

Update on the Localism Bill

Purpose of report

For decision.

Summary

This paper updates members on LG Group work to influence the provisions of the Localism Bill currently going through the House of Lords. The Government has offered three significant concessions in response to LG Group lobbying, and this paper highlights the possibility of at least one further concession.

Recommendation

Members are invited to agree that the LG Group should pursue discussions with the Government that build on the debate set out in the report.

Action

As directed by the LG Group Executive

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Achievements to date

1. The Localism Bill had its 2nd Reading in the House of Lords on the 7th June 2011 when Peers from all sides of the House expressed their concerns about some of the provisions within. LGA Vice Presidents including Baroness Eaton (Con), Lord Beecham (Lab), Lord Greaves (Lib Dem) and Lord Ouseley (Crossbench) raised the worries of local authorities on issues such as shadow mayors, EU fines, over-bureaucratisation, unnecessary guidance-making powers for the Secretary of State, and housing finance reforms.
2. The Bill began House of Lords Committee scrutiny on the 20th June and immediately sparked debate on the reach of the General Power of Competence and the mayoral provisions. After heavy opposition to the idea of shadow mayors and to provisions to force elected mayors to merge roles with the local authority chief executive, the Government chose to support LGA amendments, tabled by LGA Vice President Lord Jenkin (Con), which deleted both these issues from the Bill.
3. Provisions relating to local referendums and council tax referendums were debated on 30th June, when the Government announced that they would be supporting an LGA amendment, tabled by Lord Greaves (Lib Dem), to delete the Secretary of State's power to decree what constitutes a "local matter" in relation to a local referendum. Significant amendments to the council tax referendums section, designed by the LGA to take powers away from Whitehall and place them in the hands of local people and their councillors, were tabled by Lord Jenkin (Con) and debated on 5th July.
4. Further LGA amendments on the Community Right to Bid, Assets of Community Value, Neighbourhood Planning, Town and Village Greens legislation and housing finance will be debated in the upcoming sessions. The Government hopes for the Committee Stage to be concluded by the start of summer recess on 20th July, though at the time of writing there are three more Committee sessions scheduled and 156 Clauses, 21 Schedules and 102 pages of amendments still to be covered by the Committee. Indications are that the Government wishes to schedule Report Stage for the week of 15th September, though this will depend on whether the Committee finishes its scrutiny by 20 July.

Progress on EU Fines

Background

5. The LG Group and our member authorities believe these unprecedented and retrospective plans to enable Ministers to pass down EU fines for failing to comply with an ECJ ruling relating to non compliance with EU law to local authorities are unfair, unworkable, dangerous to council budgets and unconstitutional. We remain opposed to the principles behind this policy.
6. This means a Minister is judge, jury and executioner when passing down EU fines to councils, even though the Government is likely to be partly to blame for incurring the fine e.g. for poorly communicating EU laws and their implementing measures. If an authority disputes this, their only option will be to challenge decisions through judicial review.
7. Elected members and officers have taken every opportunity to discuss EU fines with Ministers and CLG officials. During the Bill's passage through the Commons, LG Group called for the clauses to be removed from the Bill, and have worked to suggest alternative solutions to enable Ministers to scrap the policy:
 - 7.1 'Team UK' partnership solution between central and local government working together to negotiate practicable future EU laws; and
 - 7.2 'Sector self improvement' offer to support and early warn councils where clear local authority responsibilities could result in an EU fine.

Recent activity

8. Moving into the Lords, our understanding is that Ministers are unlikely to delete the policy. Our strategy is to secure safeguards for the sector should the policy ever be enacted. Peers were briefed in advance of Second Reading and Committee (28th June). In Committee, Peers raised LG Group concerns throughout a lengthy debate. A stand part amendment for deletion was tabled. Dealing with the 'unconstitutional' issue:
 - 8.1 Baroness Eaton (Con) tabled a detailed set of LG Group cross-party amendments for independent arbitration building in procedural safeguards. Presented by Cllr The Lord Tope, it would remove the Minister from the decision making process. It protects the sector should the policy ever be enacted by ensuring the authority and the Minister make representation to independent arbitration. As well as being independent, this is quicker, cleaner and cheaper than going through the courts. Ministers responded that decisions should not be made by a single unelected individual.

Item 4

- 8.2 An alternative amendment, supported by a statement of policy, tabled by Baroness Gardner of Parkes (Con), enables a Minister to appoint an independent review panel, but this still means the Minister appoints the panel, and makes the decision as to whether to issue a fine, and does not have to take on board the panel's view. While this does not address the impartiality issue, we understand Ministers are sympathetic to this amendment.
9. Earl Atlee (Con), a Government Whip, undertook to come back to Report stage with a compromise based on the mood of the House, before which he will undertake discussions with interested Peers and bodies (LG Group, GLA etc). This is encouraging.

Next steps

10. Members are invited to agree that we should pursue discussions with the Government that build on this debate and could result in a compromise that allowed the clauses to remain in an amended form.

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