failed to rise to the challenge on community leadership and in the other priority areas of high quality services and democratic legitimacy, the Government would seek new partners in carrying out its policies. He wrote:[2]

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1 *New Labour Because Britain Deserves Better:* Labour Party 1997. The manifesto's other proposals on abolition of "crude and universal" capping, "best value" and a fairer grant system are outwith the scope of this paper but were discussed in House of Commons Library Research Paper 99/1: *The Local Government Bill: Best Value And Council Tax Capping*, 8 January 1999

2 *Leading the Way: A New Vision for Local Government* Institute for Public Policy Research, 1998

> We need a new – a different – local government to continue the task of modernising Britain. A new role for a new millennium. A role that challenges the sense of inevitable decline that has hung over local government for the past 20 years and provides local people and their representatives with new opportunities
>
> … I want the message to local government to be loud and clear.
>
> A changing role is part of your heritage. The people's needs require you to change again so that you can play your part in helping to modernise Britain and in partnership with others, deliver the policies for which this government was elected.
>
> If you accept this challenge you will not find us wanting. You can look forward to an enhanced role and new powers. Your contribution will be recognised. Your status enhanced.
>
> If you are unwilling or unable to work to the modern agenda then the government will have to look to other partners to take on your role.

B. The Green Paper

The Green Paper *Modernising Local Government: Local democracy and community leadership* was published by the Department of the Environment, Transport and the Regions in February 1998 and is discussed in the House of Commons Library Research Paper *Cabinets, Committees and Elected Mayors.*[3] It set out the Government's analysis of the existing committee system in local government and made clear its support for alternative arrangements, such as elected mayors:

> 5.1 The way local government currently operates with its traditional committee structure is inefficient and opaque. This committee system was designed over a century ago for a bygone age; it is no basis for modern local government.
>
> **Too many meetings**
>
> 5.2 Councillors spend many hours on civic business. In 1985 it was estimated at 74 hours per month on average. A more recent figure, but based on a much smaller sample, produced an average of 97 hours per month, two-thirds of which was spent on preparing for, travelling to and attending council meetings. This time is often not spent efficiently.
>
> 5.3 The Audit Commission recently reported[4] that "too much of a burden is placed on councillors, often unproductively, by committee meetings". This puts people off entering local politics and it is not what councillors themselves want to do. While 70% of councillors

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3 Research Paper 98/38: 19 March 1998

4 Representing the People: The Role of Councillors, Audit Commission, 1997

in a recent study felt that representational work directly with the community was their most important role, they spent an average of only 30% of their time on it.

5.4 Furthermore, these committees are often not where the real decisions are made. In most councils it is the political groups, meeting behind closed doors, which make the big and significant decisions. There is sometimes little open democratic scrutiny of decisions taken except through the comments on decisions by opposition parties, where they exist. Too many decisions are taken within a committee structure where even the councillors can feel unable to influence events and in the absence of a real detailed knowledge of the needs and aspirations of the people.

5.5 But the story is not all bad. Many councils are already pushing at the boundaries of what is possible within the current legislative framework. They are trying innovative ways of involving the public in their decisions, adapting their committee structures to move away from the traditional functional structure and towards looking at strategic issues or devolving some matters to committees responsible for small parts of the overall council's area, for example.

5.6 The Audit Commission found that some councils have made progress in refocusing their committees to remedy some of their shortfalls (for example, by reducing agendas, committee membership, the number of committees, reform to allowances and greater delegation to officers). But it also found that the pace of change had been slow. The fact remains that the current framework is ripe for change.

Councils' political and management structure

5.7 Traditional committees are also a poor vehicle for developing and demonstrating community leadership. It is not always clear who has taken a decision in reality. Few people know who is the leader of their local authority or, just as important, who is chair of the education committee. The committee system fails to foster community leaders and leadership; local people have no direct say over their local leaders. Executive leadership needs to be visible. An individual can provide a clear focus for local leadership as experience across Europe and the Western world shows.

5.8 There is a strong argument for separating the executive and representational functions of councillors which are so easily confused in the traditional committee. Both have an important part to play in community leadership but in different and complementary ways. Leadership and scrutiny are distinct functions. Both are needed for a healthy democracy to function effectively. Both need to be recognised and accorded their rightful place and powers.

5.9 The Government believes that this separation of roles would mean:

- greater clarity about who is responsible for decisions;
- greater clarity about who has taken and should be held to account for decisions; and
- sharper scrutiny of these decisions.

5.10 Splitting these two roles would mean that it would no longer be possible for councillors to disclaim responsibility for corporate decisions. It would be clearer to both councillors and the public where decisions were being taken. Councils would be less able to operate behind closed doors without debate and review. And where existing committee structures have become unnecessarily bureaucratic, they would be shaken up and re-invented.

5.11 Accountability and scrutiny would be sharpened because those councillors who have played no direct part in the decisions taken will have a clear explicit responsibility to review and question those decisions, whether or not they belong to the same party as the executive. The result should be improved decision making, greater openness and greater accountability - even where there is no opposition party represented on the council.

The role of the executive

5.12 The role of the executive would be to exercise political leadership. Such leadership is necessary to make democracy work. Political leadership translates the wishes of the community into action, taking the hard choices about resources and priorities, building coalitions and working in partnership across all sectors of the economy to achieve shared aims. It forms the basis of accountability and allows sharper scrutiny of decisions taken.

5.13 Political leadership can be performed most effectively and openly where it is clear who has the power to take the decisions. Both the electorate and any potential partners for the authority need to be able to identify clearly who is holding the reins. This clarity cannot be delivered by the current committee structure. It requires a separately identifiable executive.

5.14 These benefits are the greater, the more the representative role and the executive role are separated. The Government is therefore very attracted to the model of a strong executive directly elected mayor. Such a mayor would be a highly visible figure. He or she would have been elected by the people rather than the council or party and would therefore focus attention outwards in the direction of the people rather than inwards towards fellow councillors. The mayor would be a strong political and community leader with whom the electorate could identify. Mayors will have to become well known to their electorate which could help increase interest in and understanding of local government.

The Green Paper sought to reassure councillors - most of whom were thought at the time to be resistant to the idea of elected mayors or cabinet-style decision making - that a backbench/scrutiny role would be worthwhile:

The role of the councillor

5.15 The Government believes that this separation of roles will also enhance the role of representative councillors. Currently councillors can effectively be excluded from the real decisions, even if they are in the party of the ruling group. They have no explicit power of challenge or scrutiny of those decisions either.

5.16 Separation of the executive and representational roles brings with it the opportunity for greater scrutiny. Instead of attending hundreds of meetings, at which some councillors may be able to make little contribution, they could make a real difference to decisions in areas that matter.

They would:

- review and question past decisions taken by those with executive responsibilities;
- be consulted before decisions are taken or policy is set; and
- review the policies and direction of the authority, proposing changes for the future.

5.17 In the past councillors have spent a great deal of time defending their provision of services to the public. Under new models they will be able to promote and defend the public interest to the council. They could spend more time in the local community at residents' meetings or surgeries - a role which is seen by both councillors and the public as being particularly important. The role of councillors would be expanded. They would become, in a much clearer way, the advocate of the local people, channelling their grievances and demands.

A wider role

5.20 The scrutiny role could also extend to other bodies operating in the authority's area. It might help ensure that the policies of quangos or bodies funded by the authority and those of the council and its executive were complementary and pulling in the same direction.

A rewarding role

5.21 In short, being a "backbench" councillor under such models could be less time-consuming, but more high profile, more effective and therefore more rewarding. This new role might encourage a wider cross section of the community to stand for election as councillors, thereby strengthening local democracy. But it is also important that political parties and local authorities take steps, as some councils already do, to encourage enthusiastic and able people to put themselves forward. These might include holding public meetings or producing leaflets on the work of councillors, emphasising the value of their role to the democratic health of their community and the nation.

C. The White Paper

The white paper *Modern Local Government: In Touch with the People*[5] further developed the ideas of improving local democracy through new political structures. Its main proposals were

- Replacement of the current committee system with new arrangements involving the separation of the executive role from the backbench role. One option will be a directly elected executive mayor with a cabinet
- A move to annual elections for most councils
- A new framework to govern the conduct of councillors and council employees
- Replacement of Compulsory Competitive Tendering (CCT) with a duty to achieve 'best value'
- A new duty for councils to promote the economic, social and environmental well-being of their area
- A more flexible power to cap high spending councils, which would only be used in extreme cases
- A new power to set a small supplementary business rate; any income raised would need to be used in ways agreed between the council and local businesses.
- A scheme to select 'beacon councils' to serve as pacesetters and centres of excellence. As an incentive, beacon councils will have greater freedom from central controls.

[5] Cm 4014: July 1998

In the foreword and introduction to *Modern Local Government - In Touch with the People* John Prescott, the Secretary of State for Environment, Transport and the Regions, said that:

> [To work in partnership with others and make their contribution to the achievement of our aims for improving people's quality of life] councils need to break free from old fashioned practices and attitudes. There is a long and proud tradition of councils serving their communities. But the world and how we live today is very different from when our current systems of local government were established. There is no future in the old model of councils trying to plan and run most services.

The white paper argued that:

> Traditional committee structures, still used by almost all councils, lead to inefficient and opaque decision making. Significant decisions are, in many councils, taken behind closed doors by political groups or even a small group of key people within the majority group. Consequently, many councillors, even those in the majority group, have little influence over council decisions.
>
> Councillors also spend too much time in committee meetings which, because the decisions have already effectively been taken, are unproductive … The emphasis ought to be on bringing the views of their community to bear on the council's decisions, and on scrutinising their performance … there is rarely any identifiable figure leading the local community.
>
> This is no basis for modern, effective and responsive local government.

The fourth and sixth of these proposals were enacted by the *Local Government Act 1999*, which received Royal Assent on 27 July 1999. The last does not require primary legislation to inaugurate the main elements of the scheme, which was described in the Department of the Environment, Transport and the Regions' prospectus published last year.[6] The first, second, third and fifth are covered by the *Local Government Bill 1999(HL Bill 87 of 1999/2000).*[7]

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6 *The Beacon Council scheme: how will it work? Prospectus*. DETR, February 1999

7 Although the Government is consulting on change to the system for National Non-Domestic Rate (business rates), no Bill is in immediate prospect.

D. The draft Bill

Local Leadership, Local Choice was published in March 1999.[8] A further paper on new forms of local executive, it contained a draft Local Government (Organisation and Standards) Bill. Its main points were

- The traditional ways councils work do not serve local people, local communities and councils well. New forms of local governance should be introduced, with strong leadership for local communities, powerful roles for all councillors and high standards throughout local government.

- Communities should have the leadership they want and need. Communities which want a directly elected mayor should have the opportunity to be led by one; elsewhere, councils would be expected to move to other new ways of working which meet the needs of their communities.

- Legislation would require every council to move to one of a range of new forms of local governance. These would fall within three broad types: a directly elected mayor with a cabinet; a cabinet with a leader; and a directly elected mayor and council manager.

- There must be a bond of trust between the community and those that represent them. Legislation would put in place a new framework to deliver high standards of conduct throughout local government, which would be laid down in statutory codes of conduct for members and officers.

- Standards committees should oversee conduct in each council. There should be independent investigation of alleged unethical conduct, with fair hearings and effective penalties for proven cases.

- Councils should start or continue an open dialogue with local people and other stakeholders about the shape and style of their local governance. In the light of this, councils should reassess their current working methods

A Joint Committee was established to consider the draft Local Government (Organisation and Standards) Bill and published its report in August 1999.[9]

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[8] *Local Leadership, Local Choice* (1999) Cm 4298

[9] HC 542 1998/99, HL 102 1998/99 - available from Parliamentary website at www.publications.parliament.uk

The Committee considered that the three options within the draft Bill were too restrictive and argued for the inclusion of further models on the face of the Bill. It noted that "Government preference for elected mayors is by no means universally shared" and expressed concern at the lack of any mechanism for removing an elected mayor (except through the legal procedure of disqualification from office following criminal conviction or a finding from the Adjudication Panel). Nor was it convinced that a separation of powers between executive and legislature was achievable. The Joint Committee also argued for a larger executive than the draft Bill envisaged and that some functions ought not to be discharged by the executive. It recommended too that any eventual Act, regulations or guidance should ensure that councillors not on the executive did enjoy the powerful roles which the proponents of change foresaw.

The Government's reply to the Joint Committee's report was published in December 1999.[10] The Government accepted many of the Joint Committee's recommendations, but rejected others. For example, the Government was not persuaded that local authorities should be able to make new arrangements which did not entail a separation of powers:

> **2.9 Accordingly, the Government does not intend to change the approach of the draft bill in order to permit the Secretary of State by regulations to allow councils to adopt forms of constitution which do not involve a separate executive linked with separate and rigorous arrangements for overview and scrutiny.**

However, the Government did accept the merits of including decision-making area committees and joint county/district partnership committees:

> 2.12 As the Committee also said "Such arrangements are in tune with the Government's objective of encouraging community consultation and bringing decision-making closer to the people". **The Government accepts this conclusion of the Committee. The Government, therefore, intends that legislation should allow the delegation of executive functions by the executive to area committees within the context of a systematic scheme of delegations and clear limits to those delegations in terms of functions and budgets.** This would ensure that there remains clear corporate accountability for executive functions.
>
> **2.14 However, where an overview and scrutiny committee was reviewing performance or challenging the basis of particular decisions, if a member of that committee played any part in the decisions in question, that person would be treated in the same way as someone with a pecuniary interest in a decision. The Government intends to achieve this by making appropriate provision in the proposed code of conduct.**

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[10] *Government Response to the Report of the Joint Committee on the Draft Local Government (Organisation and Standards) Bill* Cm 4529

Nor was the Government convinced of the merits of another permutation of the elements within its three options for executive arrangements – a council leader plus council manager:

> 2.17 The Government sees attractions in this form of constitution. However, it recognises that the person who is charged with providing the political steer to the council manager is in a position of great influence if not direct power. It believes that a single councillor in such a pre-eminent position should be directly elected by the people as that will enhance the accountability of that office and, consequently, of the council manager. **The Government does not, therefore, wish to make specific provision for a separate leader/council manager form of constitution in the bill.**

The Government was still not persuaded of the need for a mechanism to dismiss a Mayor, instead relying on their decision to resign if they had lost support:

> 2.35 Furthermore, should a mayor, as a result of this rigorous overview and scrutiny, become very unpopular, it is entirely possible that he or she may choose to resign, or be encouraged to do so by their party, or by local media and public opinion. **The Government has, therefore, considered whether a recall mechanism would be appropriate but takes the view that it would not be.**

In its briefing, the Local Government Association broadly welcomed the changes which the Government had accepted in response to the Joint Committee's report.[11] The Association particularly welcomed:

- The Government's inclusion of the new powers to promote economic, social or environmental well being
- The inclusion of provisions relating to the abolition of surcharge
- The Government's intention to include provisions to allow the delegation of executive functions by the executive to area committees and
- The Government's commitment to providing draft regulations to Parliament during the passage of the bill.

The Association considered that the Local Government Bill, as it finally appeared, had greatly benefited from the pre-legislative scrutiny process and its publication in draft form.

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[11] *Government Response to the Report of the Joint Committee report on the draft Local Government (Organisation and Standards) Bill - Thursday 2nd December 1999* available from the Local Government Association website at www.lga.gov.uk

II The *Local Government Bill [HL][Bill 87 of 1999/2000]*

The following seeks to offer an overview of the main points of the Bill. It is not and does not purport to be a comprehensive summary. Further background briefing is available in the Explanatory Notes.[12]

The Department of the Environment, Transport and the Regions also has a website devoted to the Bill, from which factsheets and other briefings are available.[13] The Local Government Association has a mass of information and comment about the Bill on its website[14] and has also produced a *Rough Guide* to the Bill. In the *Rough Guide*, the Local Government Association has stated that:[15]

> [We welcome] the broad thrust of the bill, especially the recognition of local authorities as community leaders and the new power to promote the well being of communities. We will seek to ensure the bill is applied in as flexible a way as possible.

A. The scope of the Bill

Most of the Bill extends to England and Wales only. Paragraph 16 of Schedule 3 – dealing with parliamentary disqualification – also extends to Northern Ireland.

The Select Committee on Delegated Powers and Deregulation reported on the Local Government Bill [HL] in December 1999.[16] The Committee remarked that the bill "[covered] many different aspects of local government law and [contained] many delegated powers". The committee went on:[17]

> The Department's Memorandum states that the Government is already proposing to table a number of amendments to the bill at committee stage which will confer new powers or affect powers already in the Bill. We do not think it satisfactory to proceed in this way. The Committee can only properly assist the House when there is time for the Committee to consider provisions in the context of the bill as a whole before the House has to do so.

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12 available at http://pubs1.tso.parliament.uk/pa/cm199900/cmbills/087/en/00087x--.htm

13 http://www.local-regions.detr.gov.uk//lgbill99/index.htm

14 www.lga.gov.uk

15 ***LGA rough guide to... the Local Government Bill*** available from LGA website www.lga.gov.uk

16 *Local Government Bill [HL], Care Standards Bill [HL], Race Relations (Amendment) Bill [HL], Statutory Nuisances (Hedgerows in Residential Areas) Bill [HL]* Second Report from the Select Committee on Delegated Powers and Deregulation Session 1999-2000 HL Paper 16

17 ibid, para 2

Turning to the provisions of the Bill, the Select Committee noted that several clauses conferred a Henry VIII power on the Secretary of State. The Committee recommended:

> 56. The Committee invites the House to consider whether concern about the width of the power in clause 3(3) will be met by the promised Government amendment to apply affirmative procedure or whether the purpose of maintaining a proper balance between local and wider interests should be written into the bill. We also draw attention to the power in clause 10(5) to create a new form of local authority executive and invite the House to consider whether the bill should require local authorities to be consulted before any regulations are made under the power. The House may also wish to consider whether it is appropriate that changes to the Statute Book made under clause 69 should be subject to negative procedure as the bill provides. There is nothing else in the bill which the Committee wishes to draw to the attention of the House.
>
> 57. The Government propose to move many amendments affecting powers in the bill and some adding four new powers to it. The Committee must reserve its position on these amendments until it has seen them. The Government's intention in this regard emphasises once again the importance of tabling amendments in time for the Committee to comment on them before the House has to consider them.

B. Promotion of Economic, Social or Environmental Well-Being etc

Modern Local Government - In Touch with the People[18] announced the Government's programme for community leadership:

> 8.8 The Government intends to introduce legislation to place on councils a duty to promote the economic, social and environmental well-being of their areas and to strengthen councils' powers to enter into partnerships.
>
> 8.9 This new duty will provide an overarching framework for local government. It will enshrine in law the role of the council as the elected leader of their local community with a responsibility for the well-being and sustainable development of its area.
>
> 8.10 It will ensure that councils must, at all times, consider the long-term well-being of their area. It will put sustainable development at the heart of council decision making and will provide an overall framework within which councils must perform all their existing functions …

[18] *Modern Local Government - In Touch with the People*: Cm 4014 July 1998

The DETR factsheet sets out the rationale behind this power:[19]

> **Why do local authorities need a power of well-being?**
>
> We want local authorities to be able to respond to the needs of their local communities and improve community well-being. But, at present, their powers fall short of allowing them to do everything that the community might want them to do. The well-being legislation will allow them to do more things to improve people's quality of life.
>
> **What will the legislation allow local authorities to do?**
>
> Local councils will have much more scope to take action they believe contributes to the economic, social or environmental well-being of their areas or the people who live, work or visit there. They will be able to work closely with other local bodies, like health authorities and local transport companies, to provide services in ways that people want.
>
> **Will there be any limits on what local authorities can do?**
>
> There will be sensible limits. Many laws stopping councils from doing specific things will remain because they are still needed. Councils will not be able to use the well-being powers to find new ways of raising finance; so they will not be able to introduce new taxes or charges on individuals or businesses.

The power envisaged in the Bill is not – as some commentators might have preferred – a power of general competence. As there is no such general power, local authorities' expenditure may in some circumstances be held to be *ultra vires*, if they have exceeded their powers.[20]

Although local authorities may generally only spend money on purposes for which they have explicit or implicit statutory authority, an exception is granted by section 137 of the *Local Government Act 1972;* this is the modern equivalent of the old "twopenny rate".[21] Under section 137 of the 1972 Act, a local authority may incur expenditure which is not authorised by any other statute and which in the authority's opinion is in the interests of, *and will bring direct benefit to*, its area or any part of it or all or some of its inhabitants. The direct benefit accruing must be commensurate with the expenditure to be incurred. Expenditure under section 137 is strictly limited according to type of authority and adult population of the authority.

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19 available from DETR Local Government Bill website at http://www.local-regions.detr.gov.uk//lgbill99/factsheets/wbeing.htm

20 For a discussion of the doctrine of ultra vires, see House of Commons Library research paper 97/80: *The PFI and the Local Government (Contracts) Bill 1997-98:* 20 June 1997 and Hilary Kitchin (1995) *A Power of General Competence for Local Authorities in Britain in the Context of European Experiments:* Local Government Information Unit, chapters 3 & 5

21 as amended by section 36 of the *Local Government and Housing Act 1989*

Clauses 1 and 2 of the Bill give local authorities[22] the power to do anything they consider likely to promote or improve the economic, social or environmental well being of their area. There are, however, limits on this power – a local authority may not do anything under clause 2 which they are otherwise prohibited from doing by any prohibition, restriction or limitation contained in any other enactment (**clause 3**).

The Explanatory Notes describe local authorities' current powers and their limitations:

> 6. Local authorities are statutory corporations and operate within a framework laid down by statute. They have no powers to act other than where they are expressly authorised by law to do so. There is a wide range of statutory duties which authorities are required to fulfil, and an even wider range of permissive powers enabling them to undertake defined activities if they so wish.
>
> 7. In addition, local authorities have a small number of 'general' powers. The most significant of these is section 137 of the Local Government Act 1972, which permits authorities to incur expenditure that is in the interests of their area, subject to certain conditions. One of those conditions is that s.137 cannot be used for any purpose for which there is authority in other legislation, or to overcome any limitations, prohibitions or conditions in other legislation.
>
> 8. This formulation has, on occasion, led the courts to take a restrictive view of the activities that can be pursued using s.137. In some cases, the courts have inferred from the absence of specific powers in other legislation that certain activities are prohibited and that an authority cannot, therefore, rely on its s.137 powers to overcome that prohibition. This has created uncertainty amongst local authorities and their potential partners about the extent to which authorities can rely on their general powers to undertake certain activities.
>
> 9. The scope of s.137 is further restricted by the limit on how much authorities can spend (currently between £1.90 and £3.80 per head of population depending on the class of authority); and by the additional restrictions placed on s.137 by the Local Government and Housing Act 1989. As a result of the 1989 Act, authorities must now be able to establish that any expenditure under s.137 is of "direct" benefit to their area and is "commensurate with the expenditure to be incurred".
>
> 10. Local authorities also have general economic development powers under s.33 to 35 of the Local Government and Housing Act 1989. Again, these powers are heavily constrained by the restrictions placed on their use.

Clause 4 enables local authorities to prepare strategies for promoting or improving the economic, social and environmental well being of their area, while **clause 5** enables the

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[22] In England, county, district, unitary and London borough councils (including the City of London) and the Council of the Isles of Scilly and, in Wales, all unitary councils

Secretary of State to make orders to amend, repeal, revoke or disapply any enactment which he thinks prevents or obstructs local authorities from exercising their power under clause 2. **Clause 6** confers a similar power on the Secretary of State to amend, repeal, revoke or disapply any enactment which requires a local authority to prepare, produce or publish any plan or strategy on any matter. Before making any order, **Clause 8** requires the Secretary of State to consult local authorities, such representatives of local government and any other persons whom he considers likely to be affected by his proposals. For proposals affecting local authorities in Wales, the Secretary of State must also consult the National Assembly for Wales.

At Lords committee stage on 25 January 2000 – by which time there had been more than 280 Government amendments to the Bill - there was some debate on the Bill's provisions on the promotion of well-being and on the degree to which local authorities should be able to demonstrate that their actions were necessary and sensible. In moving Amendment 1, Lord Peyton of Yeovil said:[23]

> Local authorities are being given huge powers here. My amendment seeks to place some onus on them to prove that their actions are necessary and sensible. As the Bill stands, all they have to do is to say, "We think it likely" or "We thought it likely". In other words, they can consider themselves the judges of the worth of their own legislation. …The amendment will introduce a sensible limit to the powers conferred upon local government. Such powers cannot be left entirely to the purely subjective judgement of local authorities.

However, Baroness Hamwee (who speaks on local government and planning for the Liberal Democrats in the Lords) considered that concepts of "reasonableness"[24] were implicit in the Bill:[25]

> … My noble friend Lord Tope recently discovered that "Wednesbury" is a place as well as a principle. For that reason I assume--and I hope that the Minister can confirm this--that that principle will apply here. In other words, one must read into this provision the term "reasonably". The matters which form the subject of the clause are points of judgment. We on these Benches would always prefer a local authority to be able to be the judge--within reasonable constraints--of what is proper and appropriate and what will achieve the objectives provided for in legislation. Local authorities are not being offered a blank sheet here. However, we would prefer to see local government being able to take a reasonable view of local circumstances without too much imposition from central government.

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23 HL Deb 25 January 2000 Col 1420 [this extract has been edited for length]

24 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223* established the test of reasonableness. To summarise broadly, even if an authority has the power to do something it can only exercise that power in a reasonable way and, if it behaves unreasonably in exercising its powers, the courts may intervene.

25 HL Deb 25 January 2000 Col 1422 [this extract has been edited for length]

Lord Filkin concurred:[26]

> …. I should also like to express my concern that we might be in danger of taking away with one hand what we are seeking to give with the other here. I believe that this clause is particularly important because it recognises the need to give local authorities the general power to promote the well being of their area rather than having always to seek a legal opinion as to whether they have vires.

After further debate, the amendment was defeated on a division.

1. The power to raise money

The Bill imposes a limit on local authorities' power to promote well being. **Clause 3(2)** stipulates that:

> **[3]** (2) The power under section 2(1) does not enable a local authority to raise money (whether by precepts, borrowing or otherwise).

At the Committee stage on 25 January 2000, amendments were discussed which would have lifted this restriction. Baroness Hamwee argued:[27]

> Amendment No. 22 deals with Clause 3(2), which provides that the power of well-being does not enable a local authority to raise money, whether by precepts, borrowing or otherwise. … Our objection in principle is the tight grip which central government keeps on local government expenditure, a degree of control which we think is wrong, unnecessary and not appropriate for good government.
>
> … Are local authorities to be restricted by this provision from generating a surplus? I think that clarity in this matter would be helpful. There is a real anxiety that the subsection will prevent councils from raising partnership contributions to activities and could undo the good that the earlier part of the Bill will undoubtedly do. I beg to move.

Lord Dixon-Smith also argued for the amendment:[28]

> We are back in the position that we were in on the Greater London Authority Bill. That Bill gave the Greater London Authority powers and then the Government immediately prescribed what I described as an "anti-power". Here we are again. The Bill gives local authorities the power to promote well being--it is not an absolute power of general competence but it goes a long way towards that--and then in the next clause it says, "Well, you have this power but you cannot spend

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[26] HL Deb 25 January 2000 Col 1422 - 3 [this extract has been edited for length]
[27] HL Deb 25 January 2000 Col 1462 – 3 [this extract has been edited for length]
[28] HL Deb 25 January 2000 Col 1463

> anything on this matter". One might think that that is what the clause means, but that is not what it says. It says that a local authority may not raise money, whether by precept, borrowing or otherwise.

In response, Baroness Farrington of Ribbleton – who speaks on local government for the Government in the Lords - said:[29]

> There is no limit on what local authorities can spend under the well-being power, but the point of the power is to give them discretion. … The noble Lord, Lord Dixon-Smith, raised the question of whether this was a kind of "anti-power". It certainly is not. Local authorities have plenty of specific powers which allow them to raise money, and there is nothing to stop them using those powers in tandem with the well-being power.
>
> …
>
> The limitation in subsection (2) merely stops local authorities using the well-being power to raise money, whether by precepts, borrowing or otherwise. There are good reasons for that, which mean that the Government cannot accept Amendment No. 22 or Amendments Nos. 23, 24 and 25. We do not believe that authorities should be able to use the well-being power to impose new taxes on individuals or business. The power to tax should be subject to the specific approval of Parliament. Arguably, Amendment No. 22 would place that decision in the hands of local authorities.
>
> Nor do we see merit in allowing authorities to use the well-being power in itself as a means of borrowing. There are specific terms and conditions around local government's power to borrow. There are two clear reasons for such controls, as my noble friend Lord Smith generously indicated. First, they ensure that authorities act prudently, so that local communities are not faced with an excessive burden of debt charges in future years; secondly, they help to ensure that the Chancellor's objectives for the national economy are achieved--both the "golden rule" that borrowing should only be for investment, not for day-to-day spending, and the rule that public sector debt should be kept at a prudent and stable level over the years.
>
> However, we are keen to look for alternatives to the present system of controls on local government capital finance, which would continue to meet the same broad prudential and macro-economic objectives but in a simpler and less restrictive way. We are exploring that with the LGA as part of our wider review of local government and it will be included in this summer's Green Paper.
>
> …

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[29] HL Deb 25 January 2000 Col 1466 – 7 [this extract has been edited for length]

> In response to the noble Lord, Lord Dixon-Smith, and the noble Baroness, Lady Hamwee, the Government are determined to place charging on a more rational footing. … In response to my noble friend Lord Smith, we are determined to make rapid progress on this issue and to bring forward proposals in the local government finance review Green Paper this summer.
>
> In response to the noble Baroness, Lady Hamwee, let me make it absolutely clear that the well-being power does not prevent local authorities from charging for services. They simply cannot use the power itself as a means for doing so. Under Section 150 of the Local Government and Housing Act 1989 the Government can make regulations to allow authorities to charge for services that they provide, although that power cannot be used in respect of some specified functions, including education in schools and fire-fighting. Local authorities can continue to use their powers under the Local Authorities (Goods and Services) Act 1970 to charge for services that they provide to other public sector bodies.

Amendment 22 - which would have deleted clause 3(2) and so removed the prohibition on local authorities' raising money by precepts, borrowing or otherwise in connection with their power to promote well being – was not agreed to.

2. Equality of opportunity

The Greater London Authority – which is a body corporate rather than a local authority – is required to be mindful of equal opportunities in its functions. Section 33 of the *Greater London Authority Act 1999* requires the Greater London Authority to have regard to the principle of equality of opportunity and to publish reports accordingly.

> Equality of opportunity.
>
> **33.** - (1) The Authority shall make appropriate arrangements with a view to securing that-
>
> > (a) in the exercise of the power conferred on the Authority by section 30 above,
> >
> > (b) in the formulation of the policies and proposals to be included in any of the strategies mentioned in section 41(1) below, and
> >
> > (c) in the implementation of any of those strategies,
>
> there is due regard to the principle that there should be equality of opportunity for all people.
>
> (2) After each financial year the Authority shall publish a report containing-
>
> > (a) a statement of the arrangements made in pursuance of subsection (1) above which had effect during that financial year; and

> (b) an assessment of how effective those arrangements were in promoting equality of opportunity.
>
> (3) The functions conferred or imposed on the Authority under or by virtue of this section shall be functions of the Authority which are exercisable by the Mayor acting on behalf of the Authority.

In Committee stage on 25 January 2000, Lord Harris of Haringey moved an Amendment to the Local Government Bill which would have required local authorities to take account of equal opportunities and harmonious race relations in using their powers:[30]

> **Lord Harris of Haringey** moved Amendment No. 13:
> Page 2, line 10, at end insert--
>
> ("( ) In determining whether or how to exercise the power under subsection (1), a local authority must have regard to the effect which the proposed exercise of the power would have on equal opportunities and on the promotion of harmonious race relations in that local authority's area.").

He remarked:[31]

> … Amendment No. 13 would have the effect of placing at the centre of the new power an obligation to have regard to the effects of the exercise of that power on equal opportunities and the promotion of harmonious race relations. That is something which should be explicitly reflected on the face of the Bill. It is important to do that given the discussions which have taken place following the Stephen Lawrence Inquiry and the implications of the Macpherson Report, not just for the police service but for all public services.
>
> Quite clearly, that report was saying to local government, as it was saying to other public services and to the police, that local government needs to look at the way it operates and that part of the exercise of its powers should be promoting equal opportunities and thereby helping to achieve harmonious race relations. That is a critical responsibility of local government.

In similar vein, Amendment 57 proposed that, as well as promoting equality of opportunity for all persons irrespective of race, sex, disability, age, sexual orientation, or religion, local authorities should publish an annual statement and assessment of how effective their arrangements had been.

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30 HL Deb 25 January 2000 Col 1449
31 HL Deb 25 January 2000 Col 1450

For the Government, Lord Whitty (spokesman in the Lords on the Environment, Transport and the Regions) suggested that there might be other means of achieving the same goal:[32]

> I am not sure that we should directly link the question of the promotion of race relations and equality to the physical exercise of the power of well being, as suggested by Amendments Nos. 13 and 33. …
>
> As certain Members of the Committee, I expect, are aware, the Government will be publishing a consultation paper within the next few months, which will look at equality issues. That paper will discuss placing a general duty of equality on all public sector organisations. Therefore, it is difficult for me to agree to an amendment to the Bill inserting a form of words relating to equality that might well be generalised as regards all public sector authorities at a later stage.
>
> … However, I think it would probably be better for me to consider whether there is a more appropriate way of achieving the objectives to which noble Lords have referred.

Amendment 13 was withdrawn.

C. Arrangements with Respect to Executives

1. New ways of working in local government

The Local Government Act 1972 allows a local authority to delegate the full council's powers in most cases to a committee, but not to a mayor other individual councillor. The proposals for executive mayors are therefore novel.

Nick Raynsford (Minister for Housing, Planning and London) confirmed in 1998 that [33]

> Within the 3 models proposed in the White Paper--directly elected mayor with cabinet, cabinet with a leader, and directly elected mayor and Council manager--the scope for local diversity is great. If practice subsequently points up the possibility of other further valuable models for separating out the executive from the scrutiny role, the Government intend to provide for them to be available to local authorities.

Many local authorities have introduced new arrangements, ahead of legislation. The Local Government Association's own research, for example, suggests that many local authorities are well on the way towards implementing executive arrangements:[34]

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[32] HL Deb 25 January 2000 Col 1452 [this extract has been edited for length]
[33] HC Deb 3 November 1998 Col 457W

- **75%** of authorities have already considered the proposal for an executive/representational split, and a further 16% have this work in progress.
- **78%** of authorities have expressed a preference for a Cabinet with a Leader, 2% for a directly Mayor with a Cabinet
- **37%** of authorities already have scrutiny committees in place, 26% plan to have these in place in the next 6 months, 25% have this planned for the future
- **over 90%** either have or plan to establish standards committees.

a. Public interest in new arrangements

The figures quoted above suggest that few local authorities favour the directly elected mayor model. Ultimately, though, it would be for the local electorate to decide, via a referendum, whether to proceed along this route and other surveys indicate that this model is popular with the public. Clause 11(5), which is discussed later, and clause 24 (3) require the local authority to take reasonable steps to consult local electors in drawing up proposals for executive arrangements; where those executive arrangements would entail a mayor and cabinet executive or mayor and council manager, there must be a referendum (clause 25(2)).

As an example, the following article from the *Birmingham Post* describes public reaction there:[35]

> Almost half of Birmingham residents believe the city should have an elected mayor, according to the first replies to a survey aimed at regenerating interest in local government.
>
> The People's Panel questionnaire was sent out by the Democracy Commission, which hopes to increase citizens' involvement in local politics. The commission was set up following the Government's decision to order a revamp of local authorities in an attempt to drag voters back to the polls, speed up the decision-making process and make councillors more accountable.
>
> Questionnaires were pushed through 1,000 doors across Birmingham in early February in the council's newspaper, Voice. So far there have been about 300 replies with the deadline for people to respond by the end of the month. Interim results from the survey, analysed by MORI, show that while 82 per cent of respondents did not know a great deal about the proposals for change, 47 per cent thought having an elected mayor was a good idea. And 50 per cent said they would be more likely to vote if there were polling booths in supermarkets and shopping centres.

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34 Source: *Local Government Bill 2000:* LGA Briefing 26 November 1999 (available on LGA website)

35 "Council Survey Reveals Almost Half Of City Voters Want An Elected Mayor" *Birmingham Post Europe Intelligence Wire* 8 March 2000 (this article has been edited for length)

> About 63 per cent said they would vote if local government had more power to do as the people wished rather than answering to central government.

b. Early experiments with new executive arrangements

The first local authority to form a cabinet with executive mayor was the London Borough of Hammersmith and Fulham. This was an attempt to embody the aims of the Local Government (Experimental Arrangements) Bill, which is described in the research paper but never became law.[36] Andrew Slaughter - Hammersmith and Fulham's first executive mayor - has written of how the project had to be modified in several respects before its adoption, in order to comply with the *Local Government Act 1972*.[37]

The LGA briefing offers examples of new political management structures:[38]

> **Breckland Council**, a Conservative controlled council introduced new arrangements in early 1999. There is a balanced cabinet of four conservative, three Labour and two independents. The cabinet co-ordinates activities in the council, and takes all major strategic and policy decisions. The non-executive members role is an important one which fully recognises their representational role. **Contact Officer:** Rob Garnett, Chief Executive (Tel: 01362 656270)

> **East Sussex County Council**, a council with no overall control, but with a Lib Dem/Labour administration, is moving towards a Cabinet and Leader. The cabinet consists of a Leader and five members of the Lib/Lab administration. The County Council appoints the Leader and Cabinet. The cabinet has responsibility for the executive management of the Council, formulating and recommending strategy and policy. Cabinet members each have lead responsibility for one of the county council's cross cutting priority areas. There are six standing Scrutiny Committees. These are linked to the cross-cutting priorities. **Contact Officer:** Jane Mackney, Principal Committee Secretary (Tel: 01273 481955)

2. Transparency

The Department of the Environment, Transport and the Regions' factsheet states that:[39]

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36 *Cabinets, Committees and Elected Mayors*: House of Commons Library Research Paper 98/38 19 March 1998

37 "Experimenting with the Laws of Change" *Local Government Chronicle*: 14 August 1998

38 Source: *Local Government Bill 2000:* LGA Briefing 26 November 1999 (available on LGA website)

39 available from the DETR Local Government Bill website at http://www.local-regions.detr.gov.uk//lgbill99/factsheets/open.htm

Openness and Accountability

New political management structures with a separate executive will make councils more open, effective and accountable.

The existing requirements for access to information will remain for all meetings of the full council and of remaining committees, including overview and scrutiny committees. This means that papers for those meetings will be made publicly available in advance and the meetings will continue to be open to the public.

These arrangements will be modified for meetings of the executive.

Nevertheless, one of the criticisms made by those who do not welcome the new executive structures for local government is that they diminish, rather than enhance, accountability and openness.

There has been no formal pilot programme. As Ministers have stressed, any local authorities making new executive arrangements now are doing so voluntarily and within the existing legal framework:[40]

Mr. Coaker: To ask the Secretary of State for the Environment, Transport and the Regions what steps he will take to ensure transparency in the decision-making process of the cabinet-style arrangements envisaged by the Local Government Bill [Lords].

Ms Beverley Hughes: The arrangements we are proposing in Part II of the Local Government Bill and draft guidance are designed to ensure transparent and inclusive decision-making. These new arrangements involve:

an inclusive process of formulating a council's policy framework and budget, which will be the responsibility of the full council in public;

publicly known individuals--the executive--being personally responsible for implementing this framework and budget;

accurate recording of decisions and their reasons, and timely publication of these and of the background and factual papers available to the decision-maker(s);

and powerful overview and scrutiny committees, meeting in public:

to discuss and make recommendations on the development of policies; and

[40] HC Deb 21 March 2000 Col 469-70W

> to hold each executive member to account for what he or she has done and is planning to do.

> **Mr. Coaker:** To ask the Secretary of State for the Environment, Transport and the Regions what assessment he has made of the transparency of the decision-making process of those authorities which have experimented with the cabinet-style arrangements envisaged by the Local Government Bill [Lords].

> **Ms Beverley Hughes:** We have made no general assessment of experimental arrangements. However, any such experiments have been carried out within the existing statutory framework which was not designed to deliver the transparency of decision-making which will be put in place by our proposals in the Local Government Bill.

The Government has similarly emphasised that any access facilities, forming part of new executive arrangements made now, may not fit with the requirements of the Bill:[41]

> **Local Authority Deliberations: Public Access**
>
> **The Earl of Northesk** asked Her Majesty's Government:
> In the light of their policies for freedom of information, what their response is to the recent survey by the Society of Editors that reveals that an increasing number of new "cabinet" governments at local authority level are not allowing the public or press to witness their deliberations.[HL1594]
>
> **The Parliamentary Under-Secretary of State, Department of the Environment, Transport and the Regions (Lord Whitty):** Ministers have not seen the survey by the Society of Editors. The arrangements we are proposing under Part II of the Local Government Bill would enhance efficiency and ensure more transparent and inclusive decision-making. Experiments which local authorities are carrying out are within the existing statutory framework that was not designed for executive arrangements. In some cases, these experiments do not yet match up to what the Bill, if enacted, will require.

Some of the media comment too has focussed on the perceived lack of transparency in the functioning of local authority executives – a particular concern for some commentators in the absence of any requirement for political balance. The *Hull Daily Mail* discussed local concerns:[42]

> Opposition councillors say they fear a revamped cabinet might not only exclude them but also members of the public.

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41 HL Deb 28 March 2000 Col 62WA

42 "A cloak of secrecy could soon descend on important council decision-making in Hull" *Hull Daily Mail*: 23 March 2000

> The ruling Labour group on Kingston upon Hull City Council says it has yet to decide how any decision-making system would work under new legislation being brought in by the Government. But recent amendments to the Local Government Bill suggest ministers will allow majority parties to exclude opposition councillors from cabinets. Town hall cabinets will also be able to decide whether they meet in public or private, irrespective of the wishes of the council involved.
>
> Councillor Simone Butterworth, Liberal Democrat leader at the Guildhall, said the proposals were a threat to local democracy. "The option to hold cabinet meetings behind closed doors is not viable in terms of public accountability. It also excludes councillors not on the cabinet," she argued. Councillor John Fareham, the council's lone Conservative, said he was also worried by the moves.
>
> At the moment in Hull, an all-Labour cabinet working group meets in private to make key policy recommendations. They are then considered by an all-party cabinet committee which meets in public. Cllr Fareham said even this system was being regularly by-passed by the Labour group, with decisions being taken on some issues before they actually reach the cabinet committee. Under the new Bill, the requirement for a scrutinising cabinet committee would be scrapped.
>
> But Councillor Tom McVie, the Labour group secretary, said: "We are waiting until the Bill becomes law before discussing what changes might be needed in Hull. If we go ahead with anything too early, we could end up shooting ourselves in the foot." Cllr McVie added: "National cabinet meetings are not held in public but there is a need to be open and frank at a local level. It's a need we have recognised in the changes we have made to our own decision-making process over the last 12 months."

A recent article in *The Independent* described local authorities' and others' reservations about the Government's proposals:[43]

> Government proposals that could lead to greater secrecy and less public scrutiny of local councils have come under attack from Freedom of Information campaigners, journalists and the House of Lords. The Local Government Bill, which calls for Westminster-style "cabinet" government in local authorities, has already resulted in decisions being made behind closed doors in some parts of the country.
>
> Maurice Frankel, of the Campaign for the Freedom of Information, said: "This is another example of the Government weakening existing public rights to information rather than improving them." His organisation, alongside Charter 88 and other pressure groups, is demanding the Government amends the Bill before its final reading.

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[43] "Ministers face backlash over plans to introduce cabinet-style government for local councils": *The Independent* 15 March 2000

> Critics of the new legislation fear that decisions made by small groups of councillors in private will, in the worst cases, end in scandal and public inquiries. "If decisions are taken in private there will be less scrutiny of whether councillors' private and financial interests are properly declared and less oversight of the award of contracts and of appointments to outside bodies," Mr Frankel said.
>
> Although executive-style government is not expected to become widespread until after the Bill is enacted later this year many Labour councils are switching to the new system.
>
> Lord Whitty, the Local Government minister, has indicated that the Commons intends to force through the legislation despite a setback to the Government's plans last Thursday when the Lords voted against the Bill. An alliance of Tories, Liberal Democrats and crossbenchers protested fiercely over the requirement for executives and elected mayors in all councils. The Tory frontbench spokesman, Lord Dixon-Smith, accused the Government of "arrogance of a high order" for seeking to impose the new structures.
>
> The public have already been excluded from meetings where councils have adopted the new cabinets. Bob Satchwell of the Society of Editors said a growing number of newspapers across the country had been stopped from reporting. "The Government says it wants to engage and involve the public in decisions. Many local councils are already making changes ahead of legislation and some of them are using them as an excuse to go back to their old, secretive ways."
>
> Protests over the new executives have already been made in towns and boroughs including Newcastle, Birmingham, Glasgow, Nottingham, Derby, Edinburgh, Southend-on-Sea, Hillingdon and Uxbridge. A recent survey by the Society of Editors in northern England revealed that seven councils in the region already do not allow the public or press to witness cabinet discussions. Of 27 councils surveyed at the end of last year, 13 have adopted the cabinet system and 12 intend to. Of the 13 council cabinets operating, only seven allow the press and/or public to attend meetings.
>
> In more than 60 per cent of the council cabinets only the "ruling" political party is represented. This means only five cabinets have representatives from minority parties on the council. The Local Government Unit warned:
>
> "Vital decisions about education, housing, social services, the closure of facilities or the contracting out of services may be taken in far greater secrecy than at present. Openness will help protect against corruption."

The article went on to give examples of authorities where there has been controversy over alleged reductions in transparency:

Derby
The Evening Telegraph newspaper has been battling since October for the council to open its executive meetings. Labour councillors had accused the paper of being "distorted, emotive and destructive" and even comparing its coverage to Nazi propaganda. Earlier this month, the council bowed to the pressure and agreed that future cabinet meetings would be open.

The Evening Telegraph's editor, Keith Perch, said: "With more and more decisions being taken in private chats between cabinet members and council officers, an information protocol should be set up with one simple message: release information unless there is a very good reason not to."

Southend
The Council's eight-person cabinet was forced to open its private meetings to the public after a campaign by the town's paper, The Echo. The Echo's editor, Martin McNeill, wrote to the Local Government minister Hilary Armstrong, urging her to stop councils routinely meeting in closed session. She replied: "The executive will be able to meet in private if it wishes."

London Borough of Hillingdon
Councillors have been forced to delay until May the introduction of a cabinet after sustained public pressure, including a two-page feature in the Uxbridge Gazette attacking the council for failing to consult adequately.

Newcastle
Ten out of 78 councillors sit in single-party cabinet meetings closed to the public. Afterwards the council issues a list of recommendations to a further committee which, although held in public, has been accused of "rubber stamping" cabinet decisions. Tony Flynn, the leader of the council, says he does not understand what the fuss is about and believes the new system is no more secretive than the old, as the second committee includes two members of the opposition and is open to the press and public. Alison Hastings, editor of the Newcastle Evening Chronicle, has criticised the decision. "It's quite an easy argument. Don't have meetings in private if you don't want to be accused of being secretive," she said.

The following article from *The Guardian* also argues that new executive arrangements will make local government more opaque:[44]

A month ago Liverpool, the city labelled ungovernable after its resistance to Tory spending plans in the 80s, seemed finally to be completing the transformation from Militant hotbed to cradle of modernisation.

That, at any rate, was the message of the wide-ranging report of a 'democracy commission' representing Merseyside interests, from business and universities to

[44] "Lame mayors" *The Guardian* 10 December 1999 [This article has been edited for length]

the arts. ‘Liverpool looks set to become the first major city outside London to opt for a directly elected mayor,' a release proclaimed.

…

It was not to be. Liverpool city council has just thrown out the idea by a margin of 36-25. While councillors say they are not against reform, they balked at the prospect of concentrating power largely in one pair of hands. Instead, Liverpool, like a growing number of authorities, wants to adopt a 'cabinet' model in which leading councillors will make decisions in a more concentrated style.

…

Coming so soon after publication of the new local government bill, with its plans for more mayors and cabinets, Liverpool's choice shows the creeping scepticism in town halls about a modernisation agenda hatched by Downing Street. Has the government, they ask, thought through the consequences? Even before the wrangling over the Greater London mayor (confusingly, some of the capital's 32 boroughs are also opting for elected mayors), opposition to the new bill was building, particularly in councils already experimenting with executive mayors, such as Hammersmith and Fulham and Lewisham

Dissident Labour members in these two boroughs helped launch the Labour Campaign for Open Government earlier this year. It is claiming a growing membership which, far from being your average town hall lefties, emphasises its commitment to 'less adversarial politics and a greater tolerance of opposition points of view'.

The dissidents complain that councillors are being divided into sheep and goats. The idea is that a cabinet of 10 or so members - working alongside a mayor or a city manager - would run the council from behind closed doors. Remaining councillors would scrutinise what they did in 'select committees'.

At present, matters are usually discussed openly in education, social services, housing and similar committees, before being endorsed by a full council meeting later. In principle, the procedure offers transparency. But town halls which have already adopted the cabinet model in advance of legislation, complain that too many decisions are now taken in private. Local papers are also becoming uneasy: issues such as some planning decisions, once discussed in public, are now decided behind closed doors.

3. Access to information

A joint briefing by the Local Government Information Unit, Charter 88 and the Campaign for Freedom of Information has argued for changes to the Bill, to improve access to information:[45]

> **What the Bill would mean for openness**
>
> The consequences of [the] new structures [set out in the Bill] for openness in local authority decision-making are significant. Many decisions will no longer be taken in public, unless the authority opts to do so. Information about proposed decisions will be unavailable to members of the public until after the decision has been taken - unless the executive or individual decision-makers actively choose to make them public beforehand. The fact that mayors and individual politicians will wield considerable power in their own right - their decisions will not have to be ratified by the executive or council - adds to concern about these arrangements. Vital decisions about education, housing, social services, the closure of facilities or the contracting out of services may be taken in far greater secrecy than at present.
>
> …
>
> The government's intention is to leave openness in large areas of decision-making to the discretion of the new executives. It removes the duties on local authorities to take decisions in public, and the public's right to papers relating to these decisions, which were created by two private members' Bills: Margaret Thatcher's Public Bodies (Admission to Meetings) Act 1960, and Robin Squire's Local Government (Access to Information) Act 1985.
>
> …
>
> **The Freedom of Information Bill**
>
> The Freedom of Information Bill, which is also before Parliament, would create additional rights to information held by councils. However, the purpose of the FoI Bill is to create rights of access to information, *not* rights to attend decision-making meetings. The proposed access rights are subject to extremely broad exemptions. …

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[45] Available from the Charter 88 website at http://www.charter88.org.uk/pubs/brief/0003local.html. This extract has been edited for length

Changes which should be made to the Local Government Bill

… The Bill's requirements on access to information need to be strengthened, particularly in relation to forthcoming decisions. The public should know what decisions are about to be taken, and have access to papers relating to that decision *in advance*. The Bill should maintain the rights of non-executive councillors, press and public, to prior notice of decisions to be made by the executive, and by individuals with executive powers. This would help to build public confidence in new structures.

The changes that are needed will have to reflect the different types of structures that may be adopted.

Meetings of Executives

Local authorities may decide to introduce an executive in which decisions are taken by a 'cabinet' of councillors. The Bill should be amended to make their meetings subject to the Local Government (Access to Information) Act 1985. That is, they would have to meet in public, unless particular types of exempt information are involved. …

Decisions not involving meetings

Mayors are likely to be responsible for many types of decisions which they will effectively take on their own. No formal meeting, as such, will be involved. Individual 'cabinet members' may also be given similar powers, and the Bill will also allow for a wider range of decisions to be delegated to council officers. In these cases the Local Government (Access to Information) Act cannot directly apply. However the Bill should be amended so that the public is given equivalent rights to see papers before decisions are taken. That is, reports, recommendations and background papers should be open to the public unless they contain exempt information.

The Bill should also be amended to require a short period of delay (a week has been suggested) before executive decisions can be implemented, with powers for non-executive councillors or a scrutiny committee to 'call in' and review the decision. …

The case for changes to the Bill

The above proposals would do no more than maintain current standards of openness in local government. As well as protecting the public's existing rights, this would help build confidence in the new structures and contribute to their effectiveness. The government's aim for the Bill is to improve the efficiency of local authority decision-making. Preserving existing standards of openness is entirely compatible with this aim.

Open decision-making is better decision-making. The quality of decisions will be improved if officials and politicians know they will be questioned on the basis of

> the full facts and subject to public and media scrutiny. Openness before decisions are taken will encourage clearer and more rigorous advice to councillors. …
>
> Greater secrecy will undermine public confidence in the new executives. The new executive structures will be undermined in the eyes of the public and of local media if they are accompanied by a reduction in requirements for openness. Some local newspapers are already reporting concerns about an increase in secrecy by some authorities which have adopted the new arrangements on a trial basis.
>
> …
>
> Openness will help protect against corruption. The Bill includes measures to improve ethical standards. But if decisions are taken in private, by executives and individual politicians, there will be less scrutiny of whether councillors' private and financial interests are properly declared, and less oversight of the award of contracts and of appointments to outside bodies. …
>
> 'Transparency' is not openness. … The government argues that the new scrutiny committees will themselves generate openness. But they will only be effective if they receive informed input from local residents and organisations, especially in those areas where the council's new scrutiny bodies will be dominated by the council's majority party.
>
> …

a. Options available to local authorities

Clause 11 specifies the forms which an executive may take and, following Lords amendments, would enable local authorities to devise their own executive models - other than mayor plus cabinet, leader plus cabinet or mayor plus council manager - if those will enhance decision-making, meet the principles of transparency, accountability and efficiency and be appropriate to local circumstances. Local authorities must take reasonable steps to consult local electors and other before devising their own models. **(Clause 11(5)).**

The responsibilities of the executive are defined in **clause 12.** Much of the impact of this clause will depend on the Secretary of State's use of regulations to specify which functions are or are not to be the responsibility of an executive. The Explanatory Notes state:

> … The clause allows the Secretary of State to make regulations to specify those functions which may, but need not, be the responsibility of the executive, and those functions which must not be. Certain functions, such as licensing functions, will need to be carried out by the authority as a whole, a committee of the authority, or a council officer (usually under s.101 of the Local Government Act 1972). Otherwise, the presumption is that all functions should be carried out by the executive.

> 37. The clause also enables regulations which specify that certain functions are, to some extent, the responsibility of the executive and to another extent not the responsibility of the executive. For example, regulations may specify that the executive is responsible for preparing a draft budget but that the council is responsible for approving the budget.
>
> 38. Section 101 of the Local Government Act 1972 may, in the regulations, be disapplied from any functions which must not be the responsibility of the executive.

Clauses 13 to 15 set out how functions would be discharged in each of the three models of executive arrangements (elected mayor and cabinet executive, elected mayor and council leader or leader and cabinet executive). There is wide discretion for delegating functions.

Clause 17 enables the Secretary of State to make regulations which will permit an executive or committee or specified member of the executive to delegate its or their functions to an area committee. In similar vein, **clause 18** enables the Secretary of State to make regulations which will permit an executive, committee of the executive or specified member to delegate its functions to another local authority or the executive of another local authority. **Clause 19** provides for the Secretary of State to make regulations for the joint exercise of functions.

Local authorities will be required to have at least one overview and scrutiny committee, with the power to review and scrutinise decisions made and actions taken and to make recommendations **(clause 20).** An overview and scrutiny committee may include persons who are not members of the authority **(Clause 20(8)).** The requirements of the *Local Government and Housing Act 1989* on political balance will apply to scrutiny committees **(clause 20(9)(b)).**[46]

Provision is made in **clause 21** for access to information. Meetings of a local authority executive, or a committee of such an executive, are to open to the public or held in private (**Clause 21(1)**). However, within regulations to be made by the Secretary of State, the discretion on whether to open meetings to the public rests with the local authority. Thus:

[21] (2) Subject to regulations under subsection (9), it is for a local authority executive to decide which of its meetings, and which of the meetings of any committee of the executive, are to be open to the public and which of those meetings are to be held in private.

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[46] See also the discussion of clause 23 below

The Local Government Association has pointed out that the directly elected mayor model has some perceived benefits – such as visible leadership, enhanced accountability and better partnership working – but there are some limitations within the model. There is a danger that an elected mayor might have too much power and there might likewise be risks in relation to probity (although, arguably, the transparency of the directly elected mayor model and the new ethical framework for members and officers should reduce the risk of corruption).[47]

The majority of the witnesses from whom the Joint Committee had taken evidence considered the three options within the draft Bill too restrictive and wished to see further models added to the face of the Bill. The Committee concluded that [48]

> An authority where decision-making is normally taken on the floor of its committees should be allowed to apply to the Secretary of State under clause 2 (5) for confirmation of arrangements not in conformity with the executive arrangements on the face of the bill. … We recognise that some local authorities have already developed executive arrangements but with the inclusion of decision-making area committees and joint county/district partnership committees. We recommend that the draft bill should be capable of accommodating them …
>
> An additional model of a council leader with council manager may well appeal, for example, to some rural, a-political or traditionally hung authorities. It is, moreover, entirely consistent with the establishment of executive arrangements and complements the logic behind the other three models. We therefore recommend for the avoidance of doubt that a council leader with council manager model be included in clause 2 of the draft bill.

The Joint Committee highlighted some of the issues raised by the concept of an elected mayor and noted that "Government preference for elected mayors is by no means universally shared".[49] It observed that the lack of any mechanism for removing an elected mayor – except through the legal procedure of disqualification from office following criminal conviction or a finding from the Adjudication panel – was unique by international standards. The Joint Committee took note that "impeachment" by the council might be construed as interference with the will of the electorate but nevertheless did not accept that there should be no method of removal or at least of requiring a renewed mandate.[50]

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47 Local Government Association (1999) *Directly Elected Mayors: Reinvigorating the Debate* London: LGA

48 *Report of the Joint Committee on the Draft Local Government (Organisation and Standards) Bill*: HC 542 1998/99, HL 102 1998/99 August 1999 - available from Parliamentary website at www.publications.parliament.uk

49 ibid

50 The Government's response to the Joint Committee - in which it rejected the notion of a recall mechanism for elected mayors - is discussed elsewhere in Part I.

4. Separation of executive functions

The Government's intention was to require all local authorities to separate their executive functions, although they would have some discretion about how to achieve this.[51] The Explanatory Notes point out that:

> 24. Part II of the Bill contains proposals for political management structures with a separate executive, and sets out three initial broad forms of executive within which local authorities' proposals must be framed. The objective of this policy is to deliver greater efficiency, transparency and accountability of local authorities. Separation of the executive is intended to ensure that decisions can be taken more quickly and efficiently than in the existing committee system, that the individuals responsible for decision-making can be more readily identified by the public, and that those decision makers can be held to account in public by overview and scrutiny committees.
>
> 48. *Schedule 1* sets out further details of the working of the executive arrangements and makes provision about the education functions of the overview and scrutiny committees.
>
> 49. For the mayor and cabinet executive, the arrangements must allow the mayor to determine the size of the executive (subject to restrictions in clause 11(9)). The arrangements must also allow the mayor to appoint his or her own deputy from amongst the executive.
>
> 50. For the leader and cabinet executive, either the authority or the leader can determine the size of the executive, subject to restrictions in clause 11(9).
>
> 51. For the mayor and council manager executive, the arrangements must allow the mayor to appoint a deputy from amongst the members of the authority, who cannot be the chairman or vice-chairman of the authority or be on an overview and scrutiny committee; this is to preserve independence between the three arms of the council. The council manager is entitled to attend and speak at council meetings and committee meetings. This allows him to carry out his duties, to advise the council and to be open to scrutiny. He will not, however, be allowed to vote as he will not be an elected member of the authority. Schedule 1 also provides that the post of council manager is a politically restricted post, and that the post cannot be combined with that of chief finance officer or monitoring officer.

The Joint Committee, however, expressed some doubt as to whether a separation of powers between executive and legislature was achievable:[52]

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[51] But see the discussion of clause 9

> 101. There are grounds for supposing, then, that the distinction between what constitutes executive action and what constitutes policy framework is far from clear cut; there are grounds, too, for supposing that in practice there may be far more interaction between the two functions than the Government appear to think. Such interaction should not be a source of surprise. Ultimately, the boundaries of executive action may well have to be determined locally from experience. **We recommend that following consultation with local government representatives the government should draw up joint practice notes to minimise confusion between executive action and policy framework, and that such guidelines should be available before the bill is brought before Parliament.**

The Committee also recommended that any eventual Act, regulations or guidance should ensure that councillors not on the executive did enjoy the powerful roles which the proponents of change foresaw.[53]

> The Committee does not underestimate the culture shock that some—though by no means all—councillors may feel working in the new environment of an authority operating under executive arrangements. However, it should be noted that executive arrangements have up to now been applied in a totally unregulated environment, and some of the new models adopted do not appear to accord fully with the provisions of the draft bill …
>
> We recommend that guidelines be published setting out the full range of possible duties of councillors not on the executive and fulfilling a community role; together with ways in which they may be enabled better to fulfil them (see also para 140 above).

5. The executive: size, functions and decisions

The draft Local Government (Organisation and Standards) Bill had provided for the executive to take the form of an elected mayor plus two or more councillors, an executive leader plus two or more councillors or an elected mayor plus a council manager [clause 2(1) - (4) of that Bill]. The Joint Committee argued for a larger executive:[54]

> 113. The Committee shares the Government's and the LGA's view that smaller executives are to be preferred over larger ones. But we also have considerable sympathy with witnesses' arguments on the rigidity of the proposals in the bill. We think that the effect of expressing the size of the executive as a percentage of the membership of the council will clearly have some very perverse and undesirable—possibly unexpected—outcomes. For that reason**, we recommend**

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52 *Report of the Joint Committee on the Draft Local Government (Organisation and Standards) Bill*: HC 542 1998/99, HL 102 1998/99 August 1999 - available from Parliamentary website at www.publications.parliament.uk

53 ibid

54 ibid

> **that the size of executive should be set on the face of the bill at not fewer than 6 and not more than 10, leaving the authority to decide on its preferred size having regard to functions and allocation of portfolios. Deputies or substitute members should be specifically disallowed.**

It also argued that some functions ought not to be discharged by the executive:

> 116. … Our list of types of functions which ought not to be discharged by the executive would include development control, statutory regulatory duties (like licensing, housing and environmental health regulatory duties) and quasi-judicial functions. The Secretary of State should by regulation be enabled to amend the list.

6. "Second class councillors"?

At second reading, Baroness Hamwee questioned whether the division between executive and scrutiny functions would create a tier of "second class" councillors.[55]

> We worry, too, about the unforeseen or, perhaps, unacknowledged side-effects--the career structure for both councillors and officers. In both cases, if they are not on or serving the executive, there is the danger of them being regarded as "second class". … We believe that the models risk losing the valuable contribution of back-bench councillors. Like others who have commented on the Bill, I do not much like the term "back-bench" but none of us has been able to suggest a better term. By seeing the committee papers in advance and being able to attend meetings where their role is very much that of representing the community, those councillors can contribute at an early stage.

7. Required to change or encouraged to change?

Clause 9 empowers a local authority to decide whether to introduce executive arrangements. This element of choice was introduced in the Lords and is discussed elsewhere in this paper. After the Government's defeat in the Lords, Lord Whitty was quoted in the press as having indicated that the Government would overturn the defeat when the Bill comes to the Commons. [56]

From the outset, the Government's intention has been that local authorities should be required to change, as the current system of local authority committees and decision-making does not - in the Government's view - serve the public well. At the same time, local authorities would have some leeway in how they created their new management

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55 HL Deb 6 December 1999 Col 1034 [this extract has been edited for length]

56 "Lords scupper councils Bill" *The Times* 10 March 2000

structures. The Bill as first presented therefore offered three options but change was mandatory and the status quo was not an option.

Lord Whitty, speaking on the Bill last December on its second reading in the House of Lords said:[57]

> We do not want a legislative framework that cannot keep pace with best practice in local government. We need the maximum opportunity for responsiveness and for flexibility. Where experience shows that existing regulations or existing limitations are placing an unnecessary brake on the promotion of community well being, Parliament should be able to remove or amend them. The Bill provides the powers to do so. The measures in the Bill will bring new life to local democracy and establish the vital role of councils in improving quality of life for all members of the community.
>
> Part II deals with the new constitutions and needs to be seen together with Part IV, which deals with elections. Part II lays the foundations for more efficient, transparent and accountable government: efficient, because decisions will be taken quickly, responsively and accurately to meet the needs of the community; transparent, because it will be clear what the decisions are, who has taken them and for what reasons; accountable, because those who take decisions will have to answer for them and they will be measured against the policies and plans on which they were elected.

Lord Whitty went on:

> Many noble Lords will recall the Bill in the last Session brought forward by the noble Lord, Lord Hunt of Tanworth, who I am glad to see is to speak later in the debate. In many respects, Part II is a development of the noble Lord's Bill. Under this Bill, councils will adopt new constitutions based on either a directly-elected mayor with a cabinet, or a cabinet with a leader, or a directly-elected mayor with a council manager.
>
> Within those broad options, there is still considerable scope for local choice and diversity and almost all the options proposed in the Bill sponsored by the noble Lord, Lord Hunt, can be achieved.
>
> All the new forms of constitution stipulated in the Bill include a separate executive responsible for most of the council's functions and held to account by overview and scrutiny committees. If other workable forms of constitution with a separate executive emerge, the Secretary of State or the National Assembly for Wales will be able to make those available too.
>
> Executives will be able to meet in private. Politicians need time for reflection away from the public glare. Without that, discussion will be driven back to

[57] HL Deb 6 December 1999 Vol 607 Col 1023 - 4

> unrecorded group meetings. But the executive must be accountable. Decisions must be recorded with the reasons for those decisions and the advice received from officers. Overview and scrutiny committees will hold the executive to account in public and may investigate any aspect of the council's policy or other matters of local interest.

Lord Whitty continued:

> All councils must bring forward the options among those set out in the Bill for a new constitution. Which option and the details will be matters for local choice. This Government are committed to giving local people a real say in the way in which they are governed. Councils must consult local people and other interested parties on their proposals.
>
> In a situation in which a council opts for a directly-elected mayor, first, it will be necessary to obtain the consent of local people and that will be done through a binding referendum. A referendum for an elected mayor will also be triggered by a petition signed by at least 5 per cent of the local electorate. The Secretary of State will also be able to require individual authorities to hold a referendum on any of the forms of constitution under the Bill.
>
> The Bill also includes powers for the Secretary of State to make regulations governing the timing and conduct of elections for mayor and the conduct of referendums.
>
> The Government's intention in introducing the *Local Government Bill* was to change the executive functions of local government.

8. The balance between central and local government

Second reading in the House of Lords took place on 6 December 1999.[58] There was some debate at second reading as to whether the Bill embodied the Government's stated intentions for improving local government and on whether it represented an incursion into local government's rights to self-government. Lord Dixon-Smith (Conservative spokesman on local government in the Lords) said:[59]

> … The intentions behind the Bill, as always with intentions, are impeccable. However, it is always the detail that causes a problem.
>
> …

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58 HL Deb 6 December 1999 Col 1020-1035

59 HL Deb 6 December 1999 Col 1028 – 9 [this extract has been edited for length]

A separate but important consideration should be borne in mind as the Bill passes through the House. Article 4, Part 4, of the European Charter of Local Self-Government says:

> "Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law".

That is what we are today creating. I strongly suggest that the way in which the Bill is drafted is out with the intentions of the European Charter of Local Self-Government which this Government signed up to only two years ago.

Article 4, Part 5, states:

> "Where powers are delegated to them ... by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions".

That becomes important when we consider Part III of the Bill. Therefore we have a strategy without the power to implement it; and we have a conflict between what appears at the beginning of the Bill and the European Charter of Local Self-Government.

…

The presumption behind the creation of an executive is that it will improve decision-making and the clarity of business and that the second class of councillors who are created by the division will be happy with a scrutiny role. It also presumes that a council's business divides neatly between executive action and that scrutiny role. I regret to say that it is my belief that, as a matter of practice, that will not be the case. Even if scrutiny committees were confined exclusively to post-decision scrutiny, it would not be possible. … And it can only be a matter of time before a scrutiny committee, which is bound to develop expertise, takes a view and recommends to an executive committee a certain course of action. When that happens, who is taking the executive action?

Baroness Hamwee said:[60]

> We welcome many aspects of the Bill, although in many cases the Government have fallen short of that for which many people had hoped, because of their refusal to give up control from the centre. One aspect is the new powers as regards well being. We agree with the Minister that they will make a real difference.
>
> Those who have not seen how the Government operate have been surprised that after offering so much, the Bill then says that the Secretary of State can stop a

[60] HL Deb 6 December 1999 Col 1032 – 4 [this extract has been edited for length]

> local authority doing what he proscribes. As the noble Lord, Lord Dixon-Smith said, the powers will enable a local authority to raise money, which is at the heart of what local authorities can achieve. Liberal Democrats would prefer a power of general competence but we accept that Part II goes a long way towards it.
>
> We often come up against the dilemma of ensuring flexibility for good authorities and support and direction for those which, in any judgment, are less successful. The approach to the new powers illustrates this. … Perhaps he could also explain the Government's thinking behind allowing local authorities to cherry-pick between the three powers.
>
> … The rejection of the status quo, even--apparently--if a community is happy with it, seems to smack of a "not invented here" syndrome. We believe, as does the Local Government Association, that it is important to identify the criteria for outcomes of an approach to a new model and to allow a structure which meets them. First, that may mean an executive mayor, though I confess that I am not an enthusiast. Secondly, it may mean a mayor, plus a council manager, but I doubt that the public will easily see the distinction between the two models. Thirdly, it may mean a Cabinet model, with a leader who is "strong" or who disperses power. We believe that the Government have failed to recognise just how much power an indirectly-elected leader may have, especially if the checks and balances of the council are not effective. Fourthly--perhaps fifthly, sixthly, and so on,--our approach might mean other models.

The issue of whether local authorities should be required to change, rather than simply encouraged to adopt best practice, provoked much debate at third reading in the Lords. An amendment agreed at third reading on 9 March does, as it stands, now enable a local authority not to make executive arrangements. Lord Dixon-Smith moved Amendment No 10:[61]

> Before Clause 9, insert the following new clause--
>
> **LOCAL AUTHORITY TO DECIDE WHETHER TO INTRODUCE EXECUTIVE ARRANGEMENTS**
>
> (" .--(1) A local authority may make executive arrangements for the discharge of certain of its functions.
> (2) Nothing in this Part shall have effect in respect of a local authority not making executive arrangements.").

In moving the Amendment, Lord Dixon-Smith said:[62]

> … Part II of the Bill as drafted will require local authorities to change their ways and operate under "executive arrangements". They are not given an option; they are required to do it. … Amendments Nos. 10 and 12 are designed specifically to

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61 HL Deb 9 March 2000 Vol 610 Col 1176

62 HL Deb 9 March 2000 Vol 610 Col 1178 [this extract has been edited for length]

> remove the compulsion and make it possible for local councils to decide for themselves whether or not to adopt those arrangements.
>
> I do not oppose the suggested arrangements contained in the Bill. My opposition is to a provision that forces local authorities to adopt those arrangements on a timescale that the Minister can determine, which is wrong. …

Baroness Hamwee said:[63]

> Academics and commentators are not united behind the Government's proposals. It is not suggested that local authorities should not be allowed to adopt an executive/scrutiny split; rather, that there should be local choice. We on these Benches are very ready to acknowledge that the Government have moved on important matters, such as area committees and, to an extent, the role of the overview and scrutiny committee. Sadly, we have not yet succeeded in explaining sufficiently clearly to the Government our concern about the likely split into two classes of councillor. We believe that the proposals with which we are now dealing are flawed because of the Government's innate preference for a system that is centred on personality.

Lord Filkin offered a different view:[64]

> … I am convinced that the consequence of failing to modernise local government in a sensible fashion will be the progressive residualisation and marginalisation of its functions. …
>
> … It is not true that the current system is adequate, satisfactory, or universally working well. It often works well because of the efforts of talented members and officers, but that is not because of the system itself.
>
> The impression is being given that there is to be a monolithic imposition of a single system on all authorities across the country. That is untrue. Some of us might wish that there were more of an imposition of the stronger systems of executive governance, but that is not on offer. All that is required is that the local authorities must establish certain principles. …

In concluding for the Government, Lord Whitty remarked:[65]

> … The Government require, as a principle of the Bill, that all councils should change and change to a system which involves an executive structure. The Bill also requires that those proposals must be put forward in consultation with local people and it gives local people the right to decide explicitly in relation to a

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63 HL Deb 9 March 2000 Vol 610 Col 1179
64 HL Deb 9 March 2000 Vol 610 Col 1183 [this extract has been edited for length]
65 HL Deb 9 March 2000 Vol 610 Col 1191

> directly-elected mayor, if that is the proposition. The key to accountability is a system of governance which people understand and support.

The Amendment was agreed: Contents 144, Not-Contents 82.

a. Other issues

Sections 15 to 16 of the *Local Government and Housing Act 1989* describe local authorities' duties to maintain political balance when making appointments to local authority bodies (except in those limited circumstances described in Section 17 of the same Act).

Clause 23 of the current Bill provides that local authority executives (or committees of the executive) will not be subject to the rules on political balance set out in Section 15 of the 1989 Act. The Government does not, though, intend to lift the requirements of Section 15 of the *Local Government and Housing Act 1989* where they currently apply. Those committees of local authorities (such as planning committees) which must currently reflect the political balance of the local authority would continue to do so if the local authority adopted executive arrangements.

Although **clause 9** now leaves open the possibility that a local authority might not make executive arrangements, **clause 24** provides that every local authority must draw up proposals for the operation of executive arrangements. In drawing up these proposals, local authorities must take "reasonable steps" to consult local government electors and other interested parties in the area and must consider the extent to which the proposals will "assist in securing continuous improvement in the way in which the authority's functions are exercised". If the proposals involve a form of executive for which a referendum is required – in other words, one involving an elected mayor – the referendum must be held and the local authority must have a fall-back plan in case the original proposals are rejected in the referendum **(clause 26).** To operate executive arrangements, there must be a resolution of the local authority **(clause 27)**. A document setting out the provisions for the arrangements must then be made available for public inspection.

Clause 28 empowers the Secretary of State to make regulations which would permit a local authority which is operating executive arrangements to change those executive arrangements in any respect. The Secretary of State may also make regulations to designate other, alternative arrangements which he considers likely to ensure that local authorities take decisions in an efficient and accountable way (**clause 29**).

D. Conduct of Local Government Members and Employees

This part of the Bill seeks to build on the existing, piecemeal systems for ensuring probity in local government. It establishes a new ethical framework for local government, with a statutory code of conduct and a requirement for every council to adopt a code covering the behaviour of elected members and of officers, and the creation of a standards committee for each local authority. It also establishes the Standards Board for England as a new non-Departmental public body (NDPB), to provide an independent process for investigating instances of unethical conduct by local authority members, including any allegations that a code of conduct has been breached. Adjudication panels would constitute a pool from which tribunals to hear cases of alleged misconduct would be drawn.

At present, members of local authorities must give notice of their pecuniary interests: regulations require local authorities to keep a register of those interests.[66] The declaration of pecuniary interests at relevant meetings is a requirement under s.94 of the *Local Government Act 1972 Act*; s.97 of that Act enables dispensations to be granted to speak and/or vote at such meetings. Members are required, by virtue of s.83 of the 1972 Act, to declare at the time of accepting office that they will be guided by the National Code of Local Government Conduct (issued as a Joint Circular under s.31 of the *Local Government and Housing Act 1989*).

In addition, all members of local authorities are required, on accepting office, to declare that they will be guided by the National Code of Local Government Conduct.[67] This Code deals with the treatment of non-pecuniary interests and reminds councillors that they should always act within the law and the standing orders of the council and "should never do anything as a councillor which [they] could not justify to the public". Nevertheless, the law provides no obvious course of action which may be taken against councillors who break the code.

The third report of the Committee on Standards in Public Life (formerly the Nolan Committee and now the Neill Committee) considered the issues of standards in local government in July 1997.[68] In *Modernising Local Government: A New Ethical Framework*,[69] the Government proposed that allegations of misconduct by councillors

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66 *Local Authorities (Members' Interests) Regulations 1992* [SI 1992/618] as amended by the *Local Authorities (Members' Interests) Regulations 1996* [SI 1996/1215], made under section 19 of the Local Government and Housing Act 1989

67 which is issued under s31 of the *Local Government and Housing Act 1989* and must be approved by both Houses of Parliament before coming into effect

68 *Standards of Conduct in Local Government in England, Scotland and Wales:* Summary of the Third Report of the Committee on Standards in Public Life, July 1997 (published on www.open.gov.uk)

69 *Modernising Local Government: A New Ethical Framework: Consultation Paper* (1998) Department of the Environment, Transport and the Regions. For Wales, the document was *Modernising Local Government In Wales Consultation Paper: A New Ethical Framework.* (1998) Welsh Office

would be handled by a new independent body - the Standards Board - which would be responsible for:

- arranging for the investigation of the allegation;
- determining the substance of the allegation; and if the allegation was upheld,
- imposing appropriate penalties on the councillor(s) concerned [para 3.10].

Within this framework there would be appropriate arrangements for appeal.

The government's agenda and intentions for ensuring high standards of conduct throughout local government, including a draft of the legislation to enable new forms of local governance, were set out in *Local Leadership, Local Choice*.[70] Some of the issues raised in that white paper are discussed in the House of Commons Library research paper *Cabinets, Committees and Elected Mayors.*[71]

Part III of the current Bill is intended to give effect to the Government's plans to create a new ethical framework for local government. The existing framework is perceived by some to be weak, as it is focused on members declaring pecuniary interests and pays less attention to other potential conflicts of interest and, besides, the penalties for any breach or failing are few. As the Explanatory Notes state:

> 92. However, apart from the criminal offences under section 94(2) of the 1972 Act of failure to declare a pecuniary interest or non-registration of such an interest under section 19(2) of the 1989 Act, the only action that can be taken against an individual member is under section 30(3A) of the Local Government Act 1974 which provides for the Local Government Ombudsman to be able to name a member or members where he finds that a breach of the code by an individual member constitutes maladministration.

1. Conduct of Members

Clauses 45 onwards deal with conduct of members of local authorities in England and Wales. The Secretary of State and the National Assembly for Wales may make orders to specify the principles to govern the conduct of members and co-opted members (**clause 45**) and may make orders issuing a model code of conduct (**clause 46**). The provisions of any such code may be mandatory or may be optional. If such orders are made, local authorities must within 6 months adopt the model code of conduct or revise their own code (**clause 47**). New or revised codes of conduct must be made available for inspection at the local authority's principal office and their existence must be publicised

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[70] *Local Leadership, Local Choice* (1999) Cm 4298: Department of the Environment, Transport and Regions; London

[71] House of Commons Library Research Paper 98/38: 19 March 1998

in at least one local newspaper (**clause 47 (5)**). On taking office, a member of a local authority must undertake to comply with the code of conduct (**clause 48**).

Clause 49 makes provision for standards committees. Every relevant authority – other than a parish or community council - must establish such a committee. The authority must fix the size of the committee and, in England, it must include at least two members of the authority and at least one person who is not a member or an officer of that or any other relevant authority. In England, the Mayor or executive leader may not be a member of the standards committee.

The Standards Board for England may issues guidance on the size and composition of standards committees for local authorities in England – any such guidance must be sent to the Secretary of State. As with executives, the rules within Section 15 of the *Local Government and Housing Act 1989* - the duty to allocate seats to political groups – do not apply to standards committees in England **(clause 49(10)).**

In Wales, the National Assembly for Wales may make regulations on the size and composition of standards boards and on who may chair and vote at them and on disapplying Section 15 of the *Local Government and Housing Act 1989* (**Clause 49(11)**).

The general functions of a standards committee are

> **[50]** (a) promoting and maintaining high standards of conduct by the members and co-opted members of the authority, and
> (b) assisting members and co-opted members of the authority to observe the authority's code of conduct.
>
> (2) Without prejudice to its general functions, a standards committee of a relevant authority has the following specific functions-
>
> (a) advising the authority on the adoption or revision of a code of conduct,
>
> (b) monitoring the operation of the authority's code of conduct, and
>
> (c) advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority's code of conduct.

Clause 51 describes the relationship between standards committees and parish councils. The Explanatory Notes summarise the relationship thus:

> 114. *Clause 51* puts in place arrangements for the functions of a standards committee for parish council to be carried out on their behalf by the district

council[72] (or unitary county council where there is no district). Clause 51(1) to (3) specify that this can be discharged either through the standards committee of the district or by setting up a sub-committee of the standards committee to specifically consider parish council conduct issues. In deciding whether or not to set up a separate sub-committee to consider parish issues, clause 51(4) requires the district council to consult the parishes concerned. Furthermore, clause 51(6) and (7) require at least one parish member to be present when the committee or subcommittee discusses parish issues. This clause also enables the Secretary of State to make regulations under clause 49 on the size, composition and proceedings of standards committees for parish councils. Similarly the Standards Board may issue guidance under clause 49 and 50 as for other standards committees.

In the same spirit, standards committees for community councils in Wales may be provided by the county or county borough in which the community council sits.

2. Investigations Etc: England

Clause 53 makes provision for a Standards Board for England. The Board would be a body corporate and must appoint ethical standards officers. The Board may receive written allegations of members' or co-opted members' failures to comply with the authority's code of conduct. If the Standards Board considers that such an allegation should be investigated, it must be referred to the ethical standards officers (**clause 54**).

Ethical standards officers' functions are to investigate cases referred to them by the Standards Board for England and any other cases (which have come to light in the course of another investigation) where the ethical standards officers consider that a member or co-opted member of a relevant authority has failed or may have failed to comply with the authority's code of conduct (**clause 55**). Investigations may be carried out even where the person has ceased to be a member or co-opted member of the authority.

Clauses 57 and 58 specify the procedures in respect of investigations in which ethical standards officers have considerable discretion. The procedure is to be "such as [they consider] appropriate in the circumstances of the case" and they have a right of access "at all reasonable times to every document relating to a relevant authority which appears to [them] necessary for the purpose of conducting an investigation". **Clause 58(10***)* introduces an offence of failing to provide the ethical standards officer with such information, documentation or other evidence as he requires as part of his investigation. Any person convicted would be liable to a fine of level 3 on the standard scale (currently £1,000).

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[72] *Technical Note:* All unitary councils in the English shires – other than the Isle of Wight – are technically district councils, so the Department of the Environment, Transport and the Regions appears to intend the term "district council" to include the unitaries.

Clause 59 imposes restrictions on the disclosure of information obtained during investigations. Ethical standards officers may produce reports of their investigations and may provide summaries to any newspapers circulating in the area (**clause 60**).

Clause 62 makes provision for monitoring officers within local authorities. By regulations made by the Secretary of State, monitoring officers[73] might be enabled to conduct investigations and make reports or recommendations to the standards committee. The standards committee might then consider those reports or recommendations and take any action prescribed by the regulations.

3. Investigations Etc: Wales

In Wales, responsibility for investigations would rest with the Commission for Local Administration in Wales (the Welsh Local Government Ombudsman) (**clause 63**). The Local Government Ombudsman would be able to issue guidance to local authorities in Wales on matters relating to the conduct of members of authorities. Any such guidance may be made public. Provision is also made that additional functions may be added by the National Assembly for Wales.

The Local Ombudsman may investigate written allegations of breaches of the code of conduct made against relevant authorities members and co-opted members (**clause 64**). There are four possible outcomes of these investigations.

- that there is no evidence of a failure to comply with a code of conduct;
- that there is no need to take action on the matters investigated (whether or not there was a breach of the code); or
- that the matter should be referred back to the monitoring officer of the authority to deal with; or
- that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for Wales for adjudication by a case tribunal.

The National Assembly for Wales would have an enabling power to make Orders, to provide the Local Ombudsman with the powers of investigation available to the ethical standards officers in England. The Local Ombudsman would be enabled to terminate an investigation and refer matters to monitoring officers for investigation. (**Clause 65**).

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[73] Monitoring officers must be appointed by each local authority. The monitoring officer's duties are to report to the authority on any proposal, act or omission which might contravene any law or statutory

The provisions for reports in **clause 66** and for monitoring officers in **clause 68** mirror those for England (clauses 60 and 62 respectively).

4. Adjudications

Clause 69 provides for two Panels - the Adjudication Panel for England and the Adjudication Panel for Wales or Panel Dyfarnu Cymru. The Secretary of State would appoint the members of the Adjudication Panel for England and must appoint a president and deputy president from among the members. The Secretary of State would determine who was eligible for membership of the panel (clause **69(6)**).

Similar provision is made for Wales. The president and deputy president of each Panel would be responsible for training the members of their Adjudication Panel and issuing guidance on how case tribunals will reach decisions.

Clause 70 provides for case tribunals, to adjudicate on matters referred by the president of the relevant Adjudication Panel. The tribunal would comprise at least three members of the panel. Panel members may not sit on cases if, in the previous five years, they have been members or officers of the authority (or its committees, sub-committees and joint committees) to which the investigation relates (**clause 70(8)**).

Persons subject to adjudication may appear in person or may be represented by counsel or by a solicitor or by any other person of their choosing (**clause 71**). The Secretary of State and National Assembly for Wales will have power to make regulations "as appears to [them] to be necessary or expedient with respect to adjudications by case tribunals or interim case tribunals" (**clause 71 (2) and (3)**). The Explanatory Notes suggest that:

> [155] Such regulations might cover:
> - requiring people to attend to give evidence to the case tribunal;
> - requiring them to make relevant documents relating to the investigation available to the panel;
> - prescribing the procedure to be followed by a case tribunal;
> - provision enabling the president or deputy president to settle the procedure to be followed in relation to matters specified in the regulations;
> - awarding or settling costs or expenses;
> - the registration and proof of decisions and awards of case tribunals.

Schedule 4 places each case tribunal under the supervision of the Council on Tribunals.

Clause 71 also introduces an offence of failing to comply with any requirement imposed by the case tribunal in considering a case. As with the offence created by clause 58, the penalty is a level 3 fine (£1,000 at present).

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code of practice or might constitute maladministration or injustice (*Local Government and Housing Act 1989* Section 5)

The interim case tribunal must decide the matters before it (**clause 72**). It must decide whether or not the member mentioned should be suspended on an interim basis (and from what particular activities or business they should be suspended) and whether that suspension should be for the period recommended by the ethical standards officer. The suspension can be for no more than 6 months or (if less) the remainder of the person's term of office (**clause 72(2)**).

The case tribunal must decide whether any person to which the adjudication relates has failed to comply with the code of conduct of the relevant authority concerned and (if so) must notify the standards committee of that authority (**clause 73**). The case tribunal must decide whether the nature of the failure warrants suspension or disqualification and (if so) for how long. Suspension may be for no more than 6 months or the remainder of the person's term of office (whichever is shorter) and disqualification may be for no more than 5 years (**clauses 73(6) and (7)**).

5. Surcharge

Section 8 of the *Audit Commission Act 1998* gives the district auditor a duty to consider whether, in the public interest, he should make a report on any matter coming to his attention in the course of the normal audit of the council, in order that it may be considered by the body concerned or brought to the attention of the public. Such a report is generally known as a "public interest report".

The report of the District Auditor John Magill on Westminster Council's "Designated Sales" policy, for example, was made under this heading. In that case, the public interest report stated that the council's power to sell properties had been exercised unlawfully and that introduction of a scheme of capital grants to existing secure tenants to purchase non-council accommodation was unlawful. The report goes on to consider personal liability.

The district auditor also has a duty to surcharge any person who is responsible, by "wilful misconduct", for a loss having been incurred or a deficiency having been caused. This duty, under section 18 of the 1998 Act, is quite separate from the duty to issue (where appropriate) a public interest report. Any person who is surcharged under s18 may appeal against this action to the High Court but such an appeal is not an appeal against the auditor's decision to issue a public interest report. The 1998 Act contains no formal procedure for a council to appeal against the conclusions of a public interest report, although a council might apply for judicial review of the auditor's action.

Section 11 of the 1998 Act requires that, when a council receives such a report, it must hold a meeting to consider it within four months and must decide whether any action should be taken or whether the recommendation is to be accepted. The council must advertise the meeting in a local newspaper and must also publish the decisions taken at the meeting in a local paper [s12].

The auditor's powers under section 8 are thus limited, in that the council could simply decide to disagree with the report's conclusions. There is no specific statutory duty to act on a public interest report, other than the duty to consider it. It is not entirely clear what would be the legal position if a council decided not to take any action where a public interest report stated that (for example) one of its policies was unlawful. Councillors who voted in favour of such a decision would presumably put themselves at risk of surcharge if the policy continued.

The Explanatory Notes describe the intended impact of the part of the Bill dealing with surcharge:

> 195. *Clause 84* has the effect of repealing the current 'surcharge' provisions set out in the Audit Commission Act 1998 and also the Secretary of State's power to sanction an item of account. The changes will affect all bodies to which the surcharge provisions apply.

Clause 84 amends the provisions in the *Audit Commission Act 1998* relating to surcharge. The clause removes the courts' and auditors' ability to impose a surcharge; the court could still declare an item of expenditure to be contrary to law, but it would be for the Standards Board and Adjudication Panel to decide whether there had been misconduct and what (if any) action should be taken.

The amendment would also remove the "reasonable belief" defence, whereby – as the 1998 Act now stands – the court may not make an order if satisfied that the person responsible for incurring or authorising the expenditure acted reasonably or in the belief that the expenditure was authorised by law. The amendment would also remove the court's facility to make an order for the body whose accounts are in question to pay expenses incurred by the person to whom the application or appeal relates in their application or appeal.

6. Disclosure and registration of members' interests

Current law requires that each local authority (excluding parish and community councils) maintain a register of councillors' interests under the *Local Authorities (Members' Interests) Regulations 1992,*[74] made under s19 of the *Local Government and Housing Act 1989.*

Members of local authorities (including mayors) must record all of their financial interests in a register kept by the local authority. The information which councillors must disclose is set out in the Schedule to the regulations. All the prescribed information relates to members' "direct and indirect pecuniary interests": the headings are:

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[74] SI 1992/618 as amended by the *Local Authorities (Members' Interests) Regulations 1996* [SI 1996/1215]

- Employment, office, trade, profession or vocation (there is no obligation to disclose salary)
- Sponsorship (there is no requirement to disclose the sum involved)
- Contracts (there is no requirement to disclose the sum involved)
- Land
- Licences
- Corporate Tenancies
- Interests in Securities (there is no requirement to disclose the sum involved)

The register of members' interests must be kept up to date and must be open to public inspection. Any member who fails without reasonable excuse to comply with the requirements of the regulations is guilty of an offence under s19(2) of the 1989 Act. Under section 19(5) of the 1989 Act a local authority is not entitled to require members to give financial information other than that required by the legislation. Where the council or one of its committees is to discuss an issue in which a member has a financial interest, he or she must declare that interest early on in the meeting and may not vote or even take part in the discussion, except under special circumstances. These issues are covered in the National Code of Local Government Conduct, which applies in England, Scotland and Wales.

Clause 75 of the current bill requires every relevant authority to establish and maintain a register of the interests of the members and co-opted members of the authority.

The Explanatory Notes state that:

> 165. In particular, *clause 75(1) and (2)* place the registration and declaration of interest within the model code of conduct.
>
> 166. *Clause 75(4)* provides for the standards committee to grant dispensations for local authority members to participate in any business where they have interest.
>
> 167. *Clause 75(5)* provides for the Secretary of State to issue regulations setting out the circumstances in which standards committees may grant dispensations to members of local authorities to enable them to participate in meetings in which they have an interest.
>
> 168. *Clause 75(7) and (8)* specify that the register should include the interests of the spouse, partner or any person in that member's household. Furthermore, the interests that are to be registered—and declared—are now included as a mandatory element of the new model code.
>
> 169. Finally, under *clause 75(9)* the monitoring officer of an authority is given specific duty of establishing and maintaining the public register of interests (as specified in subsection (1).

The Department of the Environment, Transport and the Regions intend that the model code of conduct – which has not yet been drafted – should define the "interests" to be

declared. The intention is that (subject, of course, to the consultation which the drafting of the model code will entail) the code should focus on *personal* interests and should abandon the distinction between pecuniary and non-pecuniary interests.

7. Code of conduct for local government employees

Currently, the conduct of local government employees is governed by a code of conduct issued by the Local Government Management Board.

Under the terms of the Bill, The Secretary of State and National Assembly for Wales may be order issue codes of conduct for "qualifying employees of relevant authorities" in England and Wales. There must be prior consultation with representatives of local government and of local government employees, the Audit Commission and the relevant Commission for Local Administration (**clauses 76 (1) – (4)**). Every qualifying employee will be deemed to be subject any code of conduct, regardless of when that employee was appointed (**clause 76 (5)**).

8. Salaries, allowances and pensions

The idea of pensions for members of local authority executives was mooted in the white paper *Modern Local Government - In Touch with the People*.[75] The white paper suggested that:

> **Support for councillors**
>
> 3.53 A modern council, based on the proposed separation of roles, will rely on the ability of all of its members, whether in the executive or backbench role, to adapt to different ways of working. All councils should give those serving as councillors or as co-opted members the officer support, facilities and training necessary for them to fulfil their role, be it executive or otherwise, as effectively as possible.
>
> 3.54 The financial support for councillors must also reinforce the culture of the modern council and address, as far as possible, any disincentives to serving in local politics. People do not enter public service to make their fortune. But neither should they pay a price for serving the public. It is clear that executive mayors, and some others in political executive positions or the scrutiny function in councils, may spend much if not all of their time on council business with a possible subsequent loss of earnings and pension rights. Where this is the case, the Government will make possible the payment of pensionable salaries.

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[75] *Modern Local Government - In Touch with the People*: Cm 4014 July 1998

The white paper therefore envisaged that members of local authorities who were not part of the executive, but were part of the scrutiny function, might in some cases receive pensionable salaries.

However, the Government has since narrowed the definition of the circumstances in which it considers pensionable salaries for members of local authorities should be offered. By the time the draft Bill was published, the Government had fine-tuned its policy.[76] The reference to paying pensionable salaries to members of scrutiny committees was therefore not repeated. *Local Leadership, Local Choice* thus stated:[77]

> **SUPPORT FOR COUNCILLORS**
>
> 3.79 All the proposals on allowances and remuneration for councillors in the White Paper remain central to the modernising agenda. Directly elected executive mayors, and some others in political executive positions, may spend much if not all their time on council business with a possible subsequent loss of earnings and pension rights. The payment of pensionable salaries is to be made possible in these cases.

The Government had taken the view that, generally speaking, the number of posts in which pensionable salaries might be payable should be kept to a minimum. Members of the executive might, because of the demands of that role, need to spend much if not all of their time on council business, but the Government did not think it necessary or desirable that other members of the local authority should do so. The Government did not wish to encourage "full-timeism" amongst members of local authorities.

The *Local Government Chronicle* has argued that councillors ought to be better compensated for their time and effort.[78] An article on 9 July 1999, for example, gave a league table of the top-paid leaders of councils in England and Wales and noted that there had been big rises in England, but small drops in Wales.[79] There was a quote from the leader of Leeds City Council:

> There is a strange perception among the public that we should all be so enthusiastic in a political sense that we do this sort of thing for nothing. That's just not possible. All my colleagues with portfolio responsibility are here more or less full-time.

The Senior Salaries Review Body considered and reported on the salaries for the mayor, deputy mayor and assembly members of the Greater London Authority. The

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76 *Local Leadership, Local Choice* (1999) Cm 4298
77 ibid
78 "A Case of Just Desserts" *Local Government Chronicle* 16 July 1999
79 "Leaders' Pay Up 21% As Salaries Era Approaches" *Local Government Chronicle* 9 July 1999

Government announced in February that it was accepting the Review Body's recommendations in full:[80]

Senior Salaries Review Body

Mr. Geraint Davies: To ask the Secretary of State for the Environment, Transport and the Regions if he will make a statement on the report and recommendations of the Review Body on Senior Salaries on the Greater London Authority. [107864]

Mr. Prescott: The Review Body on Senior Salaries report on the initial pay, expenses, pensions and severance arrangements for the Mayor of London and members of the London Assembly is published today. Copies are available in the Libraries of the House. The Prime Minister and I are grateful to the Chairman and Members of the Review Body for their work.

The main recommendations of the Review Body with regard to pay are:

Salary	**£**
Mayor	84,385
Deputy Mayor	51,743
Assembly member	34,438

The Review Body recommended that pay levels should be uprated annually beginning on 1 April 2000 by the same percentage as the average of the movements in the mid-points of the nine senior civil service pay bands below permanent secretary and that an independent review of pay levels should take place in 2002 and then at intervals of three years.

The Review Body also recommended that a Mayor of London, Deputy Mayor or an Assembly member who is also an MP, an MEP or a salaried Office-Holder in the House of Lords should receive an abated salary in respect of his or her GLA role equal to one third of the relevant GLA salary; the Mayor, Deputy Mayor and Assembly members' pension arrangements should be provided through the Local Government Pension Scheme; and that severance payments should be made only to the Deputy Mayor, and only if he or she loses that role other than at an election. The Review Body also expressed the view that members of the Authority should receive travel and subsistence payments similar to those available to staff of the Department for Environment, Transport and the Regions.
The Government have decided to accept the Review Body's recommendations on pay, expenses, pensions and severance arrangements in full. We recognise that it has been extremely difficult to evaluate the weight of responsibilities for unique positions which do not yet exist. In particular, the Review Body concluded that there was currently insufficient evidence about additional responsibilities of the

[80] HC Deb 3 February 2000 Vol 343 Col 647W

> Chair of the Assembly and of membership of a functional body to reach a view on whether there should be additional remuneration for these roles.
>
> The Government acknowledge the uncertainties, and has therefore decided to invite the Review Body to carry out an early review of remuneration and pensions. This review would begin nine months after the new Authority became fully operational. It would therefore progress on a basis of fact and experience rather than on the inevitable current basis of anticipation of roles and responsibilities. The statutory guidance on ethical standards, issued under section 66 of the Greater London Authority Act 1999, will require the Authority to have due regard to the SSRB's recommendations in deciding future salaries.

In the Lords' consideration of the current Bill on report, Baroness Miller of Chilthorne Domer moved an amendment which would have removed the stipulation that pensions be paid only to members of local authorities who were members of the executive:[81]

> Baroness Miller of Chilthorne Domer moved Amendment No. 78:
>
> Page 54, line 42, leave out ("of an executive").
>
> The noble Baroness said: My Lords, in moving the amendment, I speak also to Amendments Nos. 79 and 80 in the name of my noble friend.
>
> The amendment seeks to delete from the section on allowances and pensions the words "of an executive". To single out councillors who are members of the executive in particular to receive pensions is divisive; and the Bill should not aim to be that. At earlier stages of the Bill, the Minister conceded that under the system other members of the council would have equally important work to do--for example, the chairman of the scrutiny and overview committee. However, the Bill allows for area committees. The chairmen of those committees are likely to spend at least as much time on their work as members of the executive. Chairmen of bodies which come into more contact with the public than does the executive are likely to undertake jobs with longer and perhaps more antisocial hours.
>
> …
>
> We believe that the independent panel should set the provision for local councillors with perhaps guidance and input from the council. We do not think that it would be helpful to have anything that further divides councillors. As I read the clause again I was reminded of Animal Farm. Councillors are supposed to be elected to represent the people. If they become long-term professionals, at some point they will become indistinguishable from the officials. It is important that the position as regards all councillors is equitable and that there are not some who are councillors by profession: they have served a long time; they have a

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[81] HL Deb 2 March 2000 Col 731 [this extract has been edited for length]

> pension; and the likelihood of them moving on is remote. There is no provision in the Bill even for a maximum term for those on pensions**.** For a councillor in his fifties who has served for a long time to receive a pension might be another incentive to stay on. None of these issues has been thought through in the drafting of the provision. I beg to move.

Setting out the Government's position, Lord Whitty responded thus:[82]

> My Lords, I am not sure whether I understand clearly the noble Baroness's case. I do not know whether she proposes that fewer people than provided by the clause should have pensions or that the possibility of pensions should be extended to others. In her latter remarks, she seemed to believe that pensions should not be extended to anyone because they encouraged individuals to stay on. As Members of your Lordships' House will know, it is not always pension rights which encourage people to stay on. I suspect that the same applies to councillors.
>
> I understand the anxiety that the provision might be divisive. However, we have to face the fact that if we move to an executive structure many of those executive posts--perhaps by no means all--will effectively be full- time jobs. Although in general the tendency to full-time councillors is not necessarily supported by this side of the House, let alone the other side, the executive function will be equivalent for the time one is on the executive to a full-time job for many executive members. They will, therefore, miss out on pension rights in what would otherwise be their full-time job. It is that situation that we have to address; and we address it here in relation to executive members.
>
> As regards general members of the council, or those who have been but cease to be members of the executive, the same arguments do not apply. If we were to make pensions more available to non-members of the executive, it would encourage a drift towards full-time councillors, which in general we are attempting to resist.

The amendment was withdrawn.

Clause 88 (1) of the Bill now provides that:

> *Allowances and pensions for certain local authority members.*
>
> **88.** - (1) The provision which may be made by regulations under section 7 of the Superannuation Act 1972 (superannuation of persons employed in local government service etc) includes provision for or in connection with the provision of pensions, allowances or gratuities to or in respect of such members of an executive of a local authority as may be prescribed by the regulations.

Clause 88(7) provides for regulations which would enable district councils, county

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[82] HL Deb 2 March 2000 Col 731 - 2

councils, county borough councils or London borough councils which are operating executive arrangements to determine which members of the executive are to be entitled to pensions, allowances or gratuities and to treat the basic allowance and the special responsibility allowance as amounts in respect of which such pensions, allowances or gratuities are payable.

Clause 88 has become very much more detailed since the Bill was first introduced in the House of Lords on 25th November 1999 as *Bill 9 of 1999/2000*, when it provided that

> **Allowances and pensions for local authority members.**
>
> **66.** The Secretary of State may by regulations make provision with respect to the payment of allowances and pensions to members of local authorities.

Clause 66 of the *Local Government Bill 1999 [HL][Bill 9 of 1999/2000]* had been intended only to signal the Government's intentions, as that part of the Bill had not been fully drafted at the time of the Bill's introduction to the House of Lords. What is now **Clause 88** was introduced at the report stage and reflects the Government's current desire not to fuel the growth in the numbers of full-time councillors.

The Explanatory Notes explain that:

> 206. *Clause 88* amends section 18 of the Local Government and Housing Act 1989 to provide for carers' allowances, and for pensions for members of local authority executives. Regulations to be made under the amended s.18 may also require councils (other than parish councils) to establish an independent panel which will make recommendations on allowances etc. …

Lord Whitty confirmed last year that it is for local authorities to devise their own schemes of allowances[83]

> **Baroness Gardner of Parkes:** Further to the Written Answer by the Lord Whitty on 27 July (HL 3783), whether the additional financial cost of the new higher rates of council allowances paid to elected councillors by councils operating a "cabinet system" will be met by the Government in extra Standard Spending Assessment, or whether the cost will fall on the council tax payers.
>
> **Lord Whitty:** Further to my Answer of 27 July, when a council adopts new ways of working such as a "cabinet system", it may keep its present scheme of allowances or move to a new scheme. Such a new scheme may entail higher or lower overall expenditure on allowances and it is for each council to decide how to accommodate any such change in its budget. Changing a council's scheme of allowance has no implication for its Standard Spending Assessment.

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[83] HL Deb 11 October 1999 Col 67W

Clause 89 deals with allowances for parish councillors and for travel, subsistence and other allowances for members of relevant authorities. The Explanatory Notes remark that:

> 206. … *Clause 89* enables the Secretary of State to make regulations on allowances for members of parish councils and, for members of all authorities, allowances for travel and subsistence, including travel by bicycle; allowances for attending conferences; and reimbursement of expenses.