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Local Democracy, Economic Development & Construction Bill [HL]: Democracy and involvement aspects

[Bill 93 of 2008-09]

This paper covers parts I to 3 of the *Local Democracy, Economic Development and Construction Bill [HL]*. The Bill implements a number of community empowerment measures outlined in the white paper - *Communities in control: real people, real power* (Cm 7427). Other provisions concern a) tenants' representation, b) audit of entities connected with local authorities, and c) replacement of the Boundary Committee for England with an independent Local Government Boundary Commission for England.

A separate Library Research Paper 09/46 covers parts 4 to 8 of the Bill which relate to economic and regional matters and construction contracts.

The Bill was introduced into the House of Lords on 4 December 2008. Having completed its Lords stages it was introduced into the House of Commons on 30 April 2009. Its second reading debate is scheduled for 1 June 2009.

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Summary of main points

The *Local Democracy, Economic Development and Construction Bill [HL]* is a wide-ranging one although many of its provisions derive from two main sources. The community empowerment white paper of July 2008 – *Communities in control* (Cm 7427) – contained commitments to introduce a number of the measures in parts 1 and 2. Secondly, parts 4 to 7 of the Bill implement key aspects of the Treasury-led *Review of sub-national economic development and regeneration* (July 2007). Economic and regional matters and construction contracts are discussed in a separate Library research paper – RP 09/46.

This paper covers parts 1 to 3 of the Bill. Community empowerment measures which were foreshadowed in the white paper include the following:-

- A new duty on local authorities to promote **public involvement in the democratic workings** of that authority and connected authorities;
- A requirement for local authorities to establish schemes to accept and respond to local **petitions**;
- Extending to specified public authorities the **duty to involve** local citizens in their decision-making processes;
- Changes to local authority **overview and scrutiny** including a requirement to designate a scrutiny officer, and broadening the scope of joint overview and scrutiny committees;

The Bill will enable the establishment of a **National Tenant Voice** which will act as an advocate for tenants (influencing government and landlords); undertake and commission research (evaluating the impact of policies); promote good practice (encouraging tenant involvement); and promote and support effective representative structures for tenants.

Two further provisions which were introduced by amendment in the Lords are:-

- Amendment of the *Local Government Act 1972* (a) to make it easier for **freemen's guilds** to amend their rules of admission in order to admit women, and (b) to allow all local authorities to confer **honorary freedoms** on those they wish to honour;
- Changes to the 'Widdicombe rules' to break the link between the salary of a local government officer and **political restrictions**.

Measures in part 2 provide for **audit** authorities to appoint auditors to entities connected with local authorities; and to make reports in the public interest.

Part 3 of the Bill removes the responsibility for electoral boundary matters from the Electoral Commission; an independent **Local Government Boundary Commission for England** (LGBCE) will take on the functions of the Boundary Committee for England, which is currently a statutory committee of the Electoral Commission. The Bill sets out the detailed provisions for the constitution and administration of the LGBCE.

The Bill extends to England and Wales only but some parts apply to England only (and part 8 on construction contracts applies to England, Wales and Scotland). The Bill was introduced into the House of Lords on 4 December 2008 and has completed all its stages there. It was introduced into the House of Commons on 30 April 2009 and is due to have its second reading debate on 1 June 2009.

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I Introduction

The *Local Democracy, Economic Development and Construction Bill [HL]* was introduced into the House of Lords on 4 December 2008 and received its second reading on 17 December. After completing its committee and report stages, it received its third reading on 29 April 2009. The Bill was introduced into the House of Commons on 30 April 2009 and is due to have its second reading debate on 1 June. Explanatory notes prepared by the Department for Communities and Local Government are available on the UK Parliament website.[1] Key documents relevant to the Bill can be found on the Library's Bill Gateway pages.

The Bill is a wide-ranging one but many of its provisions originate from two principal sources, namely, the community empowerment white paper of July 2008[2] and the Treasury's sub-national review of economic development and regeneration, published in July 2007.[3] Baroness Andrews said at second reading that the Bill represented:

> …the next step in a journey that has been going on for some time to pass power down to local government and to increase the visibility and accountability of local councils as well as their scope to develop innovative local solutions.

She said that the Bill would build on the *Local Government and Public Involvement in Health Act 2007* which had "established new rights of involvement for local people" as well as "arrangements for local authorities to work with partners on local area agreements, setting out priorities for each area." She added:

> We needed to go further, however, so in June this year we published the White Paper, *Communities in Control: Real People, Real Power*. It set out a range of measures, based on research, extensive consultation and above all listening hard to people, that aimed to transfer greater power from government to citizens and communities, providing a stronger role for local authorities.[4]

Many of the measures in parts 1 and 2 of the Bill were foreshadowed in the white paper. These include:

- duty to promote democracy;
- duty for councils to respond to petitions
- extension of duty to involve local persons;
- changes to overview and scrutiny;
- amendment of the 'Widdicombe Rules' on political restrictions;
- honorary titles;
- tenants' representation.

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1 *Bills before Parliament 2008-09*, http://services.parliament.uk/bills/
2 DCLG, *Communities in control: real people, real power*, Cm 7427, July 2008
3 HM Treasury et al, *Review of sub-national economic development and regeneration*, July 2007
4 HL Deb 17 December 2008 c850

Part 2 also contains provisions concerning the audit of entities connected with local authorities while part 3 establishes the Local Government Boundary Commission for England as an independent body separate from the Electoral Commission. It takes over the functions of the Boundary Committee for England.

All of these matters are discussed in the present paper which covers parts 1 to 3 of the Bill. A separate research paper (RP 09/46) examines the economic, regional and construction aspects contained in parts 4 to 8 of the Bill.

In terms of **territorial extent**, parts 1 to 7 of the Bill extend to England and Wales only (but with the exceptions listed below). Part 8 extends to England, Wales and Scotland. Those provisions which apply to England only are: (a) Extension of duty to involve, (b) Housing – tenants' representation, (c) Overview and scrutiny, and (d) Local Government Boundary Commission for England. Additionally, parts 4 to 7 covering economic development measures apply to England only. Clause 32 extends measure-making powers to the National Assembly for Wales in respect of (a) executive arrangements and (b) overview and scrutiny arrangements. A full explanation of territorial extent is given on pp2-3 of the explanatory notes.

II Duty to promote democracy

A. Background

The Councillors Commission had been established by Ruth Kelly as Communities Secretary in early 2007 to investigate the barriers preventing able and representative people from becoming councillors and also how best to secure public interest and recognition for the work of councillors. The Commission reported in December 2007 and its first recommendation was that local authorities should be charged with a duty to facilitate local democratic engagement. It said:

> People are unlikely to feel a sense of engagement with something they do not understand. The starting point for facilitating democratic engagement locally is through communication. Local authorities need to become expert at explaining what they do, which services are the responsibilities of other agencies, and how do they relate to one another. Who is accountable to whom and for what? How can people have influence? How can they get involved, individually or collectively? How do they get things changed?[5]

The Commission recommended that there should be an explicit duty on local authorities to facilitate local democratic engagement. Whilst it would be for individual local authorities to determine how this might best be done locally, the following broad lines of approach were suggested:

- proactively disseminating clear and accessible information on how local governance works, what councils and councillors do, how local agencies relate to each other etc.

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[5] *Representing the future: report of the Councillors Commission*, December 2007, p24, http://www.communities.gov.uk/councillorscommission/publications/representingthefuture/

- facilitating more active civic participation;
- promoting the role of councillor and providing information on how to become a councillor.[6]

The 2008 community empowerment white paper, *Communities in control*, also discussed the causes of political disengagement, concluding that the dominant factor was a sense of powerlessness on the part of citizens that their voice was not being heard. The paper noted that, formerly, politics had been seen as a respectable way of serving the community, but was now unfairly viewed as "a way of serving yourself." The paper pledged that, "as a first step to recognising the principle that political activity is valuable", the Government would place a duty on local authorities to promote democracy. It added:

> This means that local authorities should no longer be seen as just units of local administration, but as vibrant hubs of local democracy, with a statutory duty to promote democratic understanding and participation. We will empower local councils to present themselves as democratic centres, with a new culture which sees democratic politics as respected, recognised and valued.[7]

B. The Bill

The following is a selective summary only. Readers are referred to the Bill's explanatory notes for a clause-by-clause commentary. Clause 1 places a duty on principal local authorities in England and Wales to promote understanding among local people of:

- the functions of the authority;
- its democratic arrangements;
- how the public can take part and what that would involve.

The last point covers, in particular, an understanding of how to become a councillor, what councillors do and what support is available to them. The definition of "democratic arrangements" now makes specific mention of decisions made in partnership (e.g. by local strategic partnerships). This amendment followed significant discussion at Lords committee stage.[8]

Clause 2 places a duty on principal authorities to promote understanding of the same matters in relation to specified "connected authorities", that is, public bodies which provide, or directly influence, the services within the principal local authority's area.[9]

Clause 3 relates to monitoring boards, courts boards and youth offending teams; clause 4 to lay justices. In each case, principal authorities are required to promote understanding of:

- The functions of the bodies (or offices) in question;

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6 *Ibid*, p28

7 DCLG, *Communities in Control: real people, real power,* July 2008, Cm 7427, para 1.46

8 Lord Greaves (Lib Dem) argued that it was impossible nowadays to describe how local decisions are made without referring to LSPs. For discussion see HL Deb 19 January 2009 cc76-81GC and 21 January 2009 cc107-114.

9 This wording taken from the explanatory notes, p5.

- How the public can become a member of, or take part in, the work of these bodies; and what that would involve.

Clause 5 provides that the duty does not apply if information requested from the appropriate authority has not been provided. However, the Secretary of State (or in Wales, Assembly Government Ministers) may make an order requiring the provision of such information. In two-tier areas, county councils are charged with disseminating information to the district councils within their areas. Clause 6 empowers the appropriate national authority to issue guidance following consultation. Local authorities must have regard to this guidance.

C. Areas of debate in the Lords

Baroness Warsi, Conservative spokesperson, introduced an amendment to clause 1 in grand committee that would have replaced the duty to promote understanding of the authority's functions etc. with the requirement that the authority "have regard to the desirability of promoting" the same. She queried the need for a duty, adding:

> I am sure that most, if not all, local authorities promote democracy in some way or another. It is in their interests to do so. Quite simply, there is no need for central government to get involved and to direct how local authorities communicate with their populations.[10]

In her view, the only practical effect was likely to be "a new set of leaflets, dutifully produced to fulfil the obligations and left standing in the foyers of town halls across the country."[11]

Lord Tope, for the Liberal Democrats, spoke to amendments at both committee and report stages that would have inserted the words "to use reasonable endeavours". The promotion of democracy would still be a duty but it would be qualified by the need to assess the extent to which it is reasonable to incur expenditure. It was the view of his party that local authorities should decide in the light of local circumstances how best to promote democracy. It was not for the Government to prescribe how it should be done.[12]

The Minister, Baroness Andrews, replied by citing the views of the Councillors Commission and others that the promotion of democracy should be recognised as a core function of local authorities. But she pointed out that ministers had made a "specific effort" to minimise the amount of detail in the legislation. She said:

> We have specified some duties, but local authorities are able to determine the most appropriate ways to fulfil them for their local area.[13]

The amendments were not pressed to a vote. Other areas of debate included the following:

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10 HL Deb 19 January 2009 c49GC
11 *Ibid*, c50GC
12 *Ibid*, cc50-1GC. For discussion at report stage see HL Deb 17 March 2009 cc139-147.
13 *Ibid*, c61-2GC

- **Costs:** The impact assessment estimates the costs of the new duty at approximately £86,000 for each county and unitary authority (equal to two employees and a publicity budget), and £45,000 for each district authority (0.5 employees with administrative support and a publicity budget). This gives a total cost of £22.3m.[14] Baroness Andrews said that the money would be provided as part of the local government finance settlement although Lord Hanningfield (Conservative - Leader of Essex County Council) commented that his authority would not receive the full amount so that "something would have to go because of it".[15] Earlier, Lord Smith of Leigh (Labour – Leader of Wigan Council) had said

> Duties on local authorities come and go. Clearly, there will be a duty to set up this measure and get it going but, once that has happened, it will fall back and the task will become fairly routine.[16]

- **Disabled persons:** Lord Low of Dalston, a Crossbench Peer and Chairman of the RNIB, introduced amendments at both committee and report stages which would have required local authorities to provide the relevant information in formats accessible to people with disabilities. Lord Patel contended that this requirement was broadly covered by the *Disability Discrimination Act.* The amendments were withdrawn.[17]

- **List of connected authorities:** At report stage, Baroness Warsi introduced an amendment that would have replaced the itemised list of connected authorities in clause 2 with a requirement to promote understanding of just those authorities that the local authority considered appropriate. Baroness Andrews in reply said that the Government had aimed to reflect only "those bodies of interest to local people". The list had been drawn up in consultation with the LGA and the organisations concerned had wanted to be on it.[18] The amendment was withdrawn.

- **Monitoring boards, court boards, youth offending teams, lay justices:** Lord Tope voiced disagreement with the Government over the imposition of a statutory requirement to promote understanding of the work of magistrates and of other bodies involved in the administration of justice. Such bodies were, in his view, too far removed from the roles and functions of local authorities. Conservative Peers supported this position. Baroness Andrews said on report:

> We want it to be made clearer to the public what those bodies do and how to take up opportunities. We think that requiring local authorities to

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14 DCLG, *Duty to promote democracy: impact assessment*, December 2008, http://www.communities.gov.uk/documents/communities/pdf/1087956.pdf

15 HL Deb 26 January 2009 cc20-1GC

16 *Ibid*, c18GC

17 This discussion at HL Deb 19 January 2009 cc87-92GC and 17 March 2009 cc152-9.

18 This discussion at HL Deb 17 March 2009 cc147-152.

> promote information about their important range of local roles means that they can be promoted more effectively and coherently.[19]

The issue was not pressed to a vote.

D. Comment from other organisations

The Electoral Commission broadly welcomed the provision but added:

> We believe there would be merit in the Government clarifying how this new clause is intended to work alongside section 69 of the Electoral Administration Act 2006, which places a duty on electoral registration officers and returning officers to encourage the participation of electors in the electoral process.[20]

The Local Government Association commented that the duty to promote democracy, along with the duty to respond to petitions, were:

> …business as usual for councils. However we accept that they should be recognized as a core function of local authorities and support their inclusion on the basis that they are not overly prescriptive and do not add to councils' administrative and bureaucratic burden.[21]

The Local Government Information Unit (LGIU) welcomed the duty in clause 1 as a step leading to wider local representation. However, it said that much more was needed to protect local democracy including greater control for councils over their finances and resources and a statutory constitutional framework for local government. The LGIU also had doubts about the amount of activity and resources involved in fulfilling the requirement that councils should promote a similar understanding of other local bodies (clause 2). However, it did consider that such organisations needed to be more accountable to local people and advocated greater powers for overview and scrutiny committees.[22]

Professors George Jones and John Stewart, wrote the following in *Local Government Chronicle*:

> The only way to have a healthy local democracy is for central government to rebuild local government so that citizens can see it matters, and that involvement in local politics means they can make a difference. It is not enough to lay a duty on local authorities to promote understanding of local democratic arrangements.[23]

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19 HL Deb 17 March 2009 c169. This issue was also discussed at HL Deb 21 January 2009 cc150-162GC and 17 March 2009 cc166-170.

20 Electoral Commission, *Local Democracy (etc) Bill – second reading briefing*

21 LGA, *Local Democracy (etc) Bill: House of Lords second reading briefing*, 17 December 2008, http://www.lga.gov.uk/lga/aio/1363099

22 LGIU, *Local Democracy (etc) Bill Briefing [for Lords second reading]*, December 2008, section 2.1

23 George Jones and John Stewart, "Has local democracy really got a future?" *Local Government Chronicle*, 29 January 2009 pp20-1

III Petitions

A. Background

The *Governance of Britain* green paper, published in June 2007, set out a wide variety of proposals which aimed to "reinvigorate democracy". The Government considered the role that petitions could play in communities, and suggested that there should be a "duty to respond" to petitions at local level:

> Petitions can provide an important way for local communities to express collectively their views about an issue and generate local debate. They can also improve the connection between residents and local authorities, especially when they are taken seriously by local authorities. However, there is evidence that major petitions are often not fully analysed and responded to. Introducing a more formal petitioning system would provide another way to strengthen the ability of communities to have a legitimate voice in, and direct influence on, local authority decision-making. It would also help ensure that local authorities are aware of, and respond to, the issues, concerns and aspirations of most importance to local people. The Government is considering introducing a duty that requires local authorities to consider and investigate petitions from local communities, and guarantees petitioners and the wider community a response on the issues which have been raised.[24]

The Government published a consultation document in December 2007.[25] In July 2008, the community empowerment white paper, *Communities in Control*, set out proposals for a "new duty on local councils to respond to all petitions, including electronic petitions, relating to local authority functions or other public services where the council shares delivery responsibilities".[26]

For more detailed background information please see the Library Standard Note, *Local Petitions and the Councillor Call for Action.*[27]

B. The Bill

The statutory duty to run a petitions scheme and to respond to petitions is included in Chapter 2, Part 1 of the Bill. The Bill was amended at report stage in the Lords to remove references to "valid" petitions. Other successful amendments lifted certain requirements from the original Bill, such as the need for petitioners to identify a petition organiser (in order for the petition to fall within the legislation), and the need to date signatures in order for a signature to count for the purposes of the legislation. The following section sets out the provisions of the Bill as introduced to the House of Commons.

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24 Ministry of Justice, *The Governance of Britain,* July 2007, Cm 7170*,* para 175

25 DCLG, *Local petitions and calls for action: consultation*, December 2007, http://www.communities.gov.uk/publications/localgovernment/petitionscalls

26 DCLG, *Communities in Control: real people, real power,* July 2008, Cm 7427. For more details see Library Standard Note, SN/PC/4802, *Communities in Control – A summary of the Communities in and Local Government 2008 White Paper*

27 Library Standard Note, SN/PC/4856, *Local Petitions and the Councillor Call for Action*

Clause 10 requires principal local authorities to provide a facility for making petitions in an electronic form to the authority.

Clause 11 requires principal local authorities to make, publicise and comply with a scheme for handling both paper and electronic petitions.

Clause 12 sets out the requirements for petitions in order for them to be dealt with under the legislation. The number of signatures required for a petition to be valid under the Bill would be specified in each individual local authority's petitions scheme. Signatures would need to be from people who live, work or study in the authority's area, and each signature would need to state the person's name and address. Petitions requiring local authorities to hold a referendum on executive arrangements would not fall within the scope of these provisions. Petitions must request the authority to take, or cease to take, the action described in the petition. Electronic petitions would only fall under the scheme if made using the local authority's e-petitions facility.

Clause 13 requires the local authority to acknowledge a petition to which section 12 applies. The petitions scheme in operation in the local authority will set out a time limit within which the authority will acknowledge petitions. The acknowledgement must give information about what the authority has done or proposes to do in response to the petition.

Clause 14 requires principal local authorities to take one or more steps in response to active petitions. A 'section 12 petition' would become "active" if it relates to a relevant matter and is not vexatious or abusive (clause 14 (1) (b)). The definition of a "relevant matter" is set out in clause 14 (2). The petition must be related to a function of the authority. In England, principal authorities other than non-unitary district councils also must take steps in response to petitions relating to an improvement in their local economic, social or environmental well-being to which any of the partner authorities may contribute. The Secretary of State has the power to determine that petitions about certain subjects will not be considered active petitions (clause 14 (4)).

Clause 14 (5) requires authorities in England and Wales to take one or more substantive steps in response to an active petition. The steps which might be taken by a local authority must include, as a minimum, the actions set out in clause 14 (6): giving effect to the request; considering the petition at a meeting of the authority; holding an inquiry; holding a public meeting; commissioning research; giving a written response "setting out the authority's views about the request in the petition"; and referring the matter to an overview and scrutiny committee (or a comparable committee for authorities which do not operate executive arrangements).

Clause 14 (7) requires the local authority to tell the petitions organiser, within the period specified in the petitions scheme, what steps will be taken, and this information should be available to the public unless this would be inappropriate.

Under Clause 15, local authorities would have to specify in their petition scheme, a threshold number of signatures which would give an automatic right for the matter raised in the petition to be debated by the full council. The appropriate national authority will be able to issue guidance on what this threshold figure should be, to make it applicable to

all principal authorities, or require a local authority to amend their petitions scheme. Previously the Government had indicated that this should be set at about 5 per cent of the population of the authority area.[28]

Clause 16 allows for a petition to ask for an officer to be called to account by an overview and scrutiny committee or, if the council does not operate executive arrangements, a committee which serves a similar purpose. The officer must be relevant to the matter concerned. Under clause 16 (3) the petition would need to be signed by the number of people specified in the local authority's petitions scheme. Clause 16 (5) states that the officers that could be made subject to such a request would be specified in the authority's petitions scheme and must include the chief officers under section 2 of the *Local Government and Housing Act 1989* and the head of the authority's paid service (often known as the Chief Executive).

Clause 17 gives the petition organiser the power to ask any overview and scrutiny committee (or its equivalent in authorities which do not operate executive arrangements) to review the principal authority's response to the petition if the organiser is not satisfied with the steps taken under clause 14. The overview and scrutiny committee could refer this matter to the full council.

Clause 18 allows the local authority's petition scheme to include other provisions as it considers appropriate (subject to the requirements of the Bill). In particular, they might include details relating to petitions which would not fall under section 12 of this Bill, petitions which are made to more than one principal local authority, and provisions for handling a petition made to one principal local authority which relate to the functions of another principal local authority.

Clause 19 gives the appropriate national authority (the Secretary of State for a local authority in England, and Assembly Government Ministers for a local authority in Wales) the power to issue guidance, and to create a model petitions scheme. The national authority will have the power to direct an individual authority to amend its petitions scheme. A power is also available to make orders to require all principal authorities to make particular provision in their petitions schemes.

Clause 20 allows the appropriate national body (either the Secretary of State or the National Assembly for Wales), by order, to apply the petitions obligations set out in the chapter to different levels of local authority. The authorities mentioned in the Bill include parish councils (community councils in Wales); the Greater London Authority; the London Development Agency; Transport for London or an Integrated Transport Authority; the proposed economic prosperity boards or combined authorities and National Park authorities.

Clause 21 allows orders to be made by statutory instrument subject to the negative statutory instrument procedure. Clause 21 (3) requires any statutory instrument made by Welsh Ministers made under this chapter to be subject to the negative procedure in the National Assembly for Wales. Clause 21 (2) states that the Secretary of State may not

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[28] DCLG, *Local Petitions and calls for Action Consultation: Government Response,* July 2008, para 14

make a statutory instrument containing an order under Section 20 which relates to the handling of petitions by a parish council in England, unless a draft of the statutory instrument has been made subject to the affirmative procedure. A similar provision is included in clause 21 (4) for orders made by Welsh Ministers relating to community councils in Wales.

Clause 22 sets out definitions of terms used in the chapter. This includes a definition of "petition organiser" in clause 22 (1) (a) and (b) as the person designated on the petition as the person with whom the authority may deal with in relation to the petition, or another person which the authority may deal with in relation to the petition.

C. Areas of debate in the Lords

The clauses relating to petitions were debated in grand committee in the Lords on 26 January 2009, 28 January, and 3 February. They were debated in report stage on 17 March 2009 and 22 April 2009. A number of Government amendments were made during report stage.

During committee stage, Lord Greaves (Liberal Democrat) argued that he would prefer no duty relating to petitions, but if there is to be a duty, **a "light touch" approach** would be better.[29] During report stage, Lord Greaves stated that "I would prefer that the entire chapter on petitions did not exist. It is unnecessary".[30] Lord Greaves tabled 'leave out' amendments to each section of the Bill which related to petitions.[31] Speaking for the Conservatives during the Second Reading debate, Baroness Warsi described the scheme as a "fig-leaf proposal, which will do nothing to empower local people".[32] Baroness Andrews responded that she was "…surprised by the weight of feeling against these clauses":

> To put it simply, all we are trying to do is make the petition system more visible, more credible and more effective… …all we are doing is creating a legal duty to respond to petitions and setting up some simple criteria to make it more effective.[33]

There was some debate about the use of the concept of a **"valid" petition** under the Bill during grand committee. In report stage the Government tabled a number of amendments to remove the term "valid" from the Bill. Baroness Andrews stated that:

> Noble Lords were concerned that that label might suggest that there was a class of petitions that fell into the category of "invalid", and we do not want to give any such impression; we never intended that there should be. The change clarifies that authorities will be legally obliged by this chapter to respond to certain petitions defined in Clauses 12 and 14.[34]

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29 HL Deb 26 January 2009 c30GC
30 HL Deb 17 March 2009 c179
31 See *Local Democracy, Economic Development and Construction Bill [HL]: Marshalled list of amendments to be moved on Report,* Amendments 40, 53,59, 67,69, 76, 77, 81, 86, 87, 92 and 95
32 HL Deb 17 December 2008 c857
33 HL Deb 26 January 2009 cc38-42GC
34 HL Deb 17 March 2009 c184

Other areas of debate included:

- **Defining 'local people' as those who "live, work or study in the area".** Baroness Warsi (Conservative) used the example of someone who might pay to use a swimming pool twice a week, but would not be considered a valid signatory to a petition against the closure of that pool.[35] Baroness Andrews responded that the consultation exercise had found that some people thought that only taxpayers should be eligible to sign petitions, others suggested the electoral register. However, the former would mean that only one person per household might be registered; the latter would mean those not on the register, and those under 18 could not be count as signatories under the scheme. She concluded that "live, work, and study" was a good conclusion because it is a "common-sense term" and one with which local authorities are familiar.[36]

- **The number of signatures required for a petition to be fall under the scheme**. Lord Greaves argued that it would depend on the circumstances as to how many signatures might be considered a significant number. For example, a petition relating to street lighting on a particular road may only have a small number of signatures, but a majority of residents affected by the issue. The Bill does allow the local petition authority to specify different numbers of signatures required in different circumstances in their scheme. Lord Greaves argued, however, that, "We are back to the council employing people to work out those schemes and systems and having reams of detailed requirements".[37] The point was made again by Lord Greaves at report stage.[38]

- **Petitions which require an officer to be called to account**. Baroness Hamwee (Liberal Democrat) argued that the proposal in clause 16 of the Bill "fails to recognise that responsibility lies with the elected members in the final analysis" and that "it is for the members to summons the officers".[39] This position was supported by a number of peers.[40] Baroness Hamwee raised the matter again during debates on the commencement clauses of the Act. She argued that:

> The Minister has said that Clause 16 is not an attempt to subvert officers or to place them in the front line in matters that are properly for councillors, but that is what the clause does; it blurs lines of accountability and plays to the tabloid agenda of "all council officers bad"… There may be occasions when officers do not live up to the standards that the council expects of them, but calling them to account at the behest of members of the public in the way in which the clause anticipates is not a healthy of proper way in which to improve council services.[41]

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35 HL Deb 26 January 2009 c52GC
36 HL Deb 26 January 2009 c54GC
37 HL Deb 28 January c91GC
38 HL Deb 17 March 2009 cc201-203
39 HL Deb 28 January 2009 c126GC
40 See for example, Lord Graham of Edmonton, Baroness Maddock and Lord Hanningfield, all at HL Deb 28 January 2009 c127-128GC
41 HL Deb 22 April 2009 c1578

Baroness Andrews argued that this part of the Bill was aimed at providing "local people with an additional opportunity to participate in the scrutiny of decision-making".[42] She also responded to Baroness Hamwee that:

> …Officers will continue to be accountable to members as the employers. Members will be democratically accountable to the public. Officers will not be directly accountable to members of the public… To be clear, this clause is about members of the public having a direct influence to call for officers to provide evidence at an overview and scrutiny committee which is open to the public. It does not give members of the public any rights of powers over the officers concerned – it does not interfere in lines of responsibilities. The noble Baroness said that this matter was about individuals. However, I disagree: it is about issues. Petitions are about issues. We expect that a petition will call for an issue to be debated and an officer to be invited to come and explain why certain decisions have been taken. It does not give members of the public direct access or the right of direct access to officers. Officers remain accountable to elected members.[43]

D. Comment from other organisations

As mentioned above, the Government consulted on their proposals for local petitions between December 2007 and March 2008. They received 202 responses.[44] The Government has summarised the consultation responses as follows:

> Many respondents welcomed the use of petitions as a method of community empowerment. A number also emphasised that making responding to a petition a statutory requirement could potentially cause unnecessary bureaucracy and may not be tailed to local conditions or circumstances. Instead, many stated that they would prefer non-statutory guidelines that could be tailored to local conditions. Respondents also had a number of requests for guidance on petitions focused on specific definitions (for example, the definition of a 'local person') as well as on practical elements of the process (for example, how to deal with petitions relating to the functions of local authority partners).[45]

The Local Government Association's response to the consultation stated:

> 2. While the LGA agrees with the government's premise that local petitions play an important role in British democracy, and signing a petition is one of the most common ways for people to become involved in local issues, the LGA does not accept there is evidence of widespread public dissatisfaction with the way petitions are currently handled by local authorities.
>
> 3. The LGA can, however, foresee problems with the introduction of a prescriptive process for handling petitions, leading to a greater bureaucracy for dealing with them, without improving the ability of local residents to set the local agenda. The

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42 HL Deb 28 January 2009 c128GC

43 HL Deb 22 April 2009 c1579

44 These were summarised in DCLG, *Local petitions and Calls for Action Consultation: Summary of Responses,* July 2008, http://www.communities.gov.uk/publications/localgovernment/petitionscallssummary

45 *Ibid,* p5

> LGA does not therefore agree with the proposal to impose a duty to respond to local petitions as outlined in the consultation paper '*Local petitions and Calls for Action*'. The LGA believes this would create a plethora of difficulties and ambiguities in legal interpretation, as outlined below, which would not serve citizens well.
>
> 4. Rather than introducing a duty to respond to local petitions the LGA believes that at most councils should be required to have system for dealing with petitions. An alternative option to a new duty would be to issue an update to the model constitution published by CLG following the Local Government Act 2000, along with updated guidance under S31 of that Act, setting out best practice guidance on handling petitions and deputations.[46]

In their briefing on second reading of the Bill in the Lords, the LGA stated:

> The LGA believes the Government could be much lighter in its approach by just setting out the … duties and then leaving it to local authorities to decide what works best for their communities and residents. If the government is transferring power and influence to local authorities and citizens then councils should have the ability to take up issues on behalf of their residents with other public service providers.[47]

IV Duty to secure involvement

A. Background

Section 138 of the *Local Government and Public Involvement in Health Act 2007* places a statutory duty on councils and other best value authorities in England (except police authorities) to involve "representatives of local persons" in the exercise of their functions. They may do this by (a) informing (b) consulting, or (c) involving them in other ways. This was an enhancement of the existing best value duty to consult locally.[48] In the 2006 local government white paper, *Strong and prosperous communities*, the Government had pledged to:

> …reform elements of best value. We will relax those more prescriptive process requirements, whilst sharpening the focus on two key areas where best value has not had the impact envisaged – citizen engagement and competition.[49]

Another passage from the white paper noted that:

> …authorities will be required to take steps, where appropriate, to ensure the participation of local citizens in their activities. In doing this authorities will need to give consideration to engaging with hard to reach groups, such as disabled

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46 LGA, *Response to the Consultation on Local Petitions and Calls for Action,* March 2008, http://www.lga.gov.uk/lga/aio/357946

47 LGA, *Local Democracy (etc) Bill: House of Lords Second Reading Briefing,* http://www.lga.gov.uk/lga/aio/1363099

48 Section 138 amends the *Local Government Act 1999* which governs the best value regime.

49 DCLG, Strong and prosperous communities: the local government white paper, Cm 6939, October 2006, para 6.22

> persons. Authorities will be required to take steps to ensure participation by other key bodies, such as voluntary and community groups and local businesses.[50]

The duty on best value authorities to involve local people came into force on 1 April 2009 and there is Government guidance on the subject to which authorities must have regard.[51]

The involvement of citizens in the decision-making processes of public authorities was discussed in the *Governance of Britain* green paper of July 2007.[52] Subsequently, the Government made a commitment in the 2008 white paper, *Communities in control*, to extend the 'duty to involve' to additional agencies and bodies across England.[53] The bodies in question included police authorities, regional development agencies and major non-departmental public bodies such as such as the Arts Council and the Environment Agency. The paper said that this move represented "a major increase in citizen power across organisations with a huge influence on people's lives."[54]

B. The Bill

Clause 23 places a duty on specified public authorities to involve "representatives of interested persons" in the exercise of their functions where they consider it appropriate to do so. As with local authorities, the methods of securing involvement are (a) informing (b) consulting, or (c) involving them in other ways. The specified authorities are essentially the partner authorities listed in the *Local Government and Public Involvement in Health Act 2007* but with the addition of the Homes and Communities Agency.[55]

Clause 24 provides for the Secretary of State to publish guidance in respect of this duty. Such guidance may be given generally or to one or more authorities, and it may be different for different authorities. Further information on these clauses can be found in the explanatory notes.

C. Areas of debate in the Lords

Baroness Warsi, Conservative Spokesperson, commented at committee stage:

> As with the duty in Clause 1, I agree that these are desirable aims but a duty is not required.[56]

The Minister, Baroness Andrews, responded:

> The duty to involve is a simple, logical extension of what we put in place in 2007. It is an opportunity for the local community to have its say, to be informed about and

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50 *Ibid*, para 2.18
51 HM Government, *Creating strong, safe and prosperous communities: statutory guidance*, July 2008, section 2
52 Ministry of Justice, *The Governance of Britain,* July 2007, Cm 7170*,* p7 and para 172
53 DCLG, *Communities in control: real people, real power*, Cm 7427, July 2008, para 1.49
54 *Ibid*, p28
55 HL Deb 3 February 2009 c143GC
56 *Ibid*, c142GC

> to become involved in a wider range of partner services and authorities, which are there to deliver the objective of the LAA, whether it is improved social care for elderly people or dealing with social issues such as teenage pregnancy.[57]

Liberal Democrat amendments gave rise to some discussion at committee stage about the list of partner authorities.[58]

D. Comment from other organisations

Chris Leslie, Director of New Local Government Network, said the following when the extension of the duty to involve was announced in the white paper:

> There were some positive steps forward in the Government's 'Communities In Control' White Paper which arguably make Whitehall more responsive to local needs, principally the extension of the yet-to-be-defined 'duty to involve' to a smattering of centralised quangoes, including the Arts Council, Environment Agency and JobCentre Plus. Whether anyone will ever sue a quango on the grounds it is in breach of its 'duty to involve' I doubt, but the principle is sound and should be welcomed.[59]

Richard Wilson of Involve, a not-for-profit organisation that promotes public participation in the public and private sectors, has warned of the danger of a "cascade of consultation". He has written:

> If the duty to involve helps create a dynamic, effective and interactive state, it will have been a success. If it results in more consultation steamrollers, it will have the reverse effect and flatten much of our precious civic energy.[60]

The National Council for Voluntary Organisations (NCVO) has said that the new duty should reduce the current consultation burden on local voluntary and community organisations but that it is "crucial" that it is accompanied by a "holistic and joined up approach to consultation by all local partners.[61]

V A National Tenant Voice

A. Background

1. Tenant empowerment consultation

In June 2007 the Department for Communities and Local Government (DCLG) published a consultation paper entitled *Tenant empowerment.*[62] This paper sought views on a

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57 *Ibid*, c143GC
58 *Ibid*, cc140-146GC
59 Chris Leslie, "Empowerment", July 18 2008, http://www.nlgn.org.uk/public/articles/empowerment/
60 "Society: Second thoughts: involving people can be a joy not a chore, says Richard Wilson", *The Guardian*, 8 April 2009, p4
61 NCVO, *Briefing paper on the Local Democracy (etc) Bill*, December 2008, http://www.ncvo-vol.org.uk/policy/index.asp?id=12220
62 DCLG, *Tenant empowerment: a consultation paper*, June 2007: http://www.communities.gov.uk/documents/housing/pdf/323542.pdf

range of proposals aimed at increasing the empowerment of tenants living in social housing. The paper also set out the Government's vision for tenant empowerment:

> Government's overall vision is that the state should empower citizens to shape their own lives and the services they receive. We have an important role to play in helping citizens to make the most of their ability to influence the way in which they receive services. At a local level, if residents are given the opportunity and support, they are prepared to take on the responsibility for running certain services, helping to make their neighbourhood a better place to live.
>
> One of the most powerful areas for this type of community empowerment is social housing. There is a very clear relationship between whether tenants feel that the landlord takes account of their views and overall tenant satisfaction. Empowering tenants can also contribute to service improvements, for example Tenant Management Organisations (TMOs) in most cases out-perform their host local authorities.[63]

Chapter nine of the consultation paper focused on a recommendation made in Professor Martin Cave's review of social housing regulation, *Every Tenant Matters*:

> Tenant empowerment needs to start at the top as well as at the bottom. The review considers that there is an overwhelming case for the establishment of a national voice for tenants of social housing providers. While existing tenant representative groups do good work, there is the need for an expert advocate in the many strategic policy discussions that shape the professional housing agenda.[64]

The Cave Review highlighted several areas affecting tenants where decisions are taken "over the heads of landlords", thus limiting tenants' input into these matters, including:

- the introduction and enforcement of the Decent Homes Standard.
- the current framework of rent setting.
- the standards against which performance of landlords is measured.
- public investment in new homes and the investment framework for local authority housing.
- the current framework of Housing Benefit.
- the design and implementation of the social housing regulatory framework.

The Review proposed that this national voice for tenants would have a remit over the whole social housing domain i.e. tenants and leaseholders receiving housing services from public, voluntary and private sector providers of social housing.

The Government made it clear that the role of such a body would be to complement and not duplicate the work of existing tenants' organisations such as Tenants and Residents

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63 *Ibid*, p8

64 Professor Martin Cave, *Every tenant matters,* June 2007, para 3.29, http://www.communities.gov.uk/publications/housing/everytenantmatters

Organisations of England (TAROE) and the National Federation of Tenant Management Organisations (NFTMO). The consultation paper said that a National Tenant Voice might have an advocacy role rather than acting as a representative body and suggested the following aims:

- research tenant related issues and to evaluate the impact of policies and practice on consumers of housing services;
- represent tenant interests to housing providers, Government, the Housing and Communities Agency, lenders, relevant regulatory bodies and others; and
- promote good practice on relevant matters and support national tenant representative organisations.

The Government envisaged that the organisation would have a governing Board or Council, similar to those of other consumer watchdogs/panels, to include "tenants and other individuals who can effectively advocate for tenants from a range of viewpoints."

In *Tenant empowerment* the Government asked respondents to address two questions:

- What should be the aims and remit of a national tenant voice?
- What should be the institutional framework for such a body?

2. Responses to the consultation

An analysis of responses to *Tenant Empowerment* was published by the DCLG in December 2007.[65]

The analysis relating to the National Tenant Voice proposals is reproduced in full below:

> We had 53 responses to the questions on the National Tenant Voice: 38% were from RSLs [registered social landlords], 20% from tenants' organisations, 12% from national organisations, and 12% from Tenant Empowerment Programme agencies.
>
> Of those who responded, 65% supported the idea of a National Tenant Voice, with a further 29% saying their support for the idea was dependant on how the proposals developed. Only three respondents (6%) were opposed to the idea (because they thought that existing organisations could fulfil the role).
>
> Most respondents commented on the possible structure and location of the NTV rather than its remit. Of those who did comment on the remit, most supported the roles set out in the consultation document around research, representation and promotion of good practice. Some stated the importance of close links with the regulator, and some stated the importance of the organisation having 'teeth', and a statutory right to be consulted.
>
> Opinion varied on what the institutional framework should be.

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[65] DCLG, *Analysis of consultation responses to Tenant Empowerment*, December 2007, http://www.communities.gov.uk/documents/housing/pdf/Summaryofresponses.pdf

Most of the tenants organisations who responded said it was important that the NTV is controlled by tenants, or that tenants have a major say in how it operates. A majority of these said it should be built around the existing national and/or regional organisations.

Of the non-tenant organisations that responded (mainly housing providers) about half showed a preference for locating the NTV within the new National Consumer Council, with an equal number saying it should be under the governance of tenants and others.

Most respondents were of the view that whatever the framework, it is important that tenants are involved in its governance. Many respondents said the organisation will need a regional structure and/or regional representation.

In the light of responses received the Government reached the following conclusions on the establishment of a National Tenant Voice:

- We will set up a National Tenant Voice with the remit of acting as an advocate for tenants (influencing government and landlords); research (evaluating the impact of policies); promotion of good practice (encouraging tenant involvement); promotion and support for effective representative structures for tenants.

On the framework of the body the Government said:

- After consideration, we propose to explore the option of the new National Consumer Council (NCC) taking on responsibilities in the area of social housing. We are in discussion with the Department for Business, Enterprise and Regulatory Reform (DBERR) about what role this new National Consumer Council could play in respect of National Tenant Voice, consistent with the duties and powers Parliament has assigned it in the *Consumers, Estate Agents and Redress Act 2007*.

  The new NCC will come into being in autumn 2008 and could provide an excellent platform to conduct research and advocacy in relation to the experience of tenants.

- We have listened to tenants organisations about the importance of involving them in developing the National Tenant Voice and hence want to work with them as we explore this option.

3. The NTV Project Group

In February 2008 the DCLG established a Project Group to help develop the National Tenant Voice proposal. The initial role of the Group was to advise Ministers on the detailed remit, location and governance arrangements for the NTV. The Group has a majority of tenants in its membership, from national and regional organisations. It held a series of regional events, attended by over 1,000 tenants, and also received many written responses from tenants and tenants' organisations.

Taking account of tenants' views during the consultation process, the Project Group wrote a report for DCLG including a series of recommendations which was published in

July 2008. *The Project Group's Emerging Proposals for the National Tenant Voice*[66] addressed its initial views of the vision, values, roles, and governance of the NTV. The Group recommended that the NTV should be an independent stand-alone organisation rather than operating as part of an existing consumer organisation such as the NCC.

DCLG considered the Group's recommendations and published a note in February 2009, *National Tenant Voice plans agreed – an update for tenants*,[67] setting out how it envisaged the NTV being set up in the light of the Group's paper:

Vision and purpose: most tenants agreed with the vision and values set out in the Group's consultation document and these have also been accepted by the Government.

Roles and remit: in addition to the suggested advocacy role, conducting research, supporting national and regional tenant organisations and communicating information to tenants, the NTV will operate to defined and published accountability standards so that tenants (and others) will know how it communicates, particularly with tenants and tenants' organisations.

Governance and organisation: the consultation proposed that the NTV should be an independent stand alone organisation. Following consultation the Group proposed a structure with three parts:

- A National Tenant Council made up of 50 tenants. A majority of these (26) will come through a transparent recruitment process open to all tenants. A minority (24) will be nominated by existing organisations.

- A Board that will act as the executive arm of the NTV which will be made up of 15 members, with a majority of tenants, chosen for skills knowledge and experience

- An Accountability Committee, which will select the Council members not appointed by existing organisations, select the tenant Board members from those Council members interested, and scrutinise the accountability of all parts of the structure. This committee to be made up of people nominated by the national and regional tenants' organisations, plus nominees from DCLG. The Group proposed that this committee should be made up of no more than seven people.

The Government has accepted these recommendations.

The Group is continuing to meet with revised terms of reference and a slightly expanded membership. It has three priorities:

- to operate as far as possible as an 'interim' NTV – holding discussions with the Tenant Services Authority and others;

- to advise DCLG on setting up the NTV, for example the constitution; and

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66 http://www.housingcorp.gov.uk/upload/doc/NTV_Consultation_Paper.doc

67 DCLG, *National Tenant Voice plans agreed – an update for tenants*, February 2009, http://www.communities.gov.uk/documents/housing/pdf/tenantvoiceupdate.pdf

- to update tenants on progress through a series of road-shows and other communications and to explain how tenants can get involved in the NTV

The NTV will be established as a Non-Departmental Public Body (NDPB). The aim is that it will be operational by December 2009.

B. The Bill

Chapter 4 of the *Local Democracy, Economic Development and Construction Bill* contains provisions that will enable the establishment of the NTV.

Clause 25 makes provision for the Secretary of State to establish and give financial or other support to "a body" that will represent the interests of housing tenants in England at a national level. The various functions of this body are set out in sub-sections (2)-(4) and include:

- representing or facilitating the representation of social housing tenants in England or social housing tenant and tenants of other residential property.
- conducting or commissioning research into issues affecting these tenants.
- promoting representation of these tenants by other bodies.

Clause 26 would add a new section to the *Housing and Regeneration Act 2008* to give the Secretary of State power to nominate a body representing the interests of social housing tenants for the purposes of consultation in connection with certain functions carried out by the social housing regulator (the Tenant Services Authority). Specifically the regulator will be required to consult the NTV on:

- the criteria for registration of providers of social housing;
- the disposal of dwellings by registered providers of social housing;
- standards etc for registered providers of social housing;
- guidance to registered providers of social housing.

Also the Secretary of State will be required to consult the NTV on directions to the regulator on the setting of standards for registered providers of social housing.

During the second reading debate on the Bill Baroness Andrews, Parliamentary Under-Secretary of State at DCLG, briefly described the background and purpose of chapter 4:

> We have also followed other advice. The creation of a national tenant voice was one of Martin Cave's recommendations in his review of social housing regulation, *Every Tenant Matters*. He recognised that, while social landlords have well established organisations in place to represent them at national level, not least in discussions with government and the new social housing regulator, tenants lacked the resources and expertise to ensure that their interests were as effectively

represented. Through this Bill we will ensure that we are able properly to fund the national tenant voice and that it has a statutory relationship with the regulator.[68]

C. Areas of debate in the Lords

During the committee stage in the Lords, Baroness Warsi tabled various probing amendments in relation to clause 25. She focused in particular on why there was a need to create a new body to carry out the proposed functions of the NTV. Lord Patel, for the Government, provided the following response:

> **Lord Patel of Bradford:** I turn first to the amendments of the noble Baroness, Lady Warsi. She raises some very pertinent questions and rightly probes for more clarity. It gives me an opportunity to remind noble Lords that the clause seeks to create a national tenant voice, one of Martin Cave's recommendations in his review of social housing regulation, Every Tenant Matters. Tenants speaking for themselves has a long and honourable history. There are many tenant representative organisations at local and regional level, but I would like to mention specifically the three national organisations: TAROE—the Tenants and Residents Organisations of England—the National Federation of Tenant Management Organisations, and the Confederation of Co-Operative Housing. All three do commendable work representing their members, and some might have thought it reasonable to have asked one of those bodies to become the National Tenant Voice. The noble Baroness rightly raised that issue.
>
> It is worth making it clear that the National Tenant Voice will not seek to represent tenants individually but, rather, give them—more than 8 million of them—a collective voice. There is therefore no question of the National Tenant Voice replacing these organisations.
>
> Secondly, the National Federation of Tenant Management Organisations and the Confederation of Co-operative Housing do not seek to represent all social housing tenants and while TAROE does, it is still in development and it would have been unwise and unfair to expect it to take on this role as well.
>
> Thirdly, all three organisations agree the need for a separate National Tenant Voice. They have been active in helping us form it and will be represented on it. They recognise that it will complement, not replace, the work they do.
>
> …First, why should we have a new stand-alone body? I have already explained why an existing tenants' group would not have been appropriate. Martin Cave suggested that the National Tenant Voice be located within the new National Consumer Council, and we originally concurred with that. However, the project group we convened to advise us on the National Tenant Voice, which includes representatives of the three national tenant organisations, was of the unanimous view that the National Tenant Voice should be established as a new, stand-alone, independent body.
>
> The group was of the view that locating the National Tenant Voice within another body carried two risks: first, that the interests of tenants might become lost in an organisation with other purposes and intentions; secondly—and perhaps far more importantly—the group felt that to have any credibility with tenants, the National

[68] HL Deb 17 December 2008 c852

Tenant Voice would have to be clearly tenant-led, tenant-dominated and tenant-orientated. The group felt that only a stand-alone body could achieve this.

The project group consulted tenants across the country before putting its advice to us, and tenants supported these proposals. We were happy to take the advice of the group, which continues to support us as we make preparations for establishing the National Tenant Voice. The group is providing advice on the best way to ensure that tenants across the country have a chance to be involved in the National Tenant Voice either as part of an overseeing national council or with a seat on its board. We are looking at a board of around 15 members, at least nine of whom are currently tenants, probably with a full-time staff equivalent of half a dozen. Approximately £1.5 million per annum is in the spending review period. As with any NDPB, it will have financial accountability to the Secretary of State and accountability to Parliament. The recruitment process will be through the Cabinet Office, as per the code of practice.

I now turn to why we do not wish to limit the National Tenant Voice to providing a voice only for tenants of social housing and the issue of limiting financial assistance. The creation of a national tenant voice is part of our wider reform of social housing regulation, as informed by Martin Cave's review. It is quite right—and it is our wish—that its initial and core focus be on tenants in social housing. The National Tenant Voice will play a role as yet unmet, given that it will be run and dominated by tenants, not people acting on their behalf. It will therefore be able to act as an advocate and provide a voice for millions of tenants, not least enabling a direct dialogue between tenants and Government and tenants and the new social housing regulator. It will commission research into issues that affect tenants because, as tenant-led, it will know best what these issues might be. It will also be active in promoting better representation of tenants at regional and local level and helping other tenants engage more effectively with each other and their landlords.

We do not wish the benefits of the National Tenant Voice to be confined to social housing tenants although, I repeat, such tenants must be its core focus. However, the National Tenant Voice will be an independent body and, once it is established, it will be for it to decide whether at some later date it will give advice to tenants in the private sector who face similar issues to their social housing neighbours. This is a decision for the National Tenant Voice and we want the legislation to be flexible enough to permit such a decision. In any event, the clause does not envisage that the National Tenant Voice will represent private sector tenants alone. Where private tenants are represented, the body must also represent tenants of social housing. The amendments seek to rule out that option by preventing any financial support for such activity. We do not believe that to be right. Nor is it practical, as any assistance provided to the National Tenant Voice will inevitably have a financial implication.

Amendment 150A seeks to ensure that activities are not confined solely to matters affecting all tenants but could include activities relating to specific groups. I wholeheartedly agree with the intention but we feel that the amendment is not necessary to achieve this. Subsections (2), (3) and (4), which set out the key functions, are not restricted; in other words, the current wording already permits activities that concern all tenants or just some.

As to the social housing definition including lower-cost home ownership being confusing, yes, it does include lower-cost home ownership but it will also include different tenancies such as shared ownership, equity percentage arrangements,

> and so on. I hope that the full response I have provided will reassure noble Lords and that they will not press their amendments.[69]

Lord Best emphasised the need to establish a body to represent the interests of private sector tenants:

> However, while welcoming the progress in lining up a new representative body for this particular group of tenants, my concern is that many of the worst abuses—the most extreme grievances and the most serious complaints—are found in the private rented sector. Indeed, the so-called PRS, which houses many tenants on housing benefit, including homeless families referred by local authorities, contains some of the most vulnerable households in the country.
>
> It is possible that one day the remit of the new tenants' organisation will be extended to embrace private tenants, but for the immediate years ahead it will be kept busy with its important function of championing the requirements, particularly in negotiations with the TSA and the Government, of social housing tenants. Private sector tenants will, therefore, be left out in the cold, yet it is those tenants, not the social housing tenants, who currently have no recourse to any regulator or any redress/ombudsman scheme.
>
> My amendments would enable the Secretary of State at any time to set up and support a representative body for tenants in the private rented sector. It is probably desirable that such a body should in due course merge with the National Tenant Voice representing social housing tenants so that one consumer organisation can cover all tenants. At present, however, that is a distant prospect. In the mean time, private tenants have a range of issues on which a body representing their interests would have much to say.[70]

Lord Patel, in response, said that the conclusions of the review of the private rented sector conducted by Julian Rugg and David Rhodes of the University of York were still under consideration. The review had not recommended the establishment of a single "voice" for this diverse sector. He said that the construction of clause 25 meant that the NVT could undertake activities in relation to matters affecting private sector tenants where there is a "shared concern" with tenants of social housing.[71]

Clauses 25 and 26 were not amended during the Bill's passage through the Lords.

VI Local freedoms and honorary titles

A. Background

1. Local freedoms

These provisions were not part of the original Bill as presented to the House of Lords but were introduced through amendments moved by Lord Graham of Edmonton at committee stage. Lord Graham explained the historical background as follows:

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69 HL Deb 3 February 2009 cc152-4GC
70 *Ibid*, c155GC
71 *Ibid*, c157GC

> Who are the freemen of England and Wales? The freemen's guilds in our ancient towns and cities exist as trustees and guardians of funds and property for public benefit. They go back to at least medieval times. Unlike honorary freedom, borough freedom is not an honour but a civic duty and responsibility; nor is it purely inherited. In many towns, the terms of admission include residential restrictions, place of birth restrictions, forms of apprenticeship and relationship by marriage. Almost every town has different rules, which are exceedingly difficult to change.[72]

One of the main problems has been that the rules of admission for many guilds of freemen do not admit women. Where the freedom is inherited from a parent freemen it may well be the case that only sons may inherit and not daughters. The rules governing admission are commonly found in royal charter or local custom but they may be found in local Acts, byelaws and letters patent. In some cases, there is sufficient flexibility in the rules for changes to be made, but in other cases there is no simple process of amendment.

Backbench Bills seeking to remedy this situation have been introduced into both Houses during past sessions although none has become law. Lord Graham of Edmonton introduced the *Borough Freedom (No. 2) Bill [HL] 2007-08* and, prior to that, steered the *Borough Freedom (Family Succession) Bill [HL] 2005-06* through all its Lords stages. A Bill of the same title was introduced in session 2004-05. Before that, Lord Mustill introduced similar Bills in 2000-01 and 2001-02.

The Government did not oppose earlier Bills but, equally, provided little in the way of encouragement. Lord Bassam of Brighton declared in December 2004 that the Government was "enthusiastically neutral" about the measure and wished it no "ill wind".[73] By April 2008, when the *Borough Freedom (No. 2) Bill [HL] 2007-08* was introduced, there was a much greater degree of ministerial support for the proposed changes and, in fact, DCLG officials drafted the explanatory notes for the Bill[74]

2. Honorary titles

An **honorary freeman** is quite different from the holder of an ancient title and status of freeman, as discussed above. The *Local Government Act 1972* permits certain types of authority to confer the title of honorary freeman on persons of distinction and on persons who, in the opinion of the council, have rendered eminent service to the locality. Such a title is purely honorific, cannot be inherited and confers no other rights or duties.

The types of authority which have been able to confer the title of honorary freeman are:

- The council of a London Borough or a district having the status of a city, borough or royal borough;
- Any parish or community having by grant under the royal prerogative the status of city;

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72 HL Deb 3 February 2009 c162GC
73 HL Deb 7 December 2004 c816
74 See Lord Graham's speech at HL Deb 3 February 2009 cc161-2GC

- Any parish or community entitled by such grant to be called and styled a royal town.[75]

One result of the 1972 Act was that all but one of the Cinque Port towns,[76] which had formerly been municipal boroughs with the right to confer honorary freedoms, were stripped of their right to do so. Lord Boston of Faversham and others have campaigned for the restoration of this right. Lord Graham said in committee that the fact that only some types of local authority were allowed to honour those who had served the local community was "inequitable and an accident of history".[77]

The second aspect of honorary titles addressed by the Bill concerns the title of **"honorary alderman"**. Section 249 of the 1972 Act also provides for a principal council to confer this title on persons who have, in the opinion of the council, rendered eminent services to the council as past members of it. The Government said in its community empowerment white paper:

> When councillors lose their seats or retire, often their experience and knowledge is lost to local government. We want more councils to recognise the contribution of former councillors, and encourage their continuing involvement through existing powers to create Aldermen but also through new powers which we will introduce to enable the use of the title of 'Alderwoman'. An Alderman or Alderwoman is a former elected councillor of good standing, having usually served at least two full terms of office, who has provided distinguished service. Aldermen and women should be able to use the prefix to their name Alderman, Alderwomen or Ald. instead of Councillor or Cllr.[78]

B. The Bill

The following represents a brief synopsis of clauses and readers are referred to the explanatory notes for a full clause-by-clause commentary.

Clause 27 creates a new schedule to the 1972 Act which sets out procedures whereby the laws relating to the freedom of a town or city may be amended for certain specified purposes. In broad terms, these are to enable women to be admitted to the freedom; to enable women so admitted to use the title "freewoman"; and to put a civil partner of a freeman in the same position as a spouse.

The schedule provides that such laws may be amended by, or pursuant to, a "qualifying resolution". Where the law is established by custom or where it is contained in an enactment other than an Act of Parliament, it may be amended by a qualifying resolution. However, where it is contained in an Act of Parliament, it will be for the Secretary of State (or Assembly Government Ministers in Wales) to make the amendment by order (paragraph 2 of the schedule).

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75 *Local Government Act 1972*, section 249
76 The exception was Hastings.
77 HL Deb 3 February 2009 c163GC
78 DCLG, *Communities in control: real people, real power*, Cm 7427, July 2008, para 7.21

Similarly, where the law is enshrined in a royal charter, Her Majesty may amend the law by Order-in-Council (paragraph 3). In both cases, the amendment would have to be proposed in a qualifying resolution. Later paragraphs in the schedule specify the conditions and procedural requirements governing such resolutions.

Clause 28 amends section 249 of the *Local Government Act 1972*. It:

- extends the power to confer the title of honorary freeman to (1) all principal councils (2) parish and community councils and (3) charter trustees (in England);
- allows councils to confer the title of "honorary freewoman" where appropriate;
- empowers principal councils to confer the title of "honorary alderwoman" where appropriate.

C. Areas of debate in the Lords

There was general cross-party support for the clauses introduced by Lord Graham of Edmonton. As regards **local freedoms**, the Minister, Baroness Andrews, said:

> The position on the right of succession has been blatantly discriminatory—in many guilds it can be secured only by patrimony—so the provision has the added benefit of helping to ensure that hereditary freemen can continue as part of the active but historic framework of many of our towns and cities. The evidence of the noble Baroness, Lady Maddock, about how the quality of life for people in Berwick is changing was a telling example of how contemporary the work of freemen, and now freewomen, will be. I am happy to endorse the changes that recognise the position of women in those traditional governance arrangements.[79]

As regards **honorary titles**, Lord Hanningfield (Conservative) welcomed the proposed changes. He said:

> We would like the county council to honour the Essex Regiment for the part that it has played in Afghanistan, from which it has just recently returned. That is the sort of thing that relates to the first part of the Bill, about getting people to understand more about local government. If we can do things like that, it brings local government to the fore as part of our heritage and the things that people do. I very much support the amendment and hope that the Government find ways in which to do this.[80]

Baroness Maddock (Liberal Democrat) referred to the loss of borough status for Berwick-upon-Tweed as a result of local government restructuring. She said that the people of Berwick would be very pleased that the present legislation would make it possible for the successor town council to be able to honour citizens in this way.[81]

Baroness Andrews said:

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79 HL Deb 3 February 2009 c167GC
80 *Ibid*, c164GC
81 *Ibid*, c164GC

> As for the changes that the noble Lord puts forward to allow all local authorities to recognise eminent services to their area by the granting of the title of honorary freemen—absolutely. If we are to keep traditions, they must be seen to be fair and to move with the times. We agree that all local authorities should enjoy this right. It enables those who govern a place to recognise the contributions made by local people, and I feel that there cannot be too many opportunities to do that by thanking people publicly and recognising their efforts.[82]

VII Politically restricted posts

A. Background

This provision was not in the original Bill as presented to the House of Lords, but was introduced following discussion of Liberal Democrat amendments at committee and report stages which indicated a measure of cross-party support for the proposal.

Rules under the *Local Government and Housing Act 1989* and associated regulations provide that local government officers holding a politically restricted post may not stand for election to any principal local authority nor take part in a range of political activities.[83] Officers deemed to be in this category are those in very senior posts such as chief officers and their deputies, and those in posts of a politically-sensitive nature such as council staff who have regular contact with the media. Additionally, any post which is remunerated at or above a prescribed level – currently spinal point 44 on the national scale (£36,730) - is categorised as politically-restricted.

The rules on political restriction were drawn up following the report in 1986 of a committee of inquiry chaired by David Widdicombe QC.[84] Widdicombe examined the then prevalent practice of "twin-tracking", finding that about 10% of all councillors were employees of other local authorities. The Committee had two particular concerns about this:

- that employing authorities were giving excessive paid leave to employees who were members of other authorities;
- that being a councillor with another authority might detract from an officer's ability to serve his employing authority with political impartiality.

The Committee's view was that "senior officers should not be politically active" and recommended that staff at the rank of principal officer and above should not be able to become councillors.[85]

The extent of the restrictions has proved to be somewhat controversial although they have survived legal challenge. The 2007 Councillors Commission asserted that they

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82 *Ibid*, c167GC

83 For further information see Library standard note SN/PC/3883: *Local Government: politically restricted posts*.

84 *Report of the Committee of Inquiry into the Conduct of Local Authority Business*, Cmnd. 9797, June 1986

85 *Ibid*, paras 6.33. and 6.39

were "far-reaching by international standards" both as regards the number of staff affected and the range of prohibited activities. The Commission cited evidence to suggest that the rule was restricting the availability of people to stand for election as councillors. It also pointed out that the *Local Governance (Scotland) Act 2004* had abolished this pay-related restriction north of the border, leaving it up to individual councils to decide whether a particular post should remain restricted. The Commission recommended that:

> Political restrictions based on salary level should be abolished. Restrictions…should be retained for very senior posts and certain politically sensitive roles, with Councils' Standards Committees having the ability to implement restrictions to other posts where considered necessary in particular circumstances.[86]

The Government said in the community empowerment white paper that it would amend the 'Widdicombe rules' so that only the most senior officers and those in politically-sensitive posts would continue to be barred from political activity. This would demonstrate "…our desire to rehabilitate politics as a legitimate and worthy activity." The ban on council employees becoming councillors in their local authority would remain.[87]

B. The Bill

The new clause - now clause 29 – was added at third reading. The explanatory notes state:

> *Subsection (2)* removes the requirement imposed by section 2 of the Local Government and Housing Act 1989 for local authorities to prepare and maintain a list of posts that exceed a specified salary, and which as a consequence mean that the post-holder is subject to political restrictions. *Subsections (3) and (4)* make amendments consequential to this.

C. Areas of debate in the Lords

The salary threshold and political restriction: The issue was raised through Liberal Democrat amendments introduced at committee and report stages. Baroness Hamwee said that the restriction had affected many more staff than was originally anticipated and that few officers applied for an exemption. Lord Hanningfield for the Conservatives said that he sympathised with the proposal. The situation needed updating and he added, "…we should be looking at the role of that officer in the local authority, the proximity to advice and such things rather than the salary."[88]

Baroness Andrews said she was pleased to find cross-party support for the change and, after further discussion at report stage, announced that she would take the amendment away for re-drafting. The Bill was amended at third reading. The Minister assured the

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86 *Representing the future: report of the Councillors Commission*, December 2007, p87
87 DCLG, *Communities in control: real people, real power*, Cm 7427, July 2008, para 7.9
88 These points made at HL Deb 3 February 2009 cc180-5GC

House that the Government remained committed to the principle behind the Widdicombe rules but said that the salary bar was a "blunt instrument and an unnecessary bar to political activity."[89]

Other issues which were discussed at committee and report stages in connection with Liberal Democrat amendments were:-

- A proposal to end the requirement that council employees must resign before accepting nomination for election as councillor;
- A proposal to reduce from 12 months to 3 months the period of time that must elapse between a member leaving office and taking up paid employment with a council.

In both cases, the Minister cited the difficulties that were likely to arise if the changes were made. The amendments were not moved.[90]

D. Comment from other organisations

The Local Government Information Unit (LGIU) welcomed the late inclusion of a clause in the Bill that would end the link between salary levels and political restriction. The LGIU's Chief Executive, Andy Sawford, was reported as saying:

> Cross-party consensus has won the day. In terms of reigniting interest in local democracy, this is a victory. It will make a real difference for many staff who will be able to contribute to a lively political environment.[91]

The Society of Local Authority Chief Executives and Senior Managers (SOLACE) was reported to have welcomed the Government's commitment to break the link between pay and political restriction when it appeared in the community empowerment white paper:

> David Clark, Solace's director general, hailed the changes as "long overdue" but insisted that political activity would be inappropriate for chief officers who deal with members on a day to day basis.[92]

VIII Overview and Scrutiny

A. Background

The *Local Government Act 2000* required local authorities to adopt new executive arrangements, and create an 'overview and scrutiny function' to operate alongside them. The *Local Government and Public Involvement in Health Act 2007* extended powers of overview and scrutiny committees in relation to the community call for action, and local area agreements.

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89 HL Deb 29 April 2009 cc236-7

90 These issues discussed at HL Deb 3 February 2009 cc180-5GC and HL Deb 17 March 2009 cc175-8.

91 "Widdicombe rules are set to be scrapped", *Municipal Journal*, 26 March 2009 p2

92 "Scrutiny for top officers", *Local Government Chronicle*, 10 July 2008, p1

Early assessments of the operation of overview and scrutiny expressed concerns that the new overview and scrutiny committee system would end up recreating the old committee system. Writing in 2004, Stephanie Snape and Rachel Ashworth of the University of Birmingham stated that scrutiny was "struggling to become an effective element in the new council constitutions. Every piece of research draws this conclusion".[93]

A key issue for the operation of the committees has been the availability of resources to support them. Government guidance has stated that, "To be effective, overview and scrutiny committees must have effective and properly resourced support from officers".[94] However, Stephanie Snape has written that:

> One of the most controversial – and potentially divisive issues – concerning scrutiny is officer support… Many scrutiny councillors argue for separate, dedicated – and to their mind – independent – officer support. Chief officers tend to be concerned about the potential for separate scrutiny units to produce divisions and tensions within the traditionally unified officer structure…[95]

In her statement to the House of Commons announcing publication of the community empowerment white paper in July 2008, the Communities Secretary, Hazel Blears, said:

> There will be a range of measures to increase visibility and accountability in local services. We will raise the profile of overview and scrutiny systems, which should be analogous to the Select Committees system at national level…[96]

The white paper gave more details:

> … We want to **raise the visibility of the scrutiny function** to ensure that people are aware of this powerful tool at their disposal.
>
> 5.3 We will do this by encouraging councils to consider new approaches to scrutiny, including:
>
> - encouraging more creative involvement of the public, for example, through holding deliberative events along the lines of 'America Speaks' (large scale citizen engagement forums involving up to 5,000 people)
> - moving committee meetings and hearings out of the town hall and into the community, and considering webcasting
> - greater public involvement in suggesting and selecting topics for review
> - making information more readily available and accessible on websites and at council offices.
>
> In addition, we will make changes to the scrutiny function by:

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93 Rachel Ashworth and Stephanie Snape, 'An overview of scrutiny: A triumph of context over structure', *Local Government Studies,* Vol. 30 No. 4, Winter 2004

94 DCLG, *New council constitutions: Guidance to English Local Authorities*, 2001 ed., para xxx, http://www.communities.gov.uk/documents/localgovernment/pdf/155181.pdf

95 Stephanie Snape and Frances Taylor, *A hard nut to crack? Making overview and scrutiny work,* IDeA, April 2001, p 11, http://www.lga.gov.uk/lga/aio/22263

96 HC Deb 9 July 2008 c1412

- further enhancing the powers of overview and scrutiny committees in local authorities to require information from partners on a broader range of issues
- if necessary providing councils in areas with district and county councils with a power to combine resources in 'area' scrutiny committees
- requiring some dedicated scrutiny resource in county and unitary councils.[97]

In August 2008 the DCLG published a consultation paper *Improving local accountability.*[98] This set out more details of the Government's proposals. Further background information is available in the Standard Note *Overview and Scrutiny in Local Government.*[99]

B. The Bill

Clause 30 inserts a new clause into the *Local Government Act 2000* to require local authorities, with the exception of district councils in areas where there is a county council, to designate one of their officers as a scrutiny officer. The functions of the scrutiny officer are set out in subsection (2) of the clause. These include promoting the committees, and providing support to them. There are certain officials, specified in the Bill in subsection (4) of clause 27, that cannot be designated as the authority's scrutiny officer.

Clause 31 is about the remit of joint overview and scrutiny committees. Section 123 of the *Local Government and Public Involvement in Health Act 2007* allowed the Secretary of State to make regulations to enable a county council in a two-tier area to establish a joint overview and scrutiny committee with one or more district councils in the area. The remit of such a joint committee was limited to matters relating to the attainment of a local improvement target in the relevant Local Area Agreement.[100] Clause 31, which was inserted at report stage in the Lords, substitutes section 123 of the *Local Government and Public Involvement in Health Act 2007* with a new clause. This would allow the Secretary of State, by regulation, to make provision under which any two or more local authorities in England may appoint joint overview and scrutiny committees which could make reports or recommendations to any of the local authorities appointing the committees or the related county council. The recommendations could be about any matter other than those excluded under subsection (3) of the new clause.

C. Areas of debate in the Lords

Two main concerns were raised during the committee stage in the Lords to this part of the Bill:

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97 DCLG, *Communities in Control: real people, real power,* July 2008, Cm 7427, p90-91

98 DLLG, *Communities in Control: real people, real power: Improving local accountability consultation,* August 008, paras 2.31-2.33

99 Library Standard Note, SN/PC/4818, *Overview and Scrutiny in Local Government*

100 For more information about Local Area Agreements see Library Standard Note SN/PC/3168, *Local Area Agreements*

- it should be for local authorities to decide how to staff their overview and scrutiny committees;
- that the requirement for one scrutiny officer might encourage authorities to limit the number of officials working on scrutiny this minimum.

During the second reading debate Baroness Hamwee (Liberal Democrat) (who is also on the advisory board of the Centre for Public Scrutiny) said:

> I agree with the Government … that the scrutiny function requires officer support… I am uncomfortable, however, with the proposal to make the scrutiny officer one of a tiny handful of statutory posts. Scrutiny is qualitatively different from, for instance, children's services and finance, which attract those designations. It is certainly the case that scrutiny requires dedicated support. Officers who spend the morning advising the executive and the afternoon advising the scrutineers on the same subject are in an impossible position. Is this not a matter for the authority itself? Of course, we believe in evolution on a local basis.[101]

During report stage Baroness Hamwee also argued that designating an officer would not mean that there would be any extra officer resources.[102]

During the grand committee debate, Baroness Andrews explained that although the legislation would require a scrutiny officer, it would be up to the local authority to decide what grade that member of staff would be. At report stage she further stated that:

> We have not set out a list of the duties that a scrutiny officer must perform on the basis that the role of the scrutiny officer may need to vary from one local authority to another, depending on the way in which scrutiny is organised in any particular council. We therefore believe that it is better for local authorities to make arrangements that are appropriate for their own circumstances.
>
> …Although the requirement is for one statutory officer, we would expect local authorities to decide what resources they need to allocate to scrutiny to suit their particular needs.[103]

At report stage, there was some debate about the proposals for joint overview and scrutiny committees. A Government amendment was passed to allow for the appointment of joint overview and scrutiny committees by any two or more local authorities. The joint committees will be able to make reports and recommendations on any matter affecting the area of inhabitants of that group of authorities, rather than on local area agreement matters alone as is currently the case. Baroness Warsi supported this amendment, although she believed it did not go far enough:

> We on these Benches, however, would like to see greater flexibility and a greater ability for councils to set up joint scrutiny committees on specific projects or schemes where joint working is needed, often across county boundaries.

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101 HL Deb 17 December 2008 c861
102 HL Deb 23 March 2009 c451
103 *Ibid*, c454

> …On matters involving Stansted Airport, for example, it will be a question of Essex County Council working with East Hertfordshire, whereas on issues surrounding the Thames Gateway the appropriate partners might be the GLA or Kent County Council. The Government recognise the logic of allowing the joint scrutiny but have stopped short of allowing a more organic creation of such committees.[104]

D. Comment from other organisations

The Local Government Association's briefing prepared for the second reading debate in the House of Lords stated:

> The Bill amends provisions for overview and scrutiny from the Local Government and Public Involvement in Health Act 2007, which provide scope to establish joint scrutiny committees between a county and one or more districts within the county. These joint committees would have powers to support the scrutiny of partners which are signed up to Local Area Agreement (LAA) targets. The provisions in the new Bill amend this, to enable county-wide joint overview and scrutiny committees to be established for other purposes. **The LGA supports this aspect of the Bill.**
>
> In order **to further develop the scope of overview and scrutiny,** we would like to see a wider general power for any two or more local authorities to form joint scrutiny committees and sub-committees. This could enable, for example, joint scrutiny bodies between two neighbouring districts, a joint scrutiny body for a group of metropolitan authorities, or other combinations.
>
> This provision would support other aspects of the Bill by providing powers to establish joint scrutiny bodies on the boundaries of Multi-Area Agreements. It would support scrutiny of Local Strategic Partnerships which cover the boundaries of two or more neighbouring districts, which exist in several parts of the country. It would provide a mechanism for scrutiny and wider community and democratic involvement in relation to other joint initiatives. It would enable more effective use of resources in supporting scrutiny activity. It would be a power councils could choose to use should they decide to do so.
>
> **We call on the government to bring forward an amendment to the Bill to this effect.**

The Centre for Public Scrutiny CfPS responded to the Government's proposals in the 2008 consultation paper. On proposals for a dedicated scrutiny resource CfPS stated:

> We agree that requiring resources to be dedicated to scrutiny is essential if scrutiny is to benefit from the new powers and responsibilities outlined in the White Paper. However, there is a danger that by creating a minimum requirement of one dedicated scrutiny officer (as implied in paragraph 2.33) some authorities will merely maintain or even reduce scrutiny support to meet the baseline statutory requirement. Regulations need to be drafted to require **all** local authorities to have

[104] *Ibid*, c456

> a dedicated scrutiny resource and to ensure that the appointment, job description and grading is at a sufficiently senior level. It may be more useful to define 'dedicated scrutiny resources' in financial terms, insisting that sufficient budgets should be in place to facilitate the increasingly important role that scrutiny plays. In addition, the CPA and its successor inspection regime covering use of resources and governance should include whether a council has a dedicated scrutiny resource and how effective it is. This approach would allow flexibility whilst guaranteeing the delivery of improved accountability.[105]

IX Audit of entities connected with local authorities

A. Background

The Bill takes forward the recommendations of Lord Sharman's review of audit and accountability for central government in respect of local authority-controlled bodies.[106] The Review recommended, among other things, that:

- the Comptroller & Auditor General (C&AG), and equivalent audit authorities in Wales and Scotland, should be the auditor of non-departmental public bodies (NDPBs) which are companies, and of companies which are owned by a department or are a subsidiary of an NDPB;
- the C&AG (and equivalent authorities) should be eligible for appointment as auditor of companies where a department has a substantial stake or influence;
- similar arrangements should be introduced for the audit of local government entities.

Under existing arrangements, the Audit Commission in England and Auditor General for Wales cannot appoint the auditor for a local authority entity.[107] Nor does the appointed auditor have the power to bring matters which are in the public interest (i.e. relating to misuse of public money) to the attention of the public and of elected members of the authority. Chapter 2 of part 2 of the Bill seeks to remedy this situation.

B. The Bill

A full explanation of clauses 33 to 51 is given in the Bill's explanatory notes. There has been no significant amendment to these clauses during the passage of the Bill through the Lords.

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105 Centre for Public Scrutiny, *Response to 'Communities in Control: Real people, real power' Improving local accountability consultation,* para 8.1, http://www.cfps.org.uk/news/item.php?mainID=news%20home&itemid=169

106 *Holding to account: the Review of Audit and Accountability for Central Government*, February 2001, http://archive.treasury.gov.uk/docs/2001/sharman_1302.html

107 For the purposes of this chapter of the Bill, an "entity" is either a company, a limited liability partnership or an industrial and provident society which is connected with a local authority and meets other conditions specified in regulations made by the Secretary of State or Welsh Assembly Government Ministers.

C. Areas of debate in the Lords

In general, these provisions have not been controversial and have attracted little debate. Lord Patel said in grand committee that these measures:

> …provide a public sector-style audit for local authority-controlled entities in the way that there is already a public sector-style audit for central government-controlled entities. Parliament long ago approved an independent external audit for local authorities; that is why there is scope for external audit in the private sector in order to reflect the special accountabilities attached to public funds. Entities controlled by local authorities effectively carry out public functions and spend public money.
>
> The Bill will ensure that in future qualifying entities will continue to have a Companies Act audit but, where the auditor considers it necessary, the auditor will also have the power to conduct a broader audit of the entity's activities, based on the principles of public audit as recommended by the noble Lord, Lord Sharman, and report in the public interest.[108]

A Conservative amendment sought to insert a requirement that a public interest report must be published. Lord Patel responded:

> The duty to make the report public lies with the local authority as part of its deliberations at an open meeting of the council. Making information public through for the council meeting arrangements allows the public interest report to be made public alongside the entity's decisions and any proposed action.[109]

X Local Government Boundary Commission for England

A. Background

The role of the Boundary Committee for England, which is to be re-established as the Local Government Boundary Commission for England (LGBCE), is to "conduct thorough, consultative and robust reviews of local government areas in England".[110] The Boundary Committee for England is currently a statutory committee of the Electoral Commission but the Bill will establish the new Local Government Boundary Commission for England as a separate corporate body.

The Boundary Committee for England was previously the Local Government Commission which had been established as a Non Departmental Public Body of the then Department for Transport, Local Government and the Regions by the *Local Government Act 1992*. The Local Government Commission undertook the work formerly done by the Local Government Boundary Commission for England which had been established by the *Local Government Act 1972*. The LGC, under the chairmanship of Sir John Banham, carried out a programme of reviews of the two-tier structure in the shire counties in

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[108] HL Deb 3 February 2009 c187GC
[109] *Ibid*, c188GC. The amendment was not moved.
[110] http://www.electoralcommission.org.uk/boundary-reviews/boundary_committee

England. The functions of the LGC were transferred to the Electoral Commission on 1 April 2002 under the provisions of the *Political Parties, Elections and Referendums Act 2000* (the Electoral Commission was established under the same legislation).[111]

The *Political Parties, Elections and Referendums Act 2000* also allowed for the transfer of the Parliamentary Boundary Commissions to the Electoral Commission after the completion of their fifth general review of Parliamentary constituencies.[112] However, the Committee on Standards in Public Life recommended in its report on the work of the Electoral Commission, published in January 2007, that this legislation should be repealed and that the responsibility for conducting Parliamentary boundary reviews should remain with the Boundary Commissions.[113] On 20 November 2007 the Government responded formally to the Committee's report and agreed with the recommendation that the provisions in PPERA to transfer the work of the Boundary Commissions to the Electoral Commission should be repealed.[114]

The Government also agreed with the recommendations of the Committee on Standards in Public Life that the Boundary Committee for England should become an independent body, back in line with the other local government boundary commissions, and that the local and Parliamentary Boundary Commissions in each of the four home countries should share joint secretariats. The CSPL had noted in its report that "the devolved administrations have…indicated no desire or intention to transfer their local boundary setting functions to the Electoral Commission' and that during its inquiry 'commentators, practitioners, the Government and the Electoral Commission itself agreed that the partial merger of these functions is not sustainable. There is broad agreement that we need to establish clear and consistent boundary–setting responsibilities for the future."[115]

1. Local Government Boundary Commissions in Wales, Scotland and Northern Ireland

The Local Government Boundary Commission for Wales was established in 1974 under the *Local Government Act 1972*. Its role is to keep under review all local government areas in Wales, and the electoral arrangements for the principal areas, and to make such proposals to the National Assembly for Wales as seem desirable in the interests of effective and convenient local government. From 1 July 1999 the functions of the Secretary of State for Wales in relation to the Local Government Boundary Commission for Wales were transferred to The National Assembly for Wales.[116]

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111 For further information about the *Political Parties, Elections and Referendums Bill 1999-2000* see Library Research Paper 00/1 available at http://hcl1.hclibrary.parliament.uk/rp2000/rp00-001.pdf

112 For information about the fifth periodical review see Library Standard Note SN/PC/3222 available at

113 *Review of the Electoral Commission*, Committee on Standards in Public Life Eleventh report, Cm 7006, January 2007. Available at http://www.public-standards.org.uk/OurWork/11th_Report.html

114 *The Government response to the Committee on Standards in Public Life's Eleventh Report: Review of the Electoral Commission,* Cm 7272, November 2007

115 *Review of the Electoral Commission*, eleventh report of the Committee on Standards in Public Life. Cm 7006, January 2007, 2.98 and 2.99. Available at http://www.public-standards.org.uk/OurWork/11th_Report.html

116 http://www.lgbc-wales.gov.uk/

The situation in Scotland is similar; the Local Government Boundary Commission for Scotland is an Advisory Non-Departmental Public Body sponsored and wholly funded by the Scottish Executive Finance and Central Services Department. It is an independent, non-political and independent body created by Section 12 of the *Local Government (Scotland) Act 1973*.[117]

In Northern Ireland a Local Government Boundaries Commissioner is appointed by the Secretary of State under the provisions of the *Local Government Act (Northern Ireland) 1972* (as amended by the *Local Government (Boundaries) (Northern Ireland) Order 2006* and the *Local Government (Boundaries) Act (Northern Ireland) 2008*) to review the number, names and boundaries of the district councils in Northern Ireland and the wards into which they are divided.[118] The District Electoral Areas Commissioner is appointed to review the grouping of wards into district electoral areas for the purpose of electing local district councils.

B. The Bill

The Bill removes the responsibility for electoral boundary matters from the Electoral Commission and largely re-enacts the provisions in Part 2 of the *Local Government Act 1992* which established the Local Government Commission for England. The new Local Government Boundary Commission for England will be an independent body, separate from the Electoral Commission. The provisions in PPERA which allowed for the transfer of the functions of the Local Government Boundary Commissions for Scotland and Wales and of the Local Government Boundaries Commissioner for Northern Ireland to boundary committees to be set up by the Electoral Commission are repealed. The provisions in PPERA which allowed for the transfer of the Parliamentary Boundary Commissions to the Electoral Commission are also repealed.

Clause 52 establishes the Local Government Boundary Commission for England as a separate corporate body. Schedule 1 sets out the detailed provisions for the constitution and administration of the LGBCE and replicates many of the arrangements which apply to the Electoral Commission. The *Political Parties and Elections Bill* currently before Parliament will, however, relax the restrictions on employment of staff with recent political experience by the Electoral Commission; Electoral Commissioners will in future be prohibited from being appointed if they have engaged in certain political activities within the last 5 years (previously this was 10 years). The PPE Bill also makes provision for the appointment of four Commissioners with recent political experience who have been nominated by the leaders of the political parties.[119]

The Local Government Boundary Commission must have at least 5 and no more than 12 members who are appointed by Her Majesty following, in relation to the Chair, an address from the House of Commons and, for all other members, the recommendation of the Secretary of State. Members of registered political parties; those who have been an

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[117] http://www.lgbc-scotland.gov.uk/
[118] http://www.lgbc-ni.org/index/commissioner.htm
[119] For further information see Library Research Paper 08/74, *The Political Parties and Elections Bill*, available at http://www.parliament.uk/commons/lib/research/rp2008/rp08-074.pdf

officer or employee of a political party within the last 10 years or anyone who has held a relevant elective office or been a donor within the last 10 years, may not be appointed as a member. The Schedule gives the Speaker's Committee the same role in the control of the funding of the LGBCE and the remuneration of its members as it has in relation to the Electoral Commission. The Schedule also makes transitional arrangements for the Electoral Commissioner who is currently Chair of the Boundary Committee for England to become chair of the independent LGBCE when the legislation comes into force. A Deputy Electoral Commissioner who is currently a member of the present Boundary Committee will also become a member of the new LGBCE.

Clause 53 requires the Local Government Boundary Commission for England to conduct a review of the electoral arrangements of each principal council in England from time to time and make recommendations for changes to the electoral arrangements for that area. The clause also allows the LGBCE to conduct a review of all or any part of a principal council at any time. If the LGBCE recommends changes to the electoral arrangements for the area of a principal council it must also recommend whether changes should also be made to the electoral arrangements of any parish council which falls within the area of that principal council.

Clause 54 re-enacts provisions in Sections 14A and 14B of the *Local Government Act 1992* which were inserted by the *Local Government and Public Involvement in Health Act 2007*. The clause removes the role of the Electoral Commission from the procedure under which the Local Government Boundary Commission for England will carry out a review of the electoral arrangements of a principal council at the request of that council with a view to making recommendations as to single-member electoral areas.

Clause 55 sets out the procedure for conducting a review of electoral arrangements under Clause 53; the Local Government Boundary Commission for England must publish draft recommendations and allow time for representations to be made before publishing its final report.

Clause 56 makes significant changes to the procedure for making an order to implement the LGBCE's recommendations and removes the role of the Electoral Commission. The clause gives the LGBCE the power to make an order implementing all or any of the recommendations it has made in a review and replaces section 17 of the *Local Government Act 1992*. Any order made by the LGBCE must be laid in draft before Parliament and will be subject to the negative resolution procedure. Previously, the recommendations of the Boundary Committee for England were implemented by order of the Electoral Commission and were not statutory instruments laid before Parliament.

Clause 57 transfers to the new LGBCE the existing Boundary Committee for England's functions under the *Local Government and Public Involvement in Health Act 2007* in providing advice to the Secretary of State on replacing a two tier system of county and district councils with a unitary authority. The clause also transfers to the LGBCE other functions of the Electoral Commission, including its role in deciding whether an electoral review is necessary following a structural or boundary change order and its role in the review of the constituencies of the Greater London Authority.

Clause 58 repeals sections 14 and 15 of PPERA which provided for the establishment of the current Boundary Committee for England as a statutory committee of the Electoral

Commission. The clause removes all the Electoral Commission's boundary functions including the provisions in PPERA requiring the Commission to establish boundary committees for Scotland, Wales and Northern Ireland. These provisions had never been commenced.

Clauses 59 and 60 make provision for the Electoral Commission to draw up a scheme for the transfer of property, rights and liabilities from the Commission to the new Local Government Boundary Commission for England and for the continuity of functions between the former Boundary Committee for England and the new LGBCE. Clause 61 relates to schedule 3 which makes modifications to the *Local Government Act 1992* which will apply in the period between the Bill receiving royal assent and the commencement of the section establishing the new Local Government Boundary Commission for England. The clause also requires the Electoral Commission to make a decision on or before 31 March 2010 on any recommendations it receives from the current Boundary Committee for England relating to local authority electoral arrangements before the Bill has received royal assent.

Clause 62 amends the provisions in Part I of the *Local Government and Public Involvement in Health Act 2007* by inserting new sub-sections 6(A) to 6(E) which relate to the review of boundaries and electoral arrangements by the Local Government Boundary Committee for England. The clause will enable the LGBCE to consider both boundary and electoral matters in a single review, rather than in two separate sequential reviews as at present.

C. Comment by Electoral Commission

The following notes use the term Boundary Committee for England as this was the terminology used when the bill was first published. Government amendments at third reading in the House of Lords changed the name of the body to the Local Government Boundary Commission for England.

The Electoral Commission broadly welcomed the provisions of the Bill to separate the Boundary Committee for England from the Commission and establish it as an independent body. However, in a briefing paper published before the second reading debate in the House of Lords, the Commission expressed reservations about a number of aspects of the Bill.[120]

The Commission disagreed with the provision in Clause 49 that members of a new BCE should be appointed on the recommendation of the Secretary of State; to avoid any suggestion of undue influence being brought to bear on the members of the Committee and their decisions, the Commission proposed using the model of appointment for Electoral Commissioners in which the Speaker's Committee plays a role. The Commission suggested that this would uphold the independence and political impartiality of a new BCE. The Commission was also concerned that the name of the new organisation was to be the same as the old one; it argued that for greater clarity the new

[120] http://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/71448/Lords-Second-Reading-Briefing-17-12-08.pdf

body should once again be called the Local Government Boundary Commission for England which would bring it into line with the Boundary Commissions for Scotland and Wales.

The Electoral Commission also expressed concern about the new procedure for the scrutiny of recommendations by a new BCE. At present the Commission has to allow six weeks after the Boundary Committee has made its final recommendations on an electoral review before it makes an order implementing the new electoral arrangements. This period allows for further representations to be made and considered. The Bill removes the opportunity for further representations to be made after the final recommendations are published as a new BCE will now have to lay an order before Parliament which will be subject to the draft negative resolution procedure. The Commission said that the new procedure raised a number of issues whether a debate on the order was secured or not, in particular how a member of the Speaker's Committee could be expected to respond in a debate on the fine detail of local boundary changes and who would respond in a debate in the House of Lords as no peers are members of the Speaker's Committee.[121]

D. Areas of debate in the Lords

The following notes use the term Boundary Committee for England as this was the terminology used when the bill was debated in the House of Lords. Government amendments at third reading changed the name of the body to the Local Government Boundary Commission for England.

Very little was said about the proposals for the new Boundary Committee for England during the second reading debate in the House of Lords. Baroness Warsi expressed support for the bill's provisions for the BCE on behalf of the Conservatives[122] and Baroness Hamwee, for the Liberal Democrats, also welcomed the separation of boundary issues from the Electoral Commission.[123]

During the committee stage debate in the House of Lords, Baroness Hamwee (Liberal Democrat) introduced an amendment which sought to probe why a new Boundary Committee for England would be prohibited from borrowing money. Baroness Hamwee also introduced amendments to schedule 1 which would make provision for all the appointments to a new BCE to be overseen by the Speaker's Committee. Responding to the first amendment, the Minister, Lord Patel of Bradford, said that the Bill established a new BCE as an independent body accountable to Parliament rather than to a government body and that its funding would be provided directly by Parliament from the Consolidated Fund; if the Committee required additional funding it would have to present its reasons to Parliament which would determine whether they would be granted. The amendment was not moved.

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121 See the Electoral Commission's briefing for the report stage of the bill in the House of Lords. Available at http://www.electoralcommission.org.uk/__data/assets/pdf_file/0003/72732/LDEDC-Bill-Report-Stage-briefing-for-Peers.20090317.FINAL.pdf

122 HL Deb 17 December 2008 c856

123 *Ibid*, c863

Lord Patel gave further details about the appointments procedure for the Chair and ordinary members of a new Boundary Committee. He moved two amendments to schedule 1 which clarified how the appointment process for the Chair would operate; this process will be different to that for ordinary members of the Committee:

> The appointment process for the chair will be by open competition and will not be restricted to the current membership of the Boundary Committee. The amendment is therefore necessary to make it clear that the process of appointment of the chair is the only process required to make the chair a member of the Boundary Committee.[124]

The amendments were agreed.

Lord Patel responded to the amendments introduced by Baroness Hamwee that related to the role of the Secretary of State in the appointment of the ordinary members of the BCE and acknowledged that there was some ambiguity with the current drafting of schedule 1 concerning the role of the Secretary of State.[125] A number of Government amendments were introduced which clarified the procedure for appointing ordinary members of the Committee once the Electoral Commission's role is removed. Lord Patel explained the procedure:

> The appointments procedure will be undertaken, as is always the case, in accordance with the guidance of the public appointments commissioner, who will maintain oversight and audit of the process.
>
> The process that we are introducing will ensure not only that impartiality and independence are maintained but also that knowledge of the local government sector can be brought into the appointments process. In these circumstances, the Secretary of State would make recommendations for appointment on the basis of recommendations from the panel of officials, including an independent person, following a process of advertisement and executive search. We have therefore provided for the Secretary of State to be responsible for the appointment of members in the same way that she is for the appointment of various other public bodies, including the Audit Commission and the Standards board for England.[126]

The Government amendments were agreed.

Further Government amendments addressed the recommendation of the Delegated Powers and Regulatory Reform Committee that a new BCE's function of making electoral change orders was a power which should only be exercised by the full Committee and should not be delegated.[127] The Government's amendments made provision for the restriction to cover all the Boundary Committee's order making powers, as well as any powers exercised in the interim period before the establishment of a new BCE.[128] The amendments were agreed.

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[124] HL Deb 3 February 2009 c192GC
[125] *Ibid*, c191GC
[126] *Ibid*, c192GC
[127] Delegated Powers and Regulatory Reform Committee, first report 2008-09. HL 12, 2008-09.
[128] HL Deb 3 February 2009 c193GC

The Minister, Lord Patel, responded to concerns raised by Baroness Hamwee (Liberal Democrat) and Lord Hanningfield (Conservative) about schedule 2 and the criteria which the Boundary Committee must have regard to when conducting electoral reviews. Lord Patel made it clear that the criteria had not changed; the schedule re-enacted and consolidated existing criteria in section 13(5) of the *Local Government Act 1992* and schedule 11 to the *Local Government Act 1972*. There were also concerns about the transitional arrangements for the existing Boundary Committee to exercise its functions prior to the establishment of a new BCE. Lord Patel said that this section of the bill and schedule 3 would come into force immediately on royal assent, allowing the existing Boundary Committee 'to exercise its functions in relation to electoral boundary work without the involvement of the Electoral Commission prior to the establishment of the new Boundary Committee for England.'[129]

There were no amendments to part 3 of the Bill made at report stage in the House of Lords. Lord Tope (Liberal Democrat) introduced an amendment to change the name of the new Boundary Committee for England to the Local Government Boundary Commission for England.[130] Lord Tope said that the amendment was supported by the Electoral Commission which was concerned about the possibility of confusion between the old and new Committees. Renaming the new BCE as the Local Government Boundary Commission for England would also bring it into line with the Local Government Boundary Commission for Wales and the Local Government Boundary Commission for Scotland. The Minister, Lord Patel, gave a commitment that the Government would give further consideration as to whether the proposed name change was appropriate.[131] The amendment was withdrawn.

During the third reading debate in the House of Lords, the Government introduced 170 amendments which changed the name of the Boundary Committee for England to the Local Government Boundary Commission for England in the bill and in other legislation. The Minister, Lord Patel, noted that the Electoral Commission had supported this change and said that the "proposed name change appears, indeed, to make good sense – especially as it is in line with the names of the Local Government Boundary Commissions for Wales and for Scotland."[132]

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[129] *Ibid*, c197GC
[130] HL Deb 23 March 2009 c485GC
[131] *Ibid*, c486GC
[132] HL Deb 29 April 2009 c238