



Report of the Secretary of State on the Draft Local Authorities (Conduct of Referendums) (England) Regulations 2007 – Intelligibility of Referendum Questions

In pursuance of section 45(8B)(b) of the Local
Government Act 2000

Presented to Parliament by the
Lord Chancellor and Secretary of State for Justice

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Introduction

1. This report is laid before both Houses of Parliament by the Secretary of State in pursuance of section 45(8B)(b) of the Local Government Act 2000.
2. It relates to the draft Local Authorities (Conduct of Referendums) (England) Regulations 2007 (“the draft Regulations”), which have been laid before both Houses for approval by resolution. The draft Regulations provide for the conduct of referendums within local authorities as to their executive arrangements and replace the Local Authorities (Conduct of Referendums) (England) Regulations 2001 (S.I. 2001/1298) (“the 2001 Regulations”), which have been in force since 2 April 2001.
3. Where such regulations are to specify the wording of referendum questions, section 45(8B) requires the Secretary of State to:

(1) consult the Electoral Commission on the intelligibility of those questions, and

(2) lay a report before both Houses stating any views of the Commission.

This report is made in discharge of the second duty.

4. Regulation 3 of and Schedule 1 to the draft Regulations specify the referendum questions. The questions are identical to those contained in the 2001 Regulations and presently in force.
5. The referendum questions are:
 - Are you in favour of the proposal for [*insert name of local authority*] to be run in a new way, which includes a mayor, who will be elected by the voters of that [*insert “borough”, “city”, “county” or “district”, as appropriate*], to be in charge of the Council’s services and to lead [*insert name of local authority*] and the community which it serves?
 - Are you in favour of the proposal for [*insert name of local authority*] to be run in a new way, which includes a mayor, who will be elected by the voters of that [*insert “borough”, “city”, “county” or “district”, as appropriate*], to lead [*insert name of local authority*] and the community which its serves?

- Are you in favour of the proposal for [*insert name of Local Authority*] to be run in a new way, which includes a councillor, who will be elected by the councillors of [*insert name of local authority*] to lead the council and the community which it serves?

Electoral Commission's Role

6. In November 2002, the Electoral Commission responded to the proposed regional assemblies referendum question contained within the Regional Assemblies (Preparations) Bill (as it then was). In this response, the Commission stated that they carry out detailed work when assessing the suitability of referendum questions, which includes:
 - Full consideration of the questions against the Commission's published guidelines;
 - Consultation with stakeholder groups (such as the Plain English Campaign); and
 - User testing to develop informed evidence-based recommendations.
7. In the Commission's 2001 report *'Reinvigorating Local Democracy?'*, published in January 2002, they stated that the referendum question (relating to the mayor and cabinet structure) needed to be scrutinised and re-worded in order to make it fairer and clearer. The Commission also stated that they would welcome the opportunity to work with the Government in revising the question. The Government concurred with the Commission's view.

Electoral Commission's Response

8. It should be noted that the 2001 Regulations were made on 1 April 2001, and the formal role described in paragraph 3 above, was only conferred on the Electoral Commission as a result of amendments to the Local Government Act 2000, which came into force on 28 July 2001. But, as is noted in their response below, the Commission gave consideration to the questions on a non-statutory basis in 2002.
9. On 2 January 2007, the Government formally consulted the Commission on the current draft Regulations and asked them to make specific recommendations on the intelligibility of the wording of the referendum questions set out in Schedule 1.
10. The Commission, in their formal response, dated 29 January 2007, responded with the following views on the issue of the intelligibility of the wording of the referendum questions:

“Schedule 1 (Questions to be asked in a Referendum)

Regulation 3 makes provision for the questions to be asked in a local authority referendum to be in the form set out in Schedule 1. Schedule 1 to the draft Local Authorities (Conduct of Referendums) (England) Regulations 2007 sets out the wording for the questions to be asked in a referendum held under the Local Government Act 2000. Under section 45(8B) of the Local Government Act 2000 the Government has asked the Commission to consider whether it wishes to make recommendations with respect to the intelligibility of the wording of the referendum questions, and if so, to include these in our response to the draft 2007 Regulations.

In our 2001 report, *Reinvigorating Local Democracy?*, we argued that the referendum question (relating to the mayor and cabinet structure) needed to be scrutinised and re-worded in order to make it fairer and clearer and that we would welcome the opportunity to work with the Government in revising the question. A suitable opportunity to work with the Government in revising both this question and the accompanying two questions has not arisen until now.

However, the Commission is concerned that the Government has given the Commission a very limited time period within which to undertake this work. For

this reason, it has not been possible to undertake either full consideration of the questions against the Commission's published guidelines for assessing referendum questions, or the necessary consultation with the appropriate stakeholder groups (such as the Plain English Campaign) as well as user testing, which would be necessary prerequisites to developing informed and evidence based recommendations. The Commission estimates that it would take a minimum of two months in order to complete this work.

In addition, we note that the Local Government White Paper '*Strong and prosperous communities*', published in October 2006, sets out the Government's intention to remove the Mayor and Council Manager constitution and make available a new model of Elected Leader and Cabinet. Under the proposals, Mayor and Cabinet and (unelected) Leader and Cabinet forms would remain. These options are subject to the passage of the Local Government and Public Involvement in Health Bill, introduced into Parliament on 12 December 2006. While acknowledging this lack of clarity over the content of future referendum questions, the Commission is disappointed that the limited time for consultation means that it has not been possible to undertake an appropriate review of the existing referendum questions. The Commission would of course be happy to work with MoJ and the Department for Communities and Local Government in developing referendum questions which reflect the range of constitutional models arising from the passage of the Local Government and Public Involvement in Health Bill."

11. The Electoral Commission subsequently submitted a supplementary response on 12 April 2007. This was in light of further work they had undertaken against their published guidelines, although they had not had the opportunity to undertake consultation with stakeholder groups (such as local authority organisations) or user testing.
12. In the Commission's response, they highlighted the following concerns with the intelligibility of referendum questions:
 - Incomplete description of models – the descriptions of the three models are not fully intelligible, as they do not give a description of all aspects of the models and thereby present incomplete information.
 - Use of positive wording – the words 'favour', 'new', 'lead' and 'in charge' in the existing questions may be understood to imply a positive concept, and may therefore lead the voter towards a 'yes' vote.
 - Questions do not specify both options – the current questions provide an explanation of the proposed model, but not of the council's current model. This could be perceived as being leading or loaded.

- Unclear structures – the current questions are structured so that they comprise one long sentence containing a number of clauses. They are not particularly easy to read, and it is arguable as to whether they prompt an immediate response from the reader.

13. In the Commission's response, they propose the following revised wording for the questions:

"Currently decisions in [insert council name] are made by [insert appropriate model].

This referendum is about a proposed change.

The proposal is that future decisions would be made by [insert appropriate model].

Do you think the way decisions are made for [insert council name] should change?

Yes, it should change

No, it should stay the same"

14. The Commission has also developed the following explanations for the models in the three questions in the draft 2007 regulations, and for the alternative model, to be inserted as appropriate in the revised question structure above.

- Mayor and Cabinet – a mayor elected by the voters to lead the council and the local community. The mayor [chooses/would choose] a group of councillors to form a 'cabinet'.
- Mayor and council manager – a mayor elected by the voters to lead the council and the local community, working with a 'council manager' who [is/would be] responsible for day-to-day decision making.
- Leader and cabinet – [the/a] leader of the council, who [is/would be] a councillor chosen by the other councillors. A group of councillors [is/would be] chosen to form a 'cabinet' to work with the leader.
- Alternative model – committees of councillors.

Response of the Secretary of State

15. In its formal response to the Commission, the Government intends to acknowledge the Commission's concern that they did not have sufficient time to consult with stakeholder groups. Indeed the Government accepts that the referendum questions should be reviewed, and looks forward to working on this with the Commission and wider stakeholders. The Government believes that the appropriate opportunity for this is in the wider context of the implementation of the Local Government and Public Involvement in Health Bill (subject to parliamentary passage). This Bill will make significant changes to the structure of local authority executive arrangements, which are the concern of local authority referendums.
16. The Government emphasises that the referendum questions contained in the draft Regulations are identical to those contained in the 2001 Regulations, which are presently in force. The draft Regulations have the narrow focus of implementing the reforms made by the Electoral Administration Act 2006 in the context of local authority referendums, in time for a referendum which may be held as early as August 2007. This is important both to ensure that the aims of the 2006 Act are delivered in this context and to ensure consistency in electoral law. It would not be appropriate for these draft Regulations to seek to address wider questions of policy, when there is a Bill before Parliament which will have a significant impact on the referendum questions that will be needed in the future.
17. The Government welcomes the Commission's suggested revised wording of the referendum questions as an important first step in exploring how they might be revised in the context of wider consideration. However, the Government was not in a position simply to adopt the revised wording proposed by the Commission for a number of significant reasons.
18. The first relates to timing. The need for these draft Regulations to be made at this stage has been explained in paragraph 16 above. If the revised wording proposed by the Commission were included in the draft Regulations, as the Commission themselves acknowledge, it would have been without adequate consultation of stakeholder groups and without user testing.

19. The second concerns the accuracy of the Commission's descriptions of the models for executive arrangements and alternative arrangements. The Government recognises the desire of the Commission for the referendum questions to say more about the characteristics of each model. However, in seeking to do so, the Commission has adopted over-generalised wording. The Government recognises the need to strike an appropriate balance between the detail to be provided in the question and the need for the question to be both accurate and concise. The Government intends to work closely with the Commission and wider stakeholders to address these issues in due course. However, in light of these considerations, the Government is clearly of the view that it is more appropriate at the present time to re-enact the existing referendum questions, rather than adopt new and untested questions that have not been the subject of appropriate consultation.
20. For the longer term, as the Commission point out, the Government's intention, as outlined in the Local Government White Paper '*Strong and prosperous communities*' (published in October 2006), is to remove the mayor and council manager form of executive and make available a new model of an elected elective (consisting of an elected leader and other persons also elected to the executive). This policy will be given effect to by the Local Government and Public Involvement in Health Bill presently before Parliament.
21. The Government looks forward, subject to the passage of that Bill, to working with the Commission and wider stakeholders on the intelligibility of the wording of referendum questions for all the models of executive arrangements that will then be available, with a particular focus on the issues highlighted in the Commission's response of 12 April 2007.

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