

13 FEBRUARY 2023

PARLIAMENTARY BRIEFING | LEVELLING UP AND REGENERATION BILL – BARONESS SCOTT OF NEEDHAM MARKET AMENDMENTS AT LORDS COMMITTEE STAGE

Introduction

The National Association of Local Councils (NALC) is the national membership body that works with the 43 county associations of local councils to represent and support England's 10,000 local (parish and town) councils.

Local councils and their 100,000 councillors are the first tier of local government, closest to the people, and play an essential part in delivering hyper local services, building strong communities, and strengthening social fabric.

Local councils cover two thirds of England and a third of the population and invest over £2 billion per year to improve and strengthen communities.

This briefing sets out the amendments tabled by NALC's president, Baroness Scott of Needham Market at Committee Stage and provides further supporting information.

Overview and scrutiny of County Combined Authorities

Schedule 1, page 255, line 25

At end insert:

“(j) for the appointment of a representative from parish councils within the CCA area to the membership of an overview and scrutiny committee.”

Supporting information

This amendment would require the Secretary of State to make provision in regulations for the appointment of a representative from parish councils in the CCA area to the membership of an overview and scrutiny committee.

The Bill does not go far enough to empower and involve communities in devolution.

Devolving powers to areas in England that want them must not be confined to county/regional level/principal authorities and must also empower and involve local leaders at community level such as parish councils.

Parish councils must be seen as an important and valued part of a combined authority area as they are local leaders who want to work in partnership to level up and improve their areas.

The experience of previous and current rounds of negotiations about local government reorganisation and devolution has highlighted an absence of involvement by parish councils or the relevant county association of local councils acting on their behalf, including involvement in scrutiny arrangements.

This amendment will enhance and strengthen the overview and scrutiny of Combined County Authorities by creating a mechanism for the appointment of a representative of parish councils from within the CCA area to the membership of the overview and scrutiny committee.

Infrastructure levy receipts to parish councils

Schedule 11, page 354, line 26

At end insert:

(10) IL regulations must include a parish council in the provision for the persons to whom IL must be passed in discharge of a duty under subsection (1).

(11) In accordance with subsection (10), IL regulations must include provision:

- (a) for a parish council to receive 25% of receipts;
- (b) for a parish council with a made neighbourhood development plan to receive 35% of receipts; and
- (c) that notwithstanding the requirement in subsection (2), a parish council may use money passed to a parish council in discharge of a duty under subsection (1) to fund anything else not described by paragraphs (a) or (b) of subsection (2)."

Supporting information

This amendment will require a parish council to be a specified recipient of the neighbourhood share of the Infrastructure Levy, for that share to be 25% or 35% for a parish council with a made neighbourhood development plan, and for a parish council to have full flexibility over how receipts are spent.

The introduction of the new Infrastructure Levy (IL) to replace the Community Infrastructure Levy (CIL) is welcome and importantly this will be mandatory.

CIL is not compulsory which means not all communities benefit financially from development where their parish council receives a 15% neighbourhood share or 25% in the case of parish councils with a made neighbourhood development plan.

The higher CIL amount provides an additional incentive to undertake a neighbourhood development plan and extra investment in infrastructure or anything else concerned with addressing demands of the development.

It is right the government intends to build on CIL for the new IL with a parish council being the body who will receive the neighbourhood share, this is consistent with the government's approach to devolution to local leaders with local accountability.

However, parish councils are not explicitly named in the bill as a person to whom IL receipts can be passed.

It has also been reported that the neighbourhood share of IL could be 25%, however this does not provide an uplift or added incentive for communities to prepare a neighbourhood plan.

As democratically accountable local leaders, parish councils should have full flexibility in how the neighbourhood share is used as they are often at the front line of dealing with the impact of development on residents, businesses, services and facilities.

Local authority meetings (sponsor of Baroness McIntosh of Pickering amendment)

After Clause 70

Insert the following new clause:

“Local authorities to be allowed to meet virtually

(1) A reference in any enactment to a meeting of a local authority is not limited to a meeting of persons all of whom, or any of whom, are present in the same place and any reference to a “place” where a meeting is held, or to be held, includes reference to more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers.

(2) For the purposes of any such enactment, a member of a local authority (a “member in remote attendance”) attends the meeting at any time if all of the conditions in subsection (3) are satisfied.

(3) Those conditions are that the member in remote attendance is able at that time—

(a) to hear, and where practicable see, and be heard and, where practicable, seen by the other members in attendance,

(b) to hear, and where practicable see, and be heard and, where practicable, seen by any members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting, and

(c) to be heard and, where practicable, seen by any other members of the public attending the meeting.

(4) In this section any reference to a member, or a member of the public, attending a meeting includes that person attending by remote access.

(5) The provision made in this section applies notwithstanding any prohibition or other restriction contained in the standing orders or any other rules of the authority governing the meeting and any such prohibition or restriction has no effect.

(6) A local authority may make other standing orders and any other rules of the authority governing the meeting about remote attendance at meetings of that authority, which may include provision for—

(a) voting,

(b) member and public access to documents, and

(c) remote access of public and press to a local authority meeting to enable them to attend or participate in that meeting by electronic means, including by telephone conference, video conference, live webcasts, and live interactive streaming.”

Supporting information

This new clause would enable local authorities to meet virtually. It is based on regulation 5 of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020, made under section 78 of the Coronavirus Act 2020.

This new clause would strengthen local democracy by giving councils the flexibility to hold online and hybrid council meetings.

The ability to meet virtually was paramount during the Covid-19 pandemic to allowing councillors and the public to attend council meetings, with local democracy benefitting from:

- Increased attendances at remote meetings by both councillors, the public and MPs
- Significant cost savings for some councils arising from less travel to meetings
- The environmental benefits of less travel, particularly in the large county councils
- A better work/life balance for councillors
- Improved equality of access to meetings for all and opening up opportunities for more people to stand for election as councillors
- More transparency and openness for the public to see council meetings

The government has argued that a permanent provision would require a change to primary legislation and there is not sufficient Parliamentary time to enable this to happen.

The Association of Democratic Services Officers (ADSO) and Lawyers in Local Government (LLG) made an application to the High Court (supported by the Government, the Local Government Association (LGA) and the National Association of Local Councils (NALC)) that existing legislation allowed for that permanent provision. The High Court disagreed, saying that it was for Parliament to change the law.

A call for evidence by the government on remote council meetings closed in June 2021 and they are yet to publish the results or take any steps to address this issue.

Councils need the flexibility to meet in this way to be reinstated so that they can continue to work in the most accessible and resilient way possible, especially in times of emergency including adverse weather such as storms and flooding.

Amendments put forward during the Commons stages of the Bill to address this issue were not supported by the government or voted upon.

Mumsnet are calling for the return of virtual meetings through their Keep Council Meetings Accessible campaign and a Change.org petition has secured over 11,000 signatures.

Ethical standards in local government

After Clause 70

Insert the following new clause:

“Councillor conduct: suspension of a parish councillor

(1) The monitoring officer of a local authority in England may suspend a parish councillor where that monitoring officer has determined through an investigation that the parish councillor has breached the parish council’s code of conduct.

(2) In section (1) a “local authority” is defined as being a:

- (a) district council;
- (b) unitary council;
- (c) London borough council;
- (d) metropolitan borough council.”

Supporting information

This new clause would introduce a new sanction of suspension to the ethical standards regime which applies to parish councils in England.

Most parish councils are well run, with clerks and council staff working as a team with councillors to deliver their ambitions for the community. And the vast majority of England's 100,000 parish councillors maintain high standards of conduct.

But all too often the negative impact of poor and disruptive behaviour – by councillors, clerks, and residents – can overshadow the many whose tireless efforts play such a vital role in our civic life and local communities.

A significant minority of councillors engage in unacceptable behaviour, such as harassment and bullying including racist, sexist, and ableist abuse. This kind of activity would be grounds for suspension or dismissal in an employment setting, which is why stronger sanctions than currently exist should be introduced for councillors.

Every local authority is required to adopt a code of conduct for local authority members which must conform to the seven 'Nolan' principles of standards in public life and also have provisions about conflicts of interests, with elected members required to register and disclose pecuniary and non-pecuniary interests.

Local authorities are required to put in place arrangements to investigate and decide on allegations of breaching the code, including handling and investigating complaints at parish council level.

The Committee on Standards in Public Life's Review published a review of Local Government Ethical Standards in 2019 stating: the current sanctions available to local authorities are insufficient; the current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct; and that local authorities should therefore be given the power to suspend councillors without allowances for up to six months.

In its response to the report the government stated that it did not agree with Committee's recommendation.

A UK Parliament petition to legislate to enable councillors to be disqualified or suspended for poor conduct has received nearly 12,000 signatures.

Dependent carer's allowance

After Clause 70

Insert the following new clause:

“Dependents carers allowance for parish councillors

(1) The Local Authorities (Members Allowances) (England) Regulations 2003 are amended as follows.

(2) In regulation 3 (application of these Regulations), after paragraph (1) (j), insert-
“(k) a parish council”

Supporting information

This new clause would add parish councils to the list of local authorities in England which may have a scheme to provide for the payment to members of that authority. The allowance would be in respect of such expenses of arranging for the care of their children or dependants as are necessarily incurred in the performance of their duties such as attending meetings.

There are around 100,000 parish councillors in England – four times as many councillors than in principal councils – all volunteering their time (over 14 million hours a year) and taking up civic office to make decisions about improving their area.

The decisions they make affect the quality of life and well-being of our citizens in countless ways, given local councils are responsible for a growing range of responsibilities, assets and services.

There is an indisputable moral case for improving diversity in local government, and just as important is the case of effectiveness because a lack of diversity undermines effective representation and good governance.

NALC's Census Survey of Councillors shows 40% of parish councillors are women, three times the number than in 1966, however, one of the many barriers to getting more women, mums and those with caring responsibilities involved in parish councils is the lack of help with childcare costs.

Unlike every other councillor in England and Wales, parish councillors are specifically excluded from being able to access help with childcare costs to attend meetings and perform their duties.

In Autumn 2019, Weymouth Town Council made a proposal to the government under the Sustainable Communities Act to extend the dependent carer's allowances to parish councillors. They are still waiting for a response from the government, despite the Act's rules stating they should receive a decision by the secretary of state within six months.

This amendment will help level up local democracy, improve local authority governance and increase diversity by making it easier for women and those with caring responsibilities to stand and serve as parish councillors.

Neighbourhood governance

After Clause 70

Insert the following new clause:

Neighbourhood governance

“Review of neighbourhood governance in England

- (1) The Secretary of State must undertake a review of neighbourhood governance in England.
- (2) The review must include-
 - (a) how to make it easier for local people and community groups to come together, set local priorities and shape the future of their neighbourhoods;
 - (b) the role and functions of parish councils in England;
 - (c) how to make parish councils in England quicker and easier to establish.
- (3) The review must commence within one month of the day on which this Act is passed and be completed within six months.
- (4) The Secretary of State must provide a report to Parliament on the review within one month of the completion of the review.”

Supporting information

This amendment would require the Secretary of State to undertake a review of neighbourhood governance in England and sets out a timescale for its commencement, completion and reporting to Parliament.

Empowering communities is the key to levelling up and improving local public services, and that includes unlocking the potential of parish councils.

The Levelling Up the United Kingdom white paper published in January 2022 included a commitment by the government to launch a review of neighbourhood governance in England.

The review would look at how to make it easier for local people and community groups to come together, set local priorities and shape the future of their neighbourhoods. The review will also look at the role and functions of parish councils in England and how to make them quicker and easier to establish.

Importantly, the review provides the opportunity to strengthen the first tier of local government and ensure their 100,000 councillors have the necessary funding, powers, relationships, and support to provide high-quality local facilities and services and improve people's sense of belonging and community.

The government is yet to publish further details or timescale for taking this white paper commitment forward, and the bill makes no provision for legislation to support its outcomes.

Grant funding to parish councils

After Clause 70

Insert the following new clause:

“Power to pay grant to parish councils

(1) The Local Government Act 2003 is amended as follows.

(2) In section 33 (expenditure grant: interpretation), in subsection (1) after paragraph (m) insert—

“(n) a parish council.””

Supporting information

This new Clause would add parish councils to the list of local authorities in England a Minister of the Crown may pay a grant to towards expenditure incurred or to be incurred by it.

Neither the Levelling Up the United Kingdom white paper or the Bill include funding to England's 10,000 parish councils as local leaders to help them level up their areas or improve and build their capacity and capability.

Parish council services and activities are almost entirely funded by their small share of council tax (precept), which is just 1.8% of overall council tax. And unlike principal councils, parish councils do not receive revenue support grant or a share of business rates.

Parish precepts in 2022/23 total £655,138 million, 1.8% of overall council tax, and the average Band D precept charged by parish councils is £74.94. The average Band D council tax set by principal councils is £1,966.

During the pandemic many parish councils faced significant financial pressures due to additional costs, but in particular, lost income. Government funding to support local government during the pandemic was not passed on from principal councils to local councils and the government stated they could not fund local councils directly as they had no powers to do so.

Despite the growing role of parish councils in responding to the social, economic, and environmental needs of communities, they are not eligible to apply in their own right for government growth funds such as the Community Renewal Fund, Levelling Up Fund, Towns Fund, or UK Shared Prosperity Fund (UKSPF). They are also excluded from the Community Ownership Fund.

Using the UKSPF as an example, it is disappointing parish councils especially larger councils can't apply directly to government given some are almost the size of small district councils; and guidance doesn't explicitly require principal councils to ensure local councils have access to funds or are involved in local partnerships.

It is not sustainable for parish councils, especially larger councils, to play their part in levelling up their areas and expanding their range of local services, facilities and activities by increasing the tax burden on local residents.

Examples of where the government would want the full flexibility to be able to pay a grant to a parish council/s include support for the development of neighbourhood plans and neighbourhood priority statements, a Net Zero trailblazer neighbourhood plan community led by a parish council, in national emergencies, or the delivery of another policy priority.

This amendment would level up the list of local authorities in England a Minister of the Crown may pay a grant to towards expenditure incurred or to be incurred by it, through the inclusion of parish councils. As such it would provide ministers with the additional power and flexibility, not a requirement, to be able to provide grant funding to a parish council/s.

Financial assistance to places of worship

After Clause 70

Insert the following new clause:

“Financial assistance to church or other religious bodies

In the Local Government Act 1894, omit sections 6 (transfer of certain powers of vestry and other authorities to parish councils) and 8 (additional powers of parish council).”

Supporting information

This new Clause would clarify the powers of parish councils to provide financial assistance to church or other religious bodies’ buildings. The legal power of parish councils to fund repairs to local churches is a grey area in the law, with two statutory provisions pointing in opposite directions.

Section 8 of the Local Government Act 1894 provides that parish councils cannot give funding to ecclesiastical charities. And Section 137 (3) of the Local Government Act 1972 allows parish councils to give funding to charitable bodies.

Awareness that the law is unclear can discourage parish councils from providing funding for churches, in case they attract a legal challenge.

Advice from the National Association of Local Councils sets out that there is an accepted legal principle, applied by the courts, which is that in interpreting what an Act of Parliament means, a specific provision overrides one of a general nature.

Sections 137 and 138B of the 1972 Act and section 1 of the 2011 Act constitute general provisions and do not override the specific prohibitions in section 8 of the 1894 Act.

Section 137 expressly provides that expenditure cannot be incurred purposes which are subject to a statutory prohibition, restriction or limitation.

Section 2 of the 2011 Act confirms that the general power of competence does not allow an eligible parish council to get round any statutory prohibition, restriction and limitation which existed before the general power was introduced.

Section 214(6) of the 1972 Act which permits a council as a burial authority to contribute to the expenses of anyone else providing a cemetery, appears to overlap with the specific provision in section 8 of the 1894 Act which prevents a council from contributing to the affairs of the church and, in NALC’s view, the specific provision would prevail.

Section 215 of the 1972 Act is a specific provision in respect of the responsibilities of a council (whether or not a burial authority) to maintain a closed churchyard which, in NALC's opinion, thus overrides the prohibitions in sections 6 and 8 of the 1894 Act.

The 2017 Taylor Review confirmed that there is considerable confusion as to whether the 1972 Act supersedes the Local Government Act 1894, and that the 1894 Act is still perceived as a barrier, preventing investment in church buildings by local authorities. It goes on to say clarification on this point should be given such as by repealing section 8 of the 1894 Act.

There is no current case law to resolve the question of whether or not the 1894 Act restrictions override the provisions in later Acts of Parliament and ultimately it would be for the courts to determine the extent of any prohibition from the 1894 Act. Any court action is likely to be expensive and time consuming which is why Parliament should clarify the point with a specific provision in legislation.

This amendment would repeal section 8 of the 1894 Act and in doing to remove the barrier to a parish council, should it wish to do so, providing financial assistance to a church or other religious body building/s.

General Power of Competence

After Clause 70

Insert the following new clause:

“General power of competence: parish councils

(1) The Localism Act 2011 is amended as follows.

(2) In section 8 (interpretation of Chapter)—

- (a) in subsection (1)(f), for “an eligible” substitute “a”;
- (b) omit subsection (2).”

Supporting information

This amendment would include all parish councils in the definition of a local authority which has a power of general competence and remove the eligibility conditions prescribed by the Secretary of State by order for the purposes of section 8 of the Localism Act 2011.

Communities need both power and influence to tackle the issues that matter most to local people and to allow them to shape the delivery of public services in their area and deliver the community they want to be part of.

The Bill provides for the new model of CCAs to have a general power of competence, aligning them with constituent principal councils which already have this power through the Localism Act 2011.

However, parish councils are currently out of alignment with the rest of local government as the general power of competence – intended to be a ‘power of first resort’ and to encourage innovation – is restricted to principal councils and only some parish councils who meet certain tests imposed nationally by the government.

Research by the National Association of Local Councils conducted with its network of 43 county associations, suggests around 70% of parish councils are unable to make use of the general power of competence as they are not eligible to do so.

While it may be the case that other discretionary powers could be used by parish councils instead of the general power of competence, they are spread across multiple pieces of legislation, many of which date back to the 1900s and were designed to meet the demands of different historical contexts.

And the absence of a general power of competence for parish councils is a barrier to being able to innovate and respond to local needs and priorities, examples include: taking action on the climate emergency by generating or selling electricity, providing EV charging points on council premises including car parks and selling electricity back to the national grid; taking on responsibility for provision of youth services; the limit on discretionary spending imposed on parish councils by Section 137 of the Local Government Act 1972; and the ability to provide funding to an individual.

For more information and to arrange a meeting to discuss the bill or amendments:

Justin Griggs, head of policy and communications
M: 07894 937885 E: justin.griggs@nalc.gov.uk or policycomms@nalc.gov.uk