

## Cities and Local Government Devolution Bill

### What is in this for local councils?

Local councils will wish to be aware of the Cities and Local Government Devolution Bill. This significant piece of legislation once again proposes a major change to local government. Local councils will be concerned about the potential impact on principal local authority services and their democratic accountability but will also be considering what the impact might be on their own councils as the most local tier of local government. In broad terms the Bill is designed to introduce directly-elected mayors to combined local authorities in England and to give statutory authority to decisions to transfer powers to local areas, such as housing, transport, planning and policing. It also contains a clause reducing the voting age to 16.

The Bill has been through the House of Lords and had its Second Reading in the House of Commons on 14 October 2015. Whilst the First Reading is a formality and takes place without any debate, the Second Reading is when the general principles are debated.

The Local Government Association has responded to the devolution proposals with a document which gives its views of the local government offer of partnership with Government, *English Devolution, Local Solutions for A Successful Nation*, a 26 page document with no mention of local councils. The National Association of Local Councils has published a 'white paper' entitled 'Devo Local' which cites measures which it believes will empower local councils and support devolution.

Government has claimed its devolution plans are a 'major step forward in plans to devolve powers from Whitehall and into the hands of local people and businesses' and has received 38 bids from major cities and regions across the country with the aim of creating a local devolution deal. It states that this is 'part of its "one nation government's" plans to rebalance the economy and provide opportunity for all.' Agreed bids will be supported through the Cities and Local Government Devolution Bill currently passing through Parliament and will be considered as part of the Spending Review process. The proposals include:

- Buckinghamshire, Oxfordshire and Northamptonshire *England's Economic Heartland* <http://tinyurl.com/qgnbjes>
- Cornwall *Case for Cornwall* <http://tinyurl.com/o3bre6k>
- 'D2N2' – Derbyshire, Derby, Nottinghamshire and Nottingham <http://tinyurl.com/ohooovp>
- Gloucestershire *We are Gloucestershire* <http://tinyurl.com/ohtgjez>
- Hampshire and Isle of White *The Southern Powerhouse* <http://tinyurl.com/peblwmc>
- Leicester and Leicestershire *Delivering Growth Together* <http://tinyurl.com/qfwuc4z>
- Norfolk *The Norfolk Offer* <http://www.norfolk.gov.uk/view/NCC168721>
- Suffolk *A Devolved Suffolk Working for a Better Future* <http://tinyurl.com/q9frple>
- West of England (Avon) *Devolution* <http://tinyurl.com/orwcwwa>
- West Midlands Combined Authorities (geography of the three Local Enterprise Partnerships (LEPs) of The Black Country, Coventry and Warwickshire and Greater Birmingham and Solihull). Details being kept confidential. <http://tinyurl.com/q85hyhv>

Some areas have not submitted bids. For example in Hertfordshire discussions are taking place but they did not submit by the deadline set by Government. Hertfordshire County Council's leader Robert Gordon (Con) told LGC: "We want to get it right rather than get it quick."

**Relevant date: 21 October 2015 Committee Stage**

**References to local councils: 0**

**Pages: 41**

## Background

This Government and the predecessor Coalition Government have made commitments to localism and devolution of powers to local people, by which it has largely meant to principal local authority level. The creation of Local Enterprise Partnerships and planned devolution of additional powers to major city councils with directly-elected mayors was part of this process but most of these cities rejected mayors in referendums in May 2012, although some 'City deals' have been agreed subsequently. Government considered that powers should be devolved to combined authorities rather than single local councils and although many areas could explore new governance and devolution arrangements, areas with the greatest economic growth potential were prioritised. The changes were designed to provide increased local power delivered efficiently through cross-authority arrangements.

In November 2014, a 'devolution deal', *the Greater Manchester Agreement*, was announced to devolve a number of programmes and budgets immediately and to devolve further, conditional on adopting a directly-elected mayor. Subsequently there was also an agreement to establish a joint health and social care board for the Greater Manchester area. Further devolution deals were announced, including recently with Cornwall in July 2015. Cornwall is different from the other deals in that the additional powers and funding go direct to Cornwall Council.

Government announced on 14 May 2015 that any area was free to submit a proposal for devolved powers by 4 September 2015 which would ensure they were taken into account in the autumn 2015 Spending Review. Government has announced that 38 bids had been received (including four from Scotland and Wales).

The *Cities and Local Government Devolution Bill* is part of the Government's stated policy of devolving the powers and budgets of public bodies to local authorities and combined authorities which began in the previous Coalition Government. The key past and due dates for the Bill are detailed in the table below.

Key Dates for the Bill		
First Reading	House of Lords	28 May 2015
Second Reading	House of Lords	8 June 2015
Committee Stage	House of Lords	3 days between 22 & 29 June 2015
Report Stage	House of Lords	13 & 15 July 2015
Third Reading	House of Lords	21 July 2015
First Reading	House of Commons	21 July 2015
Second Reading	House of Commons	14 October 2015
Communities and Local Government Select Committee Inquiry First Session	House of Commons	12 October 2015
Committee Stage	House of Commons	21 October 2015

Although there was opposition from the Government a number of amendments were passed in the Lords including, of direct interest to local councils, a clause lowering the voting age in local elections to 16. Others passed with objections included clauses requiring an annual 'devolution report' to Parliament and a 'devolution statement' to be included in every Government Bill; a clause preventing Government from making devolution of powers conditional on the creation of an elected mayor; and a clause permitting a future referendum to abolish any local authority elected mayor established following a Government-mandated referendum.

The Bill passed its Second Reading on 14 October 2015.

## Detail

### The Bill

The Bill is an enabling Act, which proposes amendments to other statutes to deliver the main elements of the Bill. A summary of the main elements follows:

- **Clauses 1 to 2: Requirements to report to Parliament on matters related to English devolution.** Clause 1 requires the Secretary of State to submit an annual report to Parliament on the progress of devolution within England. The requirement for updates provides greater transparency which particularly helps for matters covered by executive decisions. Clause 2 requires a devolution statement to be made before the Second Reading. This has a subsidiarity effect in that it assumes default devolution to combined authorities or other local level unless central Government could exercise powers better.
- **Clauses 3 to 6 Permitting elected mayors of combined authorities and allowing them to take on the functions of the Police and Crime Commissioner (PCC).** The Government has consistently linked directly-elected mayors to devolving a full package of powers to local areas. Not all of the 38 bids submitted for devolution deals by 4 September included mayoral arrangements. Those submitting bids without mayoral arrangements will have noted that Cornwall has been offered multi-year transport budget and bus franchising powers without being required to establish an elected mayor. Clause 3 enables Orders to be made establishing, by local election, a directly-elected mayor as Chair and a Member, for a new, or an existing, combined authority. Their term would be four years and the mayor could not also be a councillor from one of the member authorities. Clause 4 requires a Deputy Mayor to be appointed from amongst the councillors in the member authorities. Clause 5 gives powers only to elected mayors of combined authorities. There will be three types of powers: the mayor's powers; the powers that belong to the combined authority as a whole; and the mayor's powers as the PCC. Clause 5 permits but does not require the combined authority mayor to become the Police and Crime Commissioner for the area. Clause 6 permits a mayoral combined authority to introduce a precept which thereby gives mayors independent finance for their 'general functions'. A mayor who is also the PCC will set the PCC precept, but this must be kept separate
- **Clauses 7 and 8: Powers to transfer public body functions to combined authorities.** This part of the Bill would create a power to transfer functions from other public bodies to combined authorities, where this is necessary to implement a devolution deal. Exactly which statutory functions will be transferred to which areas will not become clear until Orders are made in respect of the individual devolution deals agreed. Functions would be transferable from central government or from local government; and could be transferred to new or existing combined authorities. Clause 7 would remove the need for economic development and regeneration purposes to exist in order to transfer local authority functions. Clause 8 would provide a broad and general power for the transfer of public bodies' functions to a combined authority by order or, significantly, for the public body to be abolished, and/or its property to be transferred to the combined authority.
- **Clauses 9 to 11 and Schedule 3: Requirements for combined authorities to be scrutinised and audited.** These clauses of the Bill would apply provisions for audit, and overview and scrutiny, to combined authorities, likely to resemble existing practice in local government. Clause 9 of the Bill, and Schedule 3, would require each combined authority to appoint at least one overview and scrutiny committee and an audit committee which reviews decisions, produces reports and recommendations and also reports on "matters that affect the authority's area or the inhabitants of the area. Clause 10 extends the power of combined authorities to impose levies on their constituent councils in respect of exercising any of their functions (including transport). Clause 11 includes a power for the Secretary of State to apply the general power of competence, available to local authorities, to combined authorities by Order.
- **Clauses 12 to 15: The removal of certain restrictions on the boundaries of combined authorities.** These clauses of the Bill would enable new combined authorities to cover a more diverse range of boundaries than is currently possible. Clause 13 would remove the requirement both for the constituent authorities of a

combined authority to be geographically contiguous and that they do not form a 'doughnut' shape around another local authority or authorities. Clause 12 would make an equivalent provision for Economic Prosperity Boards which, under Clause 14, can apply for an order be made altering the nature of its constitution, its functions, or its funding. Clause 15 provides for a streamlined procedure to create a combined authority, or to amend the structure of an existing combined authority. Instead of the relevant local authorities having to produce a 'scheme', an order to establish a combined authority can be made, after consultation with local people.

- **Clauses 16 to 18: Powers to devolve public functions to single local authorities and to fast-track changes to their governance structures.** The Bill includes provisions to devolve the functions and powers of public bodies to single local authorities acting alone where there is no appetite for combined authorities. Clause 16 would allow orders to be made to introduce fast-track changes to local authority structures in respect of boundary reviews and local authority governance. Clause 17 contains a general power allowing the transfer of functions of public bodies to local authorities by order. The function may be fully transferred, jointly held, or concurrent, and public bodies may be abolished if they no longer have any functions. Clause 18 provides that the local authority must consent to any transfer order and the Secretary of State must believe that the order will improve the exercise of statutory functions in the area.
- **Clauses 19 to 25: Miscellaneous provisions.** Clause 19 of the Bill was introduced to ensure that, if any orders were made to devolve NHS functions to local authorities, the Secretary of State would remain responsible for fulfilling their statutory duties; would not be able to transfer regulatory or supervisory functions belonging to national bodies, and would be responsible for ensuring that bodies carrying out health functions adhered to the applicable national standards and accountability obligations. Clause 20 was to change the voting age for all local authority elections from 18 to 16. The Government opposed the amendment, but was defeated by 221 votes to 154. This clause, uniquely in the Bill, would have effect in Wales as well as England. Clause 21 removes the prohibition, where a local authority was directed by the Government to hold a referendum on an elected mayor and the outcome was a 'yes' vote, from holding a further referendum or resolving to abolish the mayor. Clauses 22-25 contain minor and consequential amendments, territorial extent, commencement and short title.

## The Second Reading

At Second Reading stage there was debate, among other things, about the role of mayors, the degree to which devolution was contingent on having a mayor, the degree to which devolution was a means to pass on financial cuts and the impact of devolution in particular areas. It is worth also noting the following particular points:

- Some concern was expressed that Government might tack on devolution of decisions on Sunday trading at a later stage in the consideration of the Bill in an attempt to circumvent debate.
- The concept of double devolution down to communities was promoted strongly:  
 14 Oct 2015: Column 325  
*Mr Graham Allen (Nottingham North) (Lab): I congratulate the Secretary of State on bringing forward this Bill and on the hard work he has done over many years in bringing devolution to our cities. Will he accept from me that bringing devolution down from Whitehall to town hall is not enough in itself? Will he look a little further at what we call "double devolution", or taking devolution down to the communities and neighbourhoods as we are trying to do in Nottingham at this very moment?*  
*Greg Clark: I will indeed, and I would like to reciprocate the hon. Gentleman's compliment.*  
 14 Oct 2015 : Column 327  
*Mr Ivan Lewis (Bury South) (Lab): Further to the point made by my hon. Friend the Member for Nottingham North (Mr Allen), the model of elected mayor and combined authority has profound implications for public engagement and public involvement. If this is devolution purely from Whitehall to town hall, and does not actually empower communities, that would be a major problem. This also has profound implications for the role of back-bench councillors who feel potentially marginalised by this model and for the role of Members of*

*Parliament in holding public services to account. What is the Government's position on the public, back-bench councillors and Members of Parliament in light of the profound impact of the proposals?*

*Greg Clark: The hon. Gentleman makes an excellent point. It is important that both back-bench councillors and Members of Parliament have the opportunity to exercise scrutiny of any elected officials, whether they be chairs of combined authorities or members of the cabinets put together by combined authorities or boroughs.*

- It was noted that the Housing and Planning Bill contains provisions to strengthen the ability of neighbourhoods to insist on the development of a neighbourhood plan.
- It was noted that Cornwall's Leader saw the devolution to date as part of a longer journey to further devolution for their area.
- The devolution of 100% of business rates was described as a positive step in devolving powers with funding to local government. It was noted that there was not yet clarity about how business rates would be distributed to ensure fairness between richer and poorer areas.
- Concerns were expressed that funding is not following devolution

14 Oct 2015 : Column 380

*Derek Thomas (St Ives) Finally, Cornwall Council has led the way over recent years in devolving responsibilities to town and parish councils. The problem is that there seems to be a habit of devolving responsibilities with no funds attached. There is an appetite among town and parish councils to take on services so that they can be delivered closer to home. I would welcome it if the Government took the lead, through the Bill, in enabling local councils to cluster together, if they choose to do so, to take on services and receive the funding that they need to deliver them for the people they serve.*

- Specific mention was made of the need to empower communities and of research by the National Association of Local Councils.

14 Oct 2015 : Column 409

*Andrea Jenkyns (Morley and Outwood) (Con): Having served as a Lincolnshire county councillor, I welcome the Government's devolution proposals giving more power to our communities. As chair of the all-party group on local democracy, I work with the excellent National Association of Local Councils, which represents more than 9,000 local councils and wholeheartedly supports the devolution of power to a local level. One of the main issues people feel strongly about is the sense of detachment from Government and the people who make the decisions that affect their lives. The Bill is an opportunity to devolve power from central Government and closer to the communities affected by the decisions made. It will see regions such as mine and others across the country given far greater power over vital services and allow them to tailor their own local services so that they work for the people using them. Alongside the northern powerhouse, they will be the engine that drives forward growth and opportunities for northern cities that have often been ignored by previous Governments. I welcome the introduction of a democratically accountable elected Mayor. It is an opportunity to attract the brightest and the best from industry to lead innovation and change, and it can make a real difference to our community, helping to restore the public's trust in those who represent them. However, I believe that the Bill could go further in some areas. I have spoken to our local police representatives who tell me that they, too, would like a voice in the local devolution deal. We have this opportunity to remove the silo mentality and truly have a joined-up approach, in which our local organisations work together for our community and plan for our future. Speaking as chair of the local democracy group, I would like to see more emphasis placed on the work done by town and parish councils, and more of a role for them in devolution. The National Association of Local Councils has undertaken research showing the widespread frustration among existing councillors that they do not have the powers they need to effect real change in their areas. We have an historic opportunity with this Bill to empower local councillors, which I believe would have the by-product of encouraging more people to stand for local office and make that unique contribution to their areas. It would also give greater scope for elected Mayors to work with communities to achieve the results that work best for them. I would like to invite the Secretary of State to look into ways through which local, town and parish councillors could be included in the devolution settlement, and I would appreciate an*

*opportunity to meet him to discuss that. Let me present an example of innovation in town councils that has made a real difference to my local*

14 Oct 2015 : Column 410

*area. In my constituency, Morley town council introduced free parking, which has been a major boost to the local high street. That is just one example of the innovative work that can be done locally. This sort of progress shows what towns can achieve through strong local leadership and innovation. We need look only at the British public's distrust of the supra-national power of the European Union to understand that the Conservative Government are spot on when it comes to assessing the public mood for devolving powers.*

## Devo Local

The National Association of Local Councils (NALC) has published what it calls a 'white paper', entitled 'Devo Local'. It describes Government's devolution plans as 'the next phase of localism' which it believes is 'by no means local enough'. It declares that by proposing a 'parish deal' empowering and strengthening local councils with fairer funding and more powers, this would support devolution and help revitalise communities. Local councils will wish to consider the extent to which they buy into the principles and measures proposed by NALC, of which at least three of the top four below include a plea for funding at a national level:

1. *Further measures to support the creation of new local councils including a 'community right of appeal', mandatory use of referendums, continued investment in a national support programme and mandatory governance reviews as part of devolution deals.* NALC has previously managed the fund to support the creation of new councils which it hopes will subscribe.
2. *Introduce a local democracy programme aimed at encouraging more people to become councillors, making it easier for people to stand and serve, gathering elections data and promoting contested elections, undertaking a census survey of councillors and establishing a national democracy fund.* The suggestion is that Government work with NALC on a local democracy programme and establishing a fund.
3. *Strengthen the standards regime to allow local councils to impose sanctions for breaches of the code of conduct.*
4. *Production of an improvement strategy for local councils to provide a framework for good governance, community engagement and council improvement, along with government investment and support.* NALC points to the potential for Government to redirect money currently provided to the LGA as a means of funding training and development work with NALC.
5. *The role of local councils in the planning and licensing system should be strengthened through a statutory 'right to be consulted' and 'right of planning appeal', along with new incentives to promote the take up of neighbourhood planning.* The incentives they suggest include increasing the share of the Community Infrastructure Levy for those with adopted plans and a share of the New Homes Bonus. They also talk about Government supporting NALC to run events and produce guides on Neighbourhood Planning. They state that local councils 'are not statutory consultees on planning and licensing applications' and ask that this is addressed. They suggest improvements should be made to the system of listing assets of community value such as by providing an appeal against refusal to list.
6. *NALC/LGA to work together to promote examples of joint working and devolution, plus the government should introduce a new 'right to engage' to help local councils work more equitably and effectively with principal councils and other public services.* NALC asks for a joint conference with the LGA on devolution

which would presumably require funding. It also presses for a right to engage on devolution with principal local authorities to be enshrined in the Bill.

7. *The government should undertake a review of the Localism Act 2011, in particular the general power of competence, removing any barriers and promoting greater use of this ‘power to innovate’.* NALC notes the particular concern that trading and charging opportunities are limited.

8. *Reform outdated laws governing the administration of local councils through a Parish Councils Bill, including new powers to deliver local services.*

9. *Give communities and local councils the power to adopt new governance models such as having a directly elected mayor or leader/cabinet.* NALC encourages Government to make changes which would enable local leadership for local councils through a single individual, a directly elected mayor. They state that this would be implemented locally only if a referendum decision agreed this. They also suggest that increasing party politicisation of local councils should also be reflected in legal provisions permitting ‘leaders’ and ‘executive style governance’.

10. *Renewed action by government to ensure council tax support funding is passed on to local councils by principal councils, either by identifying funding in the local government financial settlement, issuing statutory guidance or passing funding on to local councils directly.* This is a long-held position which has been pursued with Government. Some limited success was claimed when ministerial letters appear to have caused some billing authorities to rethink but the problem remains in many areas. NALC claims that in 2014/15, £9 million that should have been passed on was retained by billing authorities.

11. *Referenda principles should not be extended to local councils for the life of this Parliament and the power of the secretary of state in the Localism Act 2011 should be repealed.* This is a long-held position which has been pursued with Government.

12. *Reform of the business rate system to provide a 5% share for local councils to help them support local economic development, regeneration and growth and the exemption of public conveniences from non-domestic rates.*

13. *Ensuring communities benefit from development through stronger measures to provide local councils with a share of Community Infrastructure Levy, New Homes Bonus and underground exploration funding.* NALC quotes research that suggests only 1% of Community Infrastructure Levy receipts have been passed to local councils in the period April 2013 to June 2014.

## References

The Cities and Local Government Devolution Bill can be found at

[http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0064/cbill\\_2015-20160064\\_en\\_1.htm](http://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0064/cbill_2015-20160064_en_1.htm)

The Hansard report of the Second Reading can be found at

<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm151014/debtext/151014-0001.htm#15101446000003>

‘Devo Local’ can be found on the NALC website <http://www.nalc.gov.uk> or obtained through your local Association.