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Local government: polls and referendums

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Summary

This note provides information on the various types of referendum which may be (and in some circumstances must be) conducted by local authorities. These are:

- Advisory referendums called by principal local authorities;
- Parish polls;
- Statutory referendums under specific legislation:
 - governance arrangements (including mayoral systems);
 - council tax;
 - neighbourhood planning.

1. Local authority advisory polls

Although provision for various types of local referendum has existed for some time in local government legislation, referendums have become a regular feature of local government in the past two decades. This is principally owing to the number of mayoral and neighbourhood planning referendums which have been held. However, other (advisory) polls have been instigated by local authorities, including a number in connection with proposals for local government reorganisation.¹ Additional examples of votes on “local” issues were the 2008 referendum on transport issues (including congestion charging) which covered boroughs in Greater Manchester,² and the 2005 referendum in Edinburgh on congestion charging.³

There are various legal powers under which local authorities can hold advisory polls. The most recent provisions can be found in the [Local Government Act 2003](#), but other legislation can also be used to conduct local polls.

1.1 Local Government Act 2003

The Labour Government said in its 1998 local government white paper, *Modern local government: in touch with the people*, that it wished to see “...consultation and participation embedded into the culture of all councils”.⁴ Further:

The Government believes that councils should see and use referendums as an important tool to give local people a bigger say. The Government will therefore introduce legislation to confirm the power of councils to hold referendums. However, they would be neither obligatory nor binding except in the particular circumstances described in the previous chapter. Councils might wish to use referendums to consult their local people on such issues as major local developments or matters of particular local controversy.⁵

The resulting section 116 of the [Local Government Act 2003](#) provides a specific power for principal local authorities in England and Wales to hold polls in order to ascertain views on any matter relating to their services, expenditure on those services, or their power to promote well-being in their areas. There is no obligation on a local authority to hold a poll, nor is it bound by the result. The Act also does not provide for local electors to be able to demand a poll. The explanatory notes to the Act stated, with regard to the ability to hold a referendum:

¹ See Lords Select Committee on the Constitution, *Referendums in the United Kingdom*, HL 99 2009-10, April 2010, [Oral evidence, 13 January 2010](#), [Memorandum from Director of Democratic Audit, para 16](#)

² “[Voters reject congestion charge](#)”, BBC News, 12 December 2008 (last accessed 14 November 2014).

³ “[Edinburgh rejects congestion plan](#)”, BBC News, 22 February 2005 (last accessed 22 February 2014). More information on the referendum is contained in the paper from the University of Edinburgh, [An investigation into the reasons for the rejection of congestion charging by the citizens of Edinburgh](#) (last accessed 16 October 2014).

⁴ [Cm 4014](#), para 4.6

⁵ *Ibid*, para 4.8

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357. The extent of this express power is broadly drawn, allowing the local authority to hold a poll on any matter relating to the services for which it is responsible (including where these may be delivered by a third party), or the finance that it commits to those services, or any other matter that is one relating to the authority's power under section 2 of the Local Government Act 2000 (authority's power to promote well-being of its area).

358. The section also provides express freedom to a local authority in determining, for any poll it proposes to hold, who to poll and how the poll is to be conducted. The clause also provides for the Secretary of State in England and the National Assembly for Wales in Wales to be able to issue guidance, to which local authorities must have regard, on facilitating participation by disabled people in a local poll.⁶

1.2 Other powers

Further legislative provisions exist which can provide the basis for conducting a local referendum.

Research and collection of information

Section 141 of the *Local Government Act 1972* gives county and unitary councils in England and Wales the power to conduct, or assist in the conducting of, investigations into, and the collection of information relating to, any matters concerning the authority or any part of it. Similar provision is made in respect of metropolitan areas by section 88 of the *Local Government Act 1985* and in respect of local authorities in Scotland by section 87 of the *Local Government (Scotland) Act 1973*.

A poll of electors' views on council tax levels was held under this power by Milton Keynes Council in 1999. Electors were asked to choose between three levels of council tax and were given the option of voting by post or by telephone. The Council indicated that it would abide by the result, although there was no legal obligation to do so.⁷

Edinburgh referendum on congestion charging

Under the *Transport (Scotland) Act 2001*, local authorities in Scotland have the power to introduce road user charging schemes. Before introducing a scheme, authorities are required to consult those people specified in regulations and "may consult such others as they think fit". Guidance issued by the Scottish Executive in 2001 stated that it would not prescribe the types of consultation that local authorities should carry out, "be they traditional written consultation exercises, the use of the internet, polling techniques like questionnaires, door to door surveys and local referendums".⁸

⁶ [Explanatory notes to the Local Government Act 2003](#)

⁷ See House of Commons Library Research Paper 99/30, *Referendums: recent developments*, 16 March 1999, p.45

⁸ Scottish Executive Development Department, [Delivering Integrated Transport Initiatives Through Road User Charging - Consultation And Approval Process: Guidance for Local Authorities](#), 2001, p4

In 2005, a referendum was held in Edinburgh on a proposed congestion charging scheme. On a turnout of 61.8%, voters rejected the introduction of congestion charging.⁹

1.3 Law Commission report

The Law Commission's interim report on electoral law, published in February 2016, recommended consolidation of the detailed legislative provisions around mayoral referendums, council tax referendums and neighbourhood planning referendums:

Four distinct pieces of secondary legislation govern the three species of local referendums, largely based on the law governing local government elections... Materially identical rules are needlessly replicated across different pieces of legislation. ... There should be a single set of conduct rules and challenge provisions governing them. This would eliminate inconsistencies in the detail of the rules that are not justified by the nature of the referendum in question.¹⁰

This recommendation did not, however, extend to local advisory referendums or referendums on Business Improvement Districts:

...local advisory polls are not conducted according to a statutory scheme or conduct rules at all. Furthermore, local advisory polls, in particular, do not carry the same weight in terms of legal outcome as other local referendums.¹¹

1.4 Petitions to hold local referendums

With the exception of a referendum on governance arrangements (mayors, cabinets, and committee systems – see section 4), no power is available to local electors either to force their local authority to hold a referendum, or to oblige it to take any particular action following the result of a referendum.

The Conservatives stated in their localism policy paper of February 2009, *Control shift*, that if elected they would:

...give power to residents to hold local referendums on any local issue by legislating to ensure that a referendum is held in a local authority area if 5 per cent of local citizens sign a petition in favour within a six month period.¹²

The commitment was carried over into the Coalition's *Programme for government* and measures were introduced in the *Localism Bill 2010-12*.¹³ Councils in England were to be required to hold a referendum if certain conditions were met. These were where either: (1) the authority received a valid petition from local electors; (2) all, or a majority of, ward councillors requested a referendum (subject to ratification by the council); or (3) the council passed a resolution to hold one. The result of

⁹ More information is contained in the paper from the University of Edinburgh, [An investigation into the reasons for the rejection of congestion charging by the citizens of Edinburgh](#) (last accessed 1 March 2016).

¹⁰ Law Commission, [Electoral law: summary of interim report](#), 2016, p. 29

¹¹ Law Commission, [Electoral law: interim report](#), 2016, p. 200

¹² Conservative Party, [Control shift: returning power to local communities](#), February 2009, p21

¹³ Part 4, chapter 1 of the Bill as introduced.

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a referendum would not be binding on the authority concerned but it would be required to publicise the result and to consider what steps it would take to give effect to it (or set out its reasons for not acting on the matter).¹⁴

These provisions were removed from the Bill in the House of Lords. Lord Greaves said:

Councils already have the powers to hold referendums when they want to do so, and as I have already said, if passed, the referendums would only be advisory anyway. Councils could simply ignore them, and the whole thing would be a waste of money.¹⁵

¹⁴ Further information can be found in House of Commons Library research paper, [The Localism Bill: local government and community empowerment](#) (RP 11/02).

¹⁵ HL Deb 10 October 2011 c1407

2. Parish and community polls

Schedule 12 of the [Local Government Act 1972](#) provides that “a poll may be demanded before the conclusion of a parish meeting [or community meeting in Wales] on any question arising at the meeting”.¹⁶ Such a poll is advisory and the result is not binding on the parish or community council.

2.1 Current requirements in England

The 1972 Act sets out the circumstances in which a poll may be demanded:

...no poll shall be taken unless either the person presiding at the meeting consents or the poll is demanded by not less than ten, or one-third, of the local government electors present at the meeting, whichever is the less.¹⁷

Once the decision has been taken to hold a poll, the chairman of the meeting must notify the district council which will appoint a returning officer. Thus the poll is run by the district council but the cost is borne by the parish council (and ultimately its electors).¹⁸

The electorate for the poll is those entitled to attend the meeting as local government electors and the wording of the question should be decided at the meeting. The date of the poll is fixed by the returning officer and should be not earlier than the 14th day nor later than the 25th day after the day on which the poll was demanded. The poll must be held in accordance with rules made by the Secretary of State.¹⁹ Voting takes place in a polling station between 4pm and 9pm on the appointed day.

Section 42 of the [Local Audit and Accountability Act 2014](#) allows the Secretary of State to amend the parish poll regime by regulations.²⁰ A consultation was issued in December 2014, but no changes have emerged since.²¹ A Parliamentary Answer on 23 February 2016 stated:

Last summer, the Government sought the views of the National Association of Local Councils on new regulations governing the conduct of parish polls. We are now considering how best to take this matter forward with the view to having new regulations for parish polls in place as soon as practicable and in any event by summer.²²

2.2 Current requirements in Wales

The conditions for community polls in Wales were amended by the [Local Government \(Wales\) Measure 2011](#): previously, schedule 12 of the 1972 Act also applied in Wales. Under the amended provisions, a poll

¹⁶ For England, see the [Local Government Act 1972](#), Schedule 12 paragraph 18(4). For Wales, see the [Local Government Act 1972](#), Schedule 12 paragraph 34(4).

¹⁷ [Local Government Act 1972](#), schedule 12 paragraph 18

¹⁸ See section 150(2) and 150(7) of the [Local Government Act 1972](#).

¹⁹ See the [Parish and Community Meetings \(Polls\) Rules 1987](#), SI 1987/1.

²⁰ [Local Audit and Accountability Act 2014](#), section 42(3).

²¹ See DCLG, [Parish polls](#), December 2014

²² [PQ HL6056](#), 2015-16

can still “be demanded before the conclusion of a community meeting on any question arising at the meeting.” However, a poll may not be held unless:

- (a) the poll is demanded by a majority of the local government electors present at the meeting, and
- (b) the electors demanding a poll constitute not less than—
 - (i) 10% of the local government electors for the community, or
 - (ii) 150 of the electors (if 10% of the electors exceeds 150 electors).²³

As in England, the rules for the poll are set out in the *Parish and Community Meetings (Polls) Rules 1987*. The [Welsh Government consulted on amending these rules](#) at the end of 2013. The consultation closed on 12 February 2014.²⁴

2.3 Disallowed polls

There is case law relating to the subject of parish and community polls. In the case of *Bennett v Chappell*,²⁵ the Court of Appeal recognised that a parish poll requested for a purpose that was “devoid of practical application” might not be granted by the returning officer.

During 2007 and early 2008, a number of parish polls were demanded (and some were held) on the subject of the EU Treaty. There had been similar polls several years earlier on the subject of the euro. The issue was raised in the House of Commons on several occasions and ministers indicated their concerns that such polls were not being used appropriately.²⁶ Subsequently, the Audit Commission issued guidance to auditors of principal councils which indicated that such matters were unlikely to constitute “parish affairs” and that any expenditure incurred in polling might be unlawful and therefore irrecoverable. The Commission’s technical guidance stated:

As the purpose of a Parish Meeting is to discuss ‘parish affairs’ and a poll can only be demanded on a question arising at the meeting, it follows that a poll must be on a question about ‘parish affairs’. The Euro Treaty is not a ‘parish affair’ within the meaning of the Local Government Act 1972, unless it can be shown to have a direct effect on parish matters.

A proposal to hold a Parish Meeting or a subsequent poll on the Euro Treaty is likely to involve unlawful expenditure by the Parish Meeting and the district council or single tier authority if it conducts the poll.²⁷

The Law Commission’s interim report on its review of electoral law, in February 2016, recommended that the Government should define more specifically which matters can be subject to a parish poll:

²³ *Local Government Act 1972*, Schedule 12 para 34(4).

²⁴ The Welsh Government, [Community Polls: Consultation Document](#), WG20180

²⁵ *Bennett v Chappell And Another*, [1965] 3 ALLER 130; [1965] 3 WLR 829

²⁶ See, for example, HC Deb 25 October 2007 cc431-2; 14 January 2008 c926W.

²⁷ Audit Commission, *Technical directory – local government*, Section 10.15: “Parish polls on the Euro Treaty conducted by principal local authorities”

In our view, under the current law, a parish poll question cannot lie outside the proper range of decision making by a parish council, or be devoid of practical application. Nevertheless, our view is that it would be helpful if the Government were to define the circumstances in which such a poll might be called. Given that this is a matter under review, we will make the general recommendation that legislation should define the issues of parish concern that may be put to a parish poll.²⁸

²⁸ Law Commission, [Electoral law: interim report](#), 2016, p. 205

3. Statutory referendums

3.1 Mayoral and other governance referendums

Most local authorities in England and Wales²⁹ were required by part II of the *Local Government Act 2000* to change their traditional decision-making procedure (the “committee system”) and introduce new executive arrangements involving the formal separation of powers. Councils were required to consult local people about what new form of political management to adopt. A binding referendum needed to be held where:

- the council proposed an elected mayor;
- 5% of local electors petitioned the council for a referendum on whether there should be an elected mayor;
- the Secretary of State required a referendum to be held on an elected mayor (for example, because a council had not produced a formal, detailed proposal or had not consulted adequately).

Developments in England

The *Local Government and Public Involvement in Health Act 2007* made changes to executive leadership arrangements in England. Amending the 2000 Act, it:

- instituted two executive leadership models: the mayor and cabinet executive, and the new-style leader and cabinet executive;
- provided for a council to be able to adopt a mayoral system by resolution and without the need for a referendum. However, the council could make the decision subject to endorsement by referendum if it wished to;
- Extended the minimum period between referendums from five years to ten;
- Local people could still demand a referendum via a petition.

The *Localism Act 2011* inserted a new part 1A into the 2000 Act concerning governance arrangements for English local authorities. A local authority must now operate either: (1) a mayor and cabinet executive, (2) a leader and cabinet executive, (3) the committee system, or (4) arrangements prescribed by the Secretary of State. Revised regulations have also been made concerning the conduct of referendums³⁰ and petitions for referendums on governance arrangements.³¹

The Coalition Government also implemented its commitment to hold mayoral referendums in England’s twelve largest cities outside London.³² Ministerial orders were made providing for referendums on 3

²⁹ The provisions of the *Local Government Act 2000* relating to mayoral referendums do not apply in Scotland or Northern Ireland.

³⁰ *The Local Authorities (Conduct of Referendums) (England) Regulations 2012*, SI 2012/323

³¹ *The Local Authorities (Referendums) (Petitions) (England) Regulations 2012*, SI 2012/2914

³² DCLG, [Localism Bill: creating executive mayors in the 12 largest English cities: impact assessment](#), January 2011, p.8. The city of Sunderland was not included as one of

May 2012.³³ Voters in nine cities (Birmingham, Bradford, Coventry, Leeds, Manchester, Newcastle-upon-Tyne, Nottingham, Sheffield and Wakefield) rejected a mayoral system of governance. Bristol alone voted in favour and its mayoral election was held on 15 November 2012.

One referendum has also been held on returning a local authority to the committee system, with another anticipated in 2016.³⁴

The results of these referendums, and others since, are set out in Appendix B of the Library standard note [Directly-elected mayors](#) (SN/PC/5000).

Developments in Wales

In Wales, some alterations to the circumstances in which referendums may be held were made by the [Local Government \(Wales\) Measure 2011](#):

- The only permissible forms of executive are a leader and cabinet or a mayor and cabinet (i.e. the committee system may not be used);
- A referendum is required either to establish or abolish an elected mayor (in practice, together with the previous provision, this means that governance arrangements in Wales can only be modified via a referendum);
- Holding a referendum on proposed new executive arrangements is subject to their approval by the Welsh Ministers;
- The length of time that must elapse between referendums remains at five years.

Previously, the system outlined above, introduced by the [Local Government Act 2000](#), applied in both England and Wales.

Following a successful petition, a mayoral referendum was held in Ceredigion on 20 May 2004 at which voters rejected the mayoral model.³⁵ There have been no further mayoral referendums in Wales.

3.2 Council tax referendums

The *Localism Act 2011* introduced the power for the Secretary of State to provide that any rise in council tax above a set threshold must be approved by a binding local referendum. This regime applies in England only, and took effect from the 2012-13 financial year. In many recent years the threshold has been 2%, though it must be set each year within the local government finance settlement. The legislation refers to the process as 'setting principles of excessiveness'.

the 12 cities, despite having a larger population than Newcastle-upon-Tyne, because it had held a referendum in October 2001 which had rejected a mayoral system.

³³ Referendums were held in 10 of the twelve cities. Of the twelve, Leicester City Council had already resolved in December 2010 to adopt a mayoral system and the city's first mayor, Sir Peter Soulsby, was elected in May 2011. Similarly, Liverpool City Council resolved in February 2012 to adopt a mayoral system and Joe Anderson was elected as the city's first mayor in May 2012.

³⁴ Fylde BC, 22 May 2014: voters supported a committee system by 11,934 votes to 8,706 (a turnout of 34%). For the planned poll, see Mark Smulian, "Voters force governance poll on West Dorset", [Local Government Chronicle](#), 16 February 2016

³⁵ ["Voters: 'No' to mayor"](#), BBC News, 21 May 2004 (last accessed 16 October 2014).

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One referendum has been held under these provisions. Olly Martins, the Bedfordshire Police and Crime Commissioner, triggered a referendum by proposing a rise in council tax of 15.8% in 2015-16. This would have equated to an extra £24.80 on a Band D council tax bill in Bedfordshire. The poll was held on 7 May 2015. 91,086 voters (30.5%) supported the proposal, whilst 207,551 (69.5%) opposed it.

Further details on council tax referendums can be found in the Library briefing note [Council tax: local referendums](#).

3.3 Planning referendums

The *Localism Act* 2011 provides for a completely new neighbourhood planning regime, again applying in England only. The Act allows parish councils and groups of people from the community to set up 'neighbourhood forums', to formulate Neighbourhood Development Plans and Orders, which can guide and shape development in a particular area. The draft plans and orders must pass an independent check and, if they do so, they must then be put to a local referendum. If the majority of those who vote are in favour the local planning authority must adopt the plan, unless it conflicts with the European Convention on Human Rights or EU policy.

The Act contains a similar procedure for Community Right to Build Orders. These are orders which give permission for small-scale, site-specific developments by a community group. More detail is provided in the Library standard note [Neighbourhood planning](#) (SN/SC/5838).

As of December 2015, 126 neighbourhood planning referendums had been held, all of which had been successful. Across England the average neighbourhood plan referendum turnout is 33% and the average 'yes vote' is 89%.³⁶

³⁶ DCLG, [Notes on Neighbourhood Planning: issue 17](#), December 2015

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