



RESEARCH PAPER 00/45
6 APRIL 2000

The Local Government Bill ***[HL]: Electoral Aspects***

Bill 87 of 1999-2000

This Paper is one of a series which examines the provisions of this Bill, due to be debated on second reading on 11 April. Research Paper 00/44 sets out the provisions on new forms of executive arrangements (including elected mayors) in Part II of the Bill. This Paper looks at the electoral aspects of Part II. It also examines provisions for holding referendums on the new executive arrangements proposed in clauses 31 and 32 of the Bill. The Paper also discusses the introduction of a system of annual elections for all types of local authorities (excluding parish and community councils). The Bill extends to England and Wales but not Scotland. However, the National Assembly for Wales will be responsible for drafting the relevant secondary legislation under the Bill.

The following Research Papers discuss other aspects of the *Local Government Bill*: RP 00/44 (local government leadership); RP 00/46 (welfare services and social services functions); RP 00/47 (the section 28 debate).

Oonagh Gay

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Summary of main points

Part II of the Bill deals with alternative executive arrangements for local authorities. Where elected mayors are to be adopted for local authorities the form of election will be the Supplementary Vote (SV). This method is to be used in the election of the Mayor for London. The elector will have two votes and will express two preferences amongst the various candidates. The term of office for an elected mayor will be four years, although the initial terms may be shorter or longer to ensure that the mayoral elections take place in a different electoral cycle than those for councillors, where this is possible. The local electorate includes EU nationals and members of the House of Lords, but not overseas voters.

Referendums on the question of transferring to an elected mayor can be initiated by two routes:

- By a petition from at least five per cent of local electors (Clause 31)
- By order of the Secretary of State (Clauses 32 and 33)

Only one referendum may be held in a five year period.

Part IV of the Bill provides for the Secretary of State to alter the cycle of elections for English local authorities, in all councils other than parish or town councils, and for the National Assembly for Wales to alter the cycle for Welsh authorities. The intention in England is to move towards a system of annual elections for all types of principal councils (apart from parish or town). Background on this manifesto commitment is given in Research Paper 99/46 *Local Elections: Proposals for Reform*. In Wales, the National Assembly has scope to develop its own policy.

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I Elections for Mayors and Executive Members

A. Introduction

Directly elected mayors (provision for which is contained in part II of the Bill)¹ will be a novelty in English and Welsh local government. New methods of elections were thought necessary for the election of a single executive figure, and the Bill uses the Supplementary Vote (SV) for this purpose. SV was adopted for the election of the London Mayor in the *Greater London Authority Act 1999*. The 1998 white paper² considered that SV would be simple and easy to use and would result in a clear winner:

3.37 Under the SV system voters simply mark the ballot paper using an 'X', as is usual in other elections. The ballot paper has separate columns in which voters may register their first and second choices. Voters are not required to vote twice if they do not wish to do so.

3.38 Counting under the SV system is also simple. Assuming there are more than two candidates, voters' first preferences are counted and if one candidate gets 50% or more of the vote, he or she is elected. If no candidate polls 50% of the vote, all of the candidates are eliminated from the ballot except the two who received the highest number of votes. The second preferences on the ballot papers of the eliminated candidates are then examined and any second votes which have been cast for the remaining candidates are awarded to them. Whoever has the most votes at the end of that process is declared the winner.

B. The Bill

1. The Electoral Cycle for Mayoral Elections

Clause 36 defines the term 'elected mayor' and provides that the term of office is to be four years, unless amended by regulations under Clause 37. This clause was amended at Lords third reading³ to define also the term 'elected executive member' as members of a directly elected cabinet, another option for executive structure which could be requested by a local authority under clause 11(5) of the Bill. The *Explanatory Notes* to the Bill provide further details:

77. *Clause 36* provides that a directly-elected mayor means an individual elected to that post by the local government electors in the authority's area. The clause also provides for elected executive members to be elected by the local government electors for the authority's area. Elected executive members are

¹ For Part II generally, see Research Paper 00/44 *Local Government Bill: Local Government Leadership etc*

² *Modern Local Government: In Touch with the People* July 1998 Cm 4014

³ HL Deb vol 610 9 March 2000 c1214

individuals who are directly elected to an executive or to a particular post in an executive where such an executive has been provided for in regulations under clause 11(6).

78. Elected mayors are to be treated as a local authority councillor and member for the purposes of local government legislation, except where regulations provide otherwise. This means that general provisions relating to councillors, such as those relating to conduct, qualification, disqualification, the filling of vacancies, entitlement to allowances etc. will also apply to elected mayors.

Clause 37 enables the Secretary of State to make regulations providing for the dates, years and intervals at which elections for elected mayors or elected executive members can take place. The objective is to achieve an electoral cycle consistent with the different electoral cycles operated by local authorities, and this may mean that initial terms of office for elected mayors could be for more or less than four years so that the election is brought into step with those for ordinary councillors. In evidence to the Lords Select Committee on Delegated Powers and Deregulation, which carried out its normal prelegislative scrutiny of government bills, the DETR said:⁴

132. The purpose of this power is to allow the Secretary of State to make detailed provision for determining the years in which mayoral elections should take place in particular circumstances. It will also allow the Secretary of State to provide for terms of office (and intervals between elections) which are shorter or longer than the normal term of office of four years specified in subsection 25(2).

133. The Government considers that this provision will be necessary because of the potentially wide range of circumstances that will prevail amongst local authorities wishing to introduce a directly elected mayor. Relevant circumstances will include the type of local authority (e.g. whether unitary or two-tier), the pattern of elections currently in place (e.g. 'all out' elections, or elections by thirds), the years in which the normal election of councillors takes place, the year in which an authority decides to introduce an elected mayor, and the relative phasing of the electoral cycles. All of these factors will affect the options for the timing of mayoral elections, the timing of the first such election, and the possible need for initial terms of office which differ in length from the normal term of office as a transitional measure.

134. For example, a London borough council might wish to opt for its first mayoral election in 2001 (not a usual year of elections for London borough councils), but thereafter to hold mayoral elections at four-yearly intervals in the same year as council elections (i.e. 2002, 2006 etc). In order to avoid the first mayor having to seek re-election after just one year in office (or, alternatively, waiting an extra year before electing the first mayor), regulations made under this power could provide for the initial term of office to be five years in these circumstances.

⁴ HL Paper 16 1999-2000

Draft regulations were issued at Lords committee stage⁵ which provided for the timing of the first and second elections for mayor following a referendum. Once four months have elapsed since the referendum the authority must hold the mayoral election on the first Thursday in May or, if sooner, the first Thursday in October/November.⁶ The procedure for the next election was set out as follows:⁷

The second mayoral election may not be held within 23 months of the first mayoral election and must take place on the ordinary day of election of councillors of local government areas (normally the first Thursday in May).⁸ The year in which the second election is to take place depends on the existing electoral arrangements in the authority's area. The councils of metropolitan districts and the councils of those non-metropolitan district councils which elect by thirds and for whose area there is no county council, must hold a second mayoral election in the next year (after the end of the 23 month period) in which there would not normally be local government elections in their area. Other councils must hold a second mayoral election (after the end of the 23 month period) on the ordinary day of election of councillors not later than either the fifth or sixth year after the first election, depending on the month in which that election took place .

The draft regulations provided for subsequent elections on a four yearly basis. The intention would seem to be to plan for mayoral elections to take place in the 'fallow' year,⁹ for areas which elect by thirds. Where there are two tier areas, the mayoral election will probably need to be scheduled to avoid the year in which county council elections take place to avoid confusion for the electorate. This will mean that the election will have to take place in one of the 'thirds' years. London boroughs also need to avoid conflicts with the Greater London Council elections. As annual elections are introduced following Part IV of this Bill, mayoral elections could be scheduled for the 'fallow' year where possible. These rather complex transitional arrangements would seem to add – temporarily at least- to the already complicated electoral cycles for local authorities. This issue is discussed further in Part III of this Paper below. It is worth noting that the elections for the Greater London mayor will take place on the same day as elections to the Greater London Assembly.

The power to issue regulations will remain at present with the Secretary of State,¹⁰ rather than transfer to the new Electoral Commission which is planned under the *Political*

⁵ *The Local Government Bill: Further consultative drafts of proposed regulations on new constitutions for councils (Part II)* DETR February 2000 Dep 00/390

⁶ There is no provision to hold the election earlier than the four month period

⁷ Dep 00/390 *Explanatory Note*

⁸ This simply means the day on which local elections are to be held, not necessarily the day on which the whole authority is elected. The term is defined in draft regulation 1(3)

⁹ The fallow year is the year in which no elections take place where elections are held by thirds and councillors are elected for four year terms. See Research Paper 99/46 *Local Elections – Proposals for Reforms* for details

¹⁰ The National Assembly for Wales has the power to issue regulations for Wales

Parties, Elections and Referendums Bill currently before Parliament.¹¹ Under clause 6 of that Bill, a Secretary of State will only be able to exercise instrument-making powers on the conduct of local and parliamentary elections after consulting the Commission. There are additional powers in clause 5 for the Commission to review the conduct of elections, and in clause 7 for the Secretary of State to exercise functions mainly relating to election expenses only on recommendation of the Commission. In its evidence to the Lords committee, the DETR set out its proposals for amendments to the *Local Government Bill* to allow the Commission a role in regulations and guidance:

ADDITIONAL SCRUTINY BY ELECTORAL COMMISSION

70. Further scrutiny of regulations relating to the conduct of mayoral elections and referendums, and in relation to petitions, is envisaged once the proposed Electoral Commission is established. The Government proposed the creation of an Electoral Commission in its White Paper *The Funding of Political Parties in the United Kingdom*. One of the functions of the Commission would be to keep electoral law under review, and the draft Bill accompanying the White Paper envisaged that there would be a duty to consult the Commission before making certain regulations governing the conduct of elections.

71. The Government believes that a number of delegated powers in Part II of the Bill will be relevant to the functions of the proposed Electoral Commission. These are:

regulations made under clause 22 (Referendum following petition) about the form, manner of giving and verification of petitions, and the action to be taken by an authority before a referendum;

regulations made under clause 23 (Power of Secretary of State to require a referendum) in relation to the action to be taken by an authority before a referendum;

guidance issued under clause 24 (Guidance) in relation to the conduct of referendums and elections;

regulations made under clause 29 (Power to make provision about elections);

regulations made under subsections 30(3) and (4) (Provision with respect to referendums) about the conduct of referendums and the combination of polls; and orders made under clause 32 (Power to modify enactments) which modify enactments relating to the conduct of elections or referendums.

72. The Government proposes that, once the Commission has been established, and its functions in relation to changes in electoral law have been brought into effect, the Secretary of State should not make regulations under these powers without first having consulted the Commission. Furthermore, the Government believes that no regulations should be made under subparagraph 29(2)(c) (limitation of election expenses of candidates) other than upon, and in accordance with, a recommendation of the Commission (again, subject to the Commission's functions in this area being brought into effect). The Government will bring forward amendments to this effect once the Bill to establish the Commission has been introduced, as noted at relevant points in the memorandum below in respect of specific powers.

¹¹ HL Bill 48 1999-2000. See Research Papers 00/1, 00/2 and 00/3 for background

These amendments have not yet been tabled, but the Government remains committed to the principle behind them.¹² Amendments may be tabled either to this Bill or to the *Political Parties, Elections and Referendums Bill*.

2. The Supplementary Vote

SV is a modified version of the Alternative Vote used in elections in Australia.¹³ It was the preferred option of the Labour Party's Plant Commission on electoral reform for the House of Commons which reported in 1993. Its supporters favour it above the Alternative Vote as it restricts the voter to two preferences so as to prevent very weak preferences at the bottom of the ordering scale influencing the result unduly. On the other hand the votes of those using both votes for eliminated candidates are 'wasted'. A version is used in Presidential elections for Sri Lanka. The Dunleavy report on possible electoral systems for London,¹⁴ which was prepared for the DETR, noted that the 'SV elimination method favours the existing major parties (Conservatives and Labour)..but the second preferences of Liberal Democrats and other voters will be critically important in determining the final result.' Professor Vernon Bogdanor has argued that SV can have capricious effects in a four party system.¹⁵

At Lords committee stage the Liberal Democrats proposed amendments to substitute the Alternative Vote.¹⁶ Lord Lipsey, a Labour peer, argued that where there were more than three candidates, as was likely in London, third and fourth preference votes might become very important (c173). In response, Lord Whitty, the junior government spokesman, said that SV had already been chosen for London as a simpler system, and it would be inappropriate to introduce another electoral system for elected mayors outside London (c174). The Conservatives proposed the use of first past the post (c176) but Lord Whitty considered that this could lead to a mayor being elected on 28 per cent of the vote in a four sided contest (c177). The issues were again debated at Lords report stage.¹⁷

Clauses 38-40 set out the procedure for an SV election. This procedure will only be used if there are more than two candidates; otherwise a simple majority will suffice. An elector will have two votes if there are more than two candidates, and will mark preferences with an X. It is expected that if an elector offers a first preference only, that will be counted, but if an elector marks only the second preference box that will be considered a spoilt

¹² Information from DETR officials

¹³ For background on AV and SV see Research Paper 98/112 *Voting Systems: The Jenkins Report*

¹⁴ *Report to the Government Office for London: Electing the London Mayor and the London Assembly* Professor Dunleavy and Dr Helen Margetts 20 January 1998 ' para 2.24

¹⁵ *Power and the People* 1998 p 69

¹⁶ HL Deb 1 February 2000 c 171

¹⁷ HL Deb vol 610 2 March 2000 c708-12

paper.¹⁸ **Schedule 2** sets out the detailed arrangements for the vote; if no candidate wins an overall majority of first preference votes then the procedure is as follows:

No candidate with overall majority of first preference votes

3. - (1) If none of the candidates to be the elected mayor receives more than half of all the first preference votes given in the election the following provisions of this paragraph are to have effect.

(2) The two candidates who received the greatest number of first preference votes given in the election remain in the contest.

(3) If, by reason of an equality of first preference votes, three or more candidates are qualified to remain in the contest by virtue of sub-paragraph (2), all of them remain in the contest.

(4) The other candidates are eliminated from the contest.

(5) The number of second preference votes given in the election for each of the candidates remaining in the contest by voters who did not give their first preference vote to any of those candidates is to be ascertained.

(6) That number is to be added to the number of first preference votes given for that candidate, to give his total number of preference votes.

(7) The person who is to be returned as the elected mayor is that one of the candidates remaining in the contest who has the greatest total number of preference votes.

If there are two candidates with an equal number of preference votes, the returning officer is to decide the contest by lot.¹⁹

3. The Electorate and Conduct of Elections

The electors entitled to vote will be the same as those entitled to vote at normal local elections and appearing on the electoral register. These include EU nationals who are resident in the UK and members of the House of Lords, but not overseas voters. This will also form the electorate for referendums to be held under Part II of the Bill. There are new provisions in the *Representation of the People Act 2000* to create a rolling register so that registration is no longer an annual exercise.²⁰

The Secretary of State²¹ has power to make regulations for the conduct of elections for elected mayors or elected executive members. These will include powers to regulate election expenses and to deal with the possibility of combining different types of elections on the same day.

¹⁸ This follows the precedent in the elections for the Mayor for London. Information from DETR officials

¹⁹ Schedule 2 para 8

²⁰ See Research Paper 99/94 *The Representation of the People Bill* for further details

²¹ The National Assembly for Wales does not have the power to issue regulations about the conduct of elections, so these regulations will be made by the Home Secretary

The law relating to electoral expenses is currently being modified by the *Political Parties, Elections and Referendums Bill*. The new provisions apply a system of national limits for parliamentary elections. There are no national limits for local elections, but the provisions affecting individual candidates will apply to local elections. There will be new controls on donations to candidates and new definitions of election expenses.

Regulations on expenses for the London elections were however made under the *Greater London Authority Act 1999*²² and following this precedent, expenses rules will be made under the *Local Government Bill*. However, as noted above, the DETR evidence to the Lords select committee on delegated powers and deregulation proposed that the Secretary of State would not make regulations on election expenditure without consulting the Commission, and that there would be amendments to that effect to the *Local Government Bill*²³

The London election expenses rules allow for a mayoral candidate to spend £420,000 per election. This limit is much higher than can be expected for local mayors due to the size of the London electorate and the unique powers given to the London mayor.²⁴ In London, the election limits applied from the date that the order came into force, but for future elections the intention is for the limit to apply for four months prior to the date of the election. In London there were also new limits on the amounts third parties, such as pressure groups or trade unions, can spend during an election campaign. These were set at £25,000 for the mayoral element, but again this limit is much higher than can be expected for local elections.²⁵

The possibility of freepost for mayoral elections other than for London was considered at Lords third reading. Baroness Hamwee, for the Liberal Democrats, raised the question, following the debate over its use in the Greater London Authority elections.²⁶ One of the pilot schemes under the *Representation of the People Act 2000* is to allow freepost in the next local government elections in Watford to discover whether more information raises turnout.²⁷ However, Lord Whitty said that the tradition of local electoral rules was not to include freepost. He promised a further consultation paper on the regulation of mayoral elections.²⁸

²² *The Greater London Authority (Expenses) Order 2000* SI 2000 no

²³ This proposal would be subject to the Commission's functions in this area being brought into effect. See paras 72 and 141, Annex 1 of HL 16 1999-2000

²⁴ See letter from Keith Hill, junior DETR minister, to party representatives in London 15 December 1999

²⁵ New limits were necessary for third parties following the Bowman judgement in the European Court of Human Rights. See Research Paper 00/1, Part V for background

²⁶ The *Representation of the People Act* s14 allows the free delivery of election addresses for the first London mayoral election. This provision was inserted at third reading in the Lords HL Deb 6 March 2000 c808, following a vote in the Lords against the *Greater London Authority (Expenses) Order* on 22 February 2000.

²⁷ See Research Paper 99/94 *The Representation of the People Bill* for background on pilot projects. The details of the projects were set out on 13 March HC Deb c75w

²⁸ HL Deb 9 March 2000 c1231

At Lords report stage, the junior minister, Baroness Farringdon of Ribbleton, stated that the government had not yet reached a view on whether there should be special nomination requirements for elected mayor on the lines of those applicable for the London Mayor. The issue would be dealt with under secondary legislation.²⁹ Liberal Democrat amendments to introduce a system of statutory primaries for mayoral elections did not receive government support.³⁰

II Referendums

A. Introduction

Background on local authorities and referendums is given in Research Paper 99/30 *Referendums: Recent Developments*. There is no specific power enabling local authorities to hold referendums at present. The 1998 white paper³¹ promised to introduce legislation to confirm the power of authorities to hold referendums. There is no such power in the current Bill, which concentrates on referendums on the question of introducing alternative executive arrangements. The draft bill of March 1999³² contained clauses where a public petition for an elected mayor would trigger a referendum, and there are plans for secondary legislation to set out the detail of the conduct of such referendums under the current Bill. Referendums under this Bill are not subject to the provisions on expenditure for national referendums contained in the *Political Parties, Elections and Referendums Bill*.³³ However the Government have indicated that secondary legislation will cover local authority publicity and expense limits for campaigning groups in the period before polling.

B. The Bill

1. Public Petitions

Clause 31 enables the Secretary of State to make regulations requiring a local authority to hold a referendum on the possibility of a directly elected mayor, where it has received a petition signed by at least 5 per cent of local electors. The percentage may be varied by regulation. The Secretary of State has powers to combine referendums with elections, to provide for the conduct of the election, including the question to be asked, the type of publicity to be undertaken and the conduct of the authority in relation to the referendum.

²⁹ HL Deb vol 614 2 March 2000 c702

³⁰ HL Deb vol 614 2 March 2000 c703-8

³¹ Cm 4014 July 1998

³² *Local Leadership Local Choice* Cm 4298

³³ See Research Paper 00/3 *The Political Parties, Elections and Referendums Bill: Referendums and Broadcasting* for further details

In January 2000 the DETR published draft guidance which included chapters on petitions and referendums.³⁴ This draft guidance included restrictions on local authority publicity activity similar to those proposed for central government in the *Political Parties, Elections and Referendums Bill*.³⁵ There would be a 28 day period before the poll when the authority could produce factual material only about the referendum.³⁶ The restrictions would only apply to the local authority, rather than individual candidates and their party organisations. There would be expenditure limits on campaigning activity relating to the referendum.

Clause 30 provides for the operation of fall-back alternative arrangements if the referendum is lost. These need to be approved by the Secretary of State.

The Lords select committee on delegated powers and deregulation took note of the proposals in DETR evidence to consult the new Electoral Commission in regulations under this clause.³⁷ The committee considered that the negative procedure for these regulations remained appropriate.³⁸ In its evidence, the DETR also promised a series of amendments on the petition power:

104. The Government will also bring forward an amendment to the enabling power in subsection 22(1) to enable the Secretary of State, by regulations, to require a local authority which receives a petition signed by at least 5% of the local government electors for the local authority's area and requesting:

a directly elected mayor, or a referendum on a directly elected mayor, in an unspecified form of executive; or

a directly elected mayor, or a referendum on a directly elected mayor, in a specified form of executive which is one of those defined in or under the Bill, to hold a referendum in such circumstances as may be prescribed in the regulations.

105. The intention behind this proposed amendment is to allow maximum flexibility in the form of proposition put in a petition. Where the petition requests a directly elected mayor, or a referendum on whether to have a directly elected mayor, in an unspecified form of executive, the authority (in consultation with the community) will have the choice of which form of executive should form the basis of the proposals to be the subject of the referendum. Where the petition requests a directly elected mayor, or a referendum on a directly elected mayor, in a specified form of executive then the authority will have to bring forward proposals based on the form of executive requested by the petition.

³⁴ *Local Government Bill Draft Guidance New Constitutions Part I Changing to a New Constitution* DETR January 2000

³⁵ See Research Paper 00/3 *The Political Parties, Elections and Referendums Bill: Referendums and Broadcasting* for further details

³⁶ This mirrors provisions in the *Political Parties, Elections and Referendums Bill* for a 28 day pre poll period in which the Government is restricted to issuing factual material only on a referendum. See Research Paper 00/3 for details

³⁷ See above Part I Directly Elected Mayors and Executive Members

³⁸ Para 22, HL 16 1999-2000

106. The Government also intends to bring forward an amendment that regulations made under this clause will be able to include provision in respect of the method by which the 5% threshold is to be calculated and promulgated. The Government considers that it will be important for petition organisers to know what threshold will apply to their petition. A regulation-making power is sought so that the method of calculation can be easily amended, if necessary, to reflect changes in the system of electoral registration as a result of the provisions in the Representation of the People Bill.

AMENDMENT ON ACCEPTABLE FORMS OF PETITIONS

107. In addition, the Government will bring forward an amendment which enables the regulations under clause 22 to specify a form of petition which does not involve a paper-based petition with hand-written signatures. The intention behind this proposed amendment is to enable the Secretary of State to define a form of petition which is based on, for example:

telephone 'voting'; or
electronic signatures.

This is consistent with the Government's proposals to pilot schemes for elections and referendums which involve such methods, under clause 10 of the Representation of the People Bill (introduced into the House of Commons on 18 November 1999).

108. The Government appreciates that electronic or telephone signatures present additional technical complications to electronic or telephone voting. It will be essential to ensure that the appropriate technology is available before allowing petitions to be collected by these methods. Therefore, the Government does not, in the short term, intend to make regulations allowing petitions to be collected in this way but wishes to have the flexibility to do so when the technology becomes available.

SUBSECTION 22(5): POWER TO AMEND THE PETITION THRESHOLD

109. Subsection 22(5), as published in the draft Bill, provides the Secretary of State with a power to make regulations amending the threshold for a valid petition from 5% of the local electorate (as it is in subparagraph 22(1)(a)).

110. The Government considers that this provision is necessary to ensure that the threshold can be amended if it proves to be too high or too low a hurdle for petitioners to reach; for example, if it appears that the threshold has been set too high and very few, or no, valid petitions are coming forward.

The select committee report considered the negative procedure acceptable, given the requirement to consult the new Commission on amending the petition threshold. However, in a later report on government amendments for Lords committee stage the select committee commented as follows:³⁹

25. One of the effects of the amendments to clause 22 is to alter the requirement for a petition requiring a referendum under the bill from:-
- (a) signature by not less than 5 per cent. of the electorate, to
 - (b) signature by not less than a prescribed number of electors.

³⁹ HL Paper 23 1999-2000

The number that can be prescribed must not exceed 5 per cent. of the electorate but there is no lower limit. **The House may wish to consider carefully this open-ended power.**⁴⁰

In Lords Committee the Conservative spokesman, Lord Dixon-Smith, proposed amendments to require a threshold of 40 per cent of the electorate to vote in favour in a local referendum for the results to take effect.⁴¹ These amendments were supported by the Liberal Democrats. In response, the junior minister, Lord Whitty, stated:⁴²

This is an important issue and one that the Government considered carefully. As my noble friend Lord Filkin said, the Joint Committee, chaired by the noble Lord, Lord Bowness, also considered it carefully. However, broadly for the reasons I outlined and on grounds of practicality, it did not consider it sensible to require a threshold. To be credible, in one sense it would have to be fairly low in relation to actual achieved local authority election turn-outs, but to have a broader political authority it would have to be too high to be achieved. Therefore on grounds of practicality that approach was rejected.

Grounds of presentation and politics are also involved in this issue. When a situation provides that one can obtain victory in a referendum but that that victory can be snatched away by the fact that the turn-out provision has not been met, the political consequences may be dire. Members of the Committee will recall an earlier referendum in Scotland in the 1970s. The effect of that was detrimental both to the politics of Scotland and the United Kingdom. It has taken 20 years to put that right.

The Conservatives proposed a threshold of 25 per cent at report stage, but Lord Whitty continued to reject the principle of thresholds.⁴³ He rejected comparisons with the minimum turnout set in a council tenants' ballot when the question of ownership of the local authority housing stock is at issue (c699).⁴⁴

2. Referendums initiated by the Secretary of State

The DETR evidence to the Lords select committee on delegated powers and deregulation also commented on the need to take powers to require a referendum, citing instances where it might be considered necessary:

⁴⁰ This issue was debated at Lords committee stage HL Deb vol 609 1 February 2000 c142-149

⁴¹ HL Deb vol 609 1 February 2000 c134 See Research Paper 97/61 *The Referendums (Scotland and Wales) Bill* for background to the question of thresholds for referendums.

⁴² HL Deb vol 609 1 February 2000 c137

⁴³ HL Deb vol 610 2 March 2000 c698 No statutory thresholds for local authority transfers apply. The 1998 Transfer Guidelines (DETR) state that 'The Department consider that a simple majority of those voting in favour is sufficient to indicate tenant support for a transfer. However, an authority may wish to impose a more stringent test.' para 2.27

116. Examples of circumstances in which the Secretary of State may wish to require a referendum could be:

where an authority has requested such an intervention (e.g. if they have received multiple petitions);

where a petition organiser has requested such an intervention (e.g. if the authority has refused to act on the petition);

where an authority will not draw up proposals for a new constitution;

where an authority has not consulted appropriately on its proposals;

where the timetable for implementation of an authority's proposals is inordinately long; or

where, in the Secretary of State's opinion, an authority's proposals are not in accordance with the principles of efficiency, transparency and accountability which underpin the legislation

Clauses 32 to 33 give the Secretary of State power to make regulations directing a local authority to hold a referendum on a local authority executive and to require all local authorities or all authorities of a particular description to hold a referendum on a particular form of executive. There are further provisions to allow the Secretary of State to direct the action to be taken by a local authority before and after the referendums. Lord Whitty defended the clauses in committee as necessary to deal with isolated instances of abuse and to avoid the necessity for court action.⁴⁵

Clause 41 provides that a local authority may hold only one referendum on proposals for executive arrangements in any five year period, including referendums triggered by public petition under clause 31 or required by the Secretary of State under clauses 32 and 33. It also sets out the electorate as those eligible to vote in ordinary local elections.

III The Electoral Cycle

A. Introduction

Part IV of the Bill provides for the Secretary of State to alter the cycle of elections for English local authorities and for the National Assembly for Wales to alter the cycle for Welsh authorities. The background to the provisions is set out in Research Paper 99/46 *Local Elections- Proposals for Reform*.

Current electoral arrangements in England are summarised below:⁴⁶

⁴⁵ HL Deb vol 609 1 February 2000 c169

⁴⁶ The table is taken from the February 1998 green paper *Modernising Local Government: Local Democracy and Community Leadership* DETR p14. For background on types of local authorities see paras 3.7-3.9. The table does not include the cycle for the Greater London Authority elections

Electoral arrangements in English local authorities

| Type of authority | Electoral cycle and warding arrangements | 1998 | 1999 | 2000 | 2001 | 2002 |
|--|--|---------------|---------------|---------------|------|---------------|
| County councils | Full council elections. Single member electoral districts. | | | | FC | |
| London Boroughs | Full council elections. 1-3 members per ward. | FC | | | | FC |
| Metropolitan Districts, 6 unitary authorities and 21 shire districts | By thirds. Almost all wards have between 1-3 members. | $\frac{1}{3}$ | $\frac{1}{3}$ | $\frac{1}{3}$ | | $\frac{1}{3}$ |
| 67 Shire Districts and 5 unitary authorities | By thirds. Almost all wards have 1 -3 members. | $\frac{1}{3}$ | $\frac{1}{3}$ | $\frac{1}{3}$ | | $\frac{1}{3}$ |
| 149 Shire Districts and 28 unitary authorities | Full council elections. All wards have three members. | | FC | | | |
| Parishes | Full council elections. Some parishes warded, others not. | | FC | | | |

This table excludes transitional arrangements in recently-created unitary authorities.

The academics Rallings and Thrasher have concluded in a recent article⁴⁷ that the local electoral cycle had become more complex. This was due to the piecemeal approach to structural change, to the difficulty of implementing new electoral arrangements consequent on the change-and to the necessary re-warding being carried out by the Local Government Commission for England.

The Labour manifesto for the 1997 election contained a commitment to the introduction of annual elections for all types of councils. The 1998 white paper⁴⁸ set out detailed proposals to introduce annual elections by building on the system of electing by thirds used in all metropolitan districts and some unitary authorities as well as district councils in two tier areas:

4.10 In introducing annual accountability, the Government will therefore build on this well-supported system which is already in place in many councils. All the metropolitan district councils elect by thirds in this way, as do a number of the shire unitary district councils and district councils in two-tier areas. The Government will make this the standard pattern of elections for all unitary councils in future, including London Boroughs.

4.11 The 'fallow' year in which there would be no election for councillors would be used for other elections. In unitary councils (including London Boroughs)

⁴⁷ *Parliamentary Affairs* January 1999 'An Audit of Local Democracy in Britain'

⁴⁸ *Modern Local Government: In Touch with the People* July 1998 Cm 4014

which had moved to a model with a directly elected mayor, the mayoral election would take place in the fallow year. So would the elections for the mayor and assembly of the Greater London Authority.

4.12 In two tier areas, the Government is equally committed to giving voters an annual opportunity to pass judgement on their local representatives. But it is also preferable to avoid having annual elections for councils in both tiers.

4.13 In these areas, the Government will therefore introduce a pattern in which both the districts and counties would elect by halves in alternate years; i.e. in year one half of the district council would be elected, in year two half of the county council would be elected, and so on. Such a pattern will be readily understood by local electors.

4.14 Currently most district (lower-tier) councils and the biggest spenders, the counties, have elections only every four years while some district councils are elected by thirds. The Government's proposal will therefore reduce the frequency of elections in some district councils but increase the frequency of elections in most councils. Parishes will continue to hold all out elections every four years alongside local district council elections.

4.15 The Local Government Commission (LGC) will continue to review electoral boundaries in the light of the existing criteria of reflecting local communities and providing for effective local government. But local accountability is maximised where the whole electorate in a council's area is involved in elections each time they take place. This requires the same number of councillors in a ward or electoral division as there are elections for the council in any four year period. The Government will therefore take a power to direct the Commission to take this criterion into account when reviewing a council's electoral areas.

4.16 That means that the LGC could, where possible, and over time, be asked to redefine electoral boundaries to increase the proportion of the electorate involved in each local election. But there is no intention to move towards very large electoral areas in sparsely populated rural areas. These would fail to reflect local communities and place additional burdens on those councillors attempting to represent those who elected them. Single member wards or electoral divisions will continue in many authorities.

Therefore, in a two tier area the pattern would be that districts and counties would both elect half their council members in alternate years; however unless two member wards are created throughout two tier areas, it is unlikely that more than half the electorate would be involved in each election. The main effect of moving to annual elections would be felt in London where a new system of three member wards would be necessary. Three member wards are common but not universal there. The cycle of elections for London will also need to take account of the four yearly cycle for the Greater London Authority. This aspect of Government policy appears to have developed separately from the technicality of scheduling elections for directly elected mayors.

The Local Government Commission for England (LGCE) is required to undertake periodic electoral reviews (PER) of English local authorities, and make recommendations on the overall number of councillors, and the number and boundaries of wards/electoral areas. It began a PER in 1996. Once its final recommendations are made, the Secretary of State may implement them by order, with or without modifications. The Commission issued a letter to council chief executives in October 1998 noting that although it was not required to take note of the white paper, the proposals in it were clearly a consideration which it would not be sensible to ignore. In July 1999 Hilary Armstrong, local government minister, announced that there would be no additional elections to implement new electoral arrangements following PERs.⁴⁹

The March 1999 draft *Local Government (Organisation and Standards) Bill*⁵⁰ did not contain any proposals on annual elections, concentrating on new forms of governance. The provisions in Part II of the current Bill for new executive forms do not appear to envisage changes in the number of councillors, despite their new roles. In contrast the Greater London Assembly will have only 25 members across London to scrutinise the executive Mayor for London. The potential interaction between the new executive arrangements in Part II and the cycle of elections in Part IV has not been discussed in depth by Government ministers. It might be argued that fewer councillors are necessary to carry out the different scrutiny and representative roles envisaged as part of the new executive arrangements. However the LGCE is not required to take such considerations into account when recommending overall numbers of councillors.

In Wales the electoral cycle for the unitary local authorities is on a four yearly basis. The Welsh white paper⁵¹ stated that the Assembly would be given a power to determine the frequency of elections for principal councils. The Assembly could therefore bring in elections by thirds or halves, for all county and county borough councils or for named individual councils. In June 1995 the Secretary of State for Wales directed the Local Government Boundary Commission for Wales to undertake a general review of electoral arrangements and issued guidance about the conduct of electoral reviews, including the number of members per electoral area.⁵² The reviews were due to have been completed by December 1999. The National Assembly for Wales is required to make the remaining orders.

The white paper also recommended that the Assembly could also be given a power to rationalise the electoral cycles for the Assembly, councils and community councils and power to direct the Local Government Boundary Commission for Wales to review local

⁴⁹ HC Deb 28 July 1999 c356-7

⁵⁰ *Local Leadership, Local Choice* Cm 4298 March 1999

⁵¹ *Local Government in Wales: Local Voices* Cm 4028 July 1998

⁵² The guidance is set out in Appendix 3 of *Review of Electoral Areas for Welsh Principal Areas: A Guidance Note* Local Government Boundary Commission for Wales See the LGBCW website at www.lgbc-wales.gov.uk for details of the progress of the review

authority electoral arrangements.⁵³ In 1999 the Assembly elections were held on the same day as local authority and community council elections, and there has been pressure to reorganise the cycle so that elections are more regularly spaced.

The National Assembly has not yet made a policy decision on the introduction of annual elections for Wales.

At second reading in the Lords, the junior minister, Lord Whitty, said that ‘Local democracy and service delivery will be enhanced by giving local electors greater opportunity to give their verdict on the council’s policy and performance’.⁵⁴ Part IV of the Bill did not receive detailed scrutiny in its Lords stages.

B. The Bill

Clause 93 provides that the powers exercisable by the Secretary of State under Part IV are exercisable in Wales by the Assembly. The parliamentary procedures for orders relating to England will not apply in Wales, where the Assembly has its own procedures for secondary legislation. **Clause 78** defines the term ‘principal council’ and includes all types of local authorities, apart from parish, town or community councils.

Clauses 79 to 80 allow the Secretary of State to apply different schemes of elections, as set out in the *Explanatory Notes*:

Clause 79 defines the three different schemes of elections that may be applied to principal councils (as defined in *clause 78*). These are:

all-out elections, with the whole council being elected once every four years,
elections by halves, with half the councillors being elected every other year,
elections by thirds, with one third of the councillors being elected each year for three years out of four.

In each case, councillors have a four-year term of office.

177. *Clause 80* provides for the Secretary of State to be able to specify, by order, that a particular scheme of elections should apply to a particular principal council or description of principal council. The scheme of elections must be one of the three schemes set out in *clause 79*. The order may also specify the year or years in which elections are to be held.

178. Where the specified scheme of elections involves the election of only a proportion of councillors in any one year, the order may include provision for identifying the wards, electoral divisions and councillors that may be affected by such a change. This is necessary because the number of councillors representing a ward in a principal council may not be evenly divisible by the frequency of elections that is being specified for the authority. In such cases, there is a need to be able to identify which seats are to be elected at which elections. Similarly, in

⁵³ paras 4.12-4.15

⁵⁴ HL Deb 6 December 1999 c 1025

the electoral divisions of counties (which only have one member per division), it will be necessary to identify which divisions will have elections in any particular year.

Clause 81 allows the Secretary of State to change, by order, the years in which elections take place for any local authority (including parish and community councils). The *Explanatory Notes* state that the purpose of the provision is to change the phasing of electoral cycles without changing the scheme or frequency of elections.

Clauses 82 and 83 allow the making of further orders and for minor amendments to the *Local Government Act 1972* and *Local Government Act 1992* to allow the creation of multi-member electoral divisions in non-metropolitan counties in England. At present county councils are allowed one member per electoral division and so multi-member divisions are necessary to move away from an ‘all-out’ election every four years.