

Briefing for Peers:

Local Government (Religious Etc. Observances) Bill

The Local Government (Religious etc. Observances) Bill¹ gives power to a wide variety of local government bodies to include prayers or "other religious observance" or "observance connected with a religious or philosophical belief" at their meetings.

The Private Member's Bill, sponsored by Conservative MP Jake Berry, but drafted by the DCLG, seeks to negate a High Court ruling that "The saying of prayers as part of the formal meeting of a Council is not lawful under s111 of the Local Government Act 1972, and there is no statutory power permitting the practice to continue." Eric Pickles took particular exception to this and the Bill is receiving the Secretary of State's full support.

A list of tabled amendments appears at the end of this briefing. I hope you can support them.

Our objections to the Bill in summary

Religious freedom

- It would allow officials or religious cliques to impose worship in council meetings. This impinges on the religious freedom of those including council employees who do not wish it. Those who do are free to worship before the meeting.

Social Cohesion

- All elected representatives should be allowed to take part on council meetings on an equal basis. Meetings should not be conducted in a way that may alienate those who feel uncomfortable about them in some cases feeling the need to absent themselves from prayers.
- Religious worship in secular settings works against social cohesion; sectarian conflict has resulted from prayers, which are likely to be off-putting those of a different faith from the prayers and particularly younger people – and may even dissuade them from participating as councillors.

¹ <http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0084/15084.pdf>

Representation

- Institutionalising a particular religion within the formal business of a council meeting or identifying the council with a belief - or even a range of beliefs - impedes councils from being equally representative of all local citizens.
- Fewer and fewer people – even religious people – consider religious observance to be appropriate in a local government meeting where people of many different faiths and none are elected to work together for a secular purpose. Reversing the High Court judgement is therefore perverse.

Scope of the Bill

- We believe the Bill's scope is much less modest than is represented. In our view, the Bill reverses the 2012 High Court ruling for all councils and extends the scope to over 30 more types of body set out in Clause 2, including fire and rescue authorities, joint waste authorities, internal drainage boards and even Transport for London.
- The Bill allows local authorities in England to "facilitate, or make arrangements to be represented" at community events that may have a religious element. This is unnecessary, as such powers already exist. Those opposing the Bill have no objection to such representation.
- The Bill would also empower local authorities in England to "support" community events that have a religious element. It is wrong in principle that public funds should be expended on religious events themselves as the purpose of Local Government is secular. Further, it is inappropriate for council tax payers to be subsidising religious events. The cost of religious events should be borne by the religious or 'philosophical belief' groups themselves.

Religious freedom

Rather than increase 'religious freedom', as supporters claim, we think the opposite is true. It undermines religious freedom by enabling an individual or a set of councillors to impose their beliefs on other councillors. Secularism is a necessary adjunct to any democracy that supports equality for all.

The absence of prayers from the formal business of local authority meetings does not impede the religious freedoms of believers or deny anybody the right to pray. The current legal position simply prevents local authorities from summoning councillors to religious observance at council meetings and imposing it on those that do not wish it.

Many local councillors make a huge contribution to the communities they serve. Many will be motivated by their personal faith, and if they wish to pray prior to meetings they are free to do so. There is no need for a law to enable believers to impose their worship on others, including employees, during a Local authority's formal business.

Religious freedom protects both "freedom of religion or belief." It should also therefore protect non-believers from believers imposing religious observance on those that do not share their faith. This may also be regarded as basic good manners. Secularism does not seek to interfere with believers following their faith in any way, provided that it does not impinge adversely on others.

Councillors are free to meet and pray before their meetings, but formal acts of worship should not take place as part of the official business of local authority meetings. In this way, meetings can be conducted without anyone feeling compelled to participate in prayers, or feeling excluded, or that they have to absent themselves from any part of the meeting.

Social Cohesion

Separating acts of worship from the formal business of council meetings creates a neutral space and removes an unnecessary barrier to local democracy being equally representative of all sections of society.

Acts of worship can alienate councillors who simply do not wish to participate in public religious activity. The late Clive Bone, a councillor who assisted the NSS in our High Court challenge felt uncomfortable in refusing to participate, and said the worship created an unwelcoming atmosphere for non-religious councillors, and that he was aware of it putting off potential councillors from standing.

Cllr Imran Khan, a Muslim and Conservative councillor on Reigate and Banstead Borough Council in Surrey, asked for Christian prayers to be separated from full council meetings as he felt it was wrong that he was expected to stand outside the council chamber while prayers were being said. After speaking out on the issue, Mr Khan found himself subjected to abuse from fellow councillors. He was subsequently not reselected by the Tories to contest the seat and claimed the prayer row had "a big influence".²

Even multi-faith prayers can cause tension, rather than cohesion. Portsmouth Council allowed a Imam to say a prayer during a meeting, but a local councillor was accused of "disrespect" after excluding himself during it. He told local media: "I don't feel it's appropriate for Muslim prayers to be said, as I don't feel we worship the same God as Muslims, so I left."³

Similarly, councillors in Shropshire called a fellow non-religious councillor "disgusting" after he wore headphones during a prayer held during a council meeting.

Just last week, three lawmakers in the US state of Idaho refused to attend the Senate's daily invocation after objecting to the offering of a Hindu prayer.⁴

In a religiously diverse nation, where large sectors of the population do not hold or practise religious beliefs, local authorities should perform their civic duties in a secular manner without privileging or identifying with any particular religious position.

² <http://www.surreymirror.co.uk/Muslim-councillor-deselected-Horley-prayer-row/story-15669740-detail/story.html>

³ <http://www.bbc.co.uk/news/uk-england-hampshire-12284894>

⁴ <http://america.aljazeera.com/articles/2015/3/3/idaho-lawmakers-object-to-hindu-prayers.html>

Representation: inappropriate for councils to identify with particular religious beliefs

The role of local councils is to represent and serve all people in their area equally, it is therefore inappropriate for them to appear corporately to subscribe to any religious beliefs, far less to one faith in particular.

Local authorities have a statutory duty to advance equality of opportunity between people who share a protected characteristic and those who do not; the Bill is inimical to this, at least in spirit. This legislation can be expected to increase the incidence of religious observance (predominantly, but not exclusively, Christian prayer) during formal council proceedings, potentially generating unnecessary conflict or resentment.

We note that the average age of councillors increased from 55 in 1997 to 60 in 2010 and only 4 per cent came from an ethnic minority background⁵. It is important to make local democracy as open and inclusive as possible. The presence of predominantly Christian prayers may be seen as alienating for some who are not Christian. This is equally true for non-believers forced to sit through Christian prayers, as (for example) Christian councillors forced to sit through Islamic ones.

Scope of the Bill

Following the 2012 High Court ruling that local councils had no statutory powers to summon councillors to prayer, Secretary of State Eric Pickles fast tracked the Localism Act's "General Power of Competence" which he claimed gave principal councils the power back to include acts of worship as part of their official meetings.

According to the DCLG, this new Bill simply corrects what it regards as an anomaly – and extends the power to hold prayers to smaller town and parish councils.

However, it is not at all clear that the Localism Act actually permits any councils to include acts of worship within their official business. Although Mr Pickles claims that the "general power of competence" "effectively reverses" the High Court's ruling on council prayers, this is merely his untested assertion.

Under the General Power of Competence "a local authority has power to do anything that individuals of full legal capacity may do giving authorities the power to take reasonable action they need 'for the benefit of the authority, its area or persons resident or present in its area'". It is doubtful that prayer would meet this benefit test.

There is no mention of prayers in the Localism Act, nor was there in any of the debates which gave rise to it. The Act was clearly not passed with that express intention of facilitation prayers in council meetings.

⁵ http://www.local.gov.uk/local-government-intelligence/-/journal_content/56/10180/100325/ARTICLE

Keith Peter-Lucas, a local government lawyer and partner at public services law firm Bevan Brittan, has expressed doubt that the "general power of competence" makes prayers lawful:

*"This general power has been oversold as a universal panacea. Despite the secretary of state confidently saying that this immediate implementation should effectively overtake Mr Justice Ouseley's ruling, the new general power may actually offer little assistance in this instance."*⁶

We therefore believe the Bill's scope is much less modest than is represented. It is more likely that the Bill reverses the High Court ruling for all councils and extends the scope far wider to over 30 more types of body set out in Clause 2.

The Bill also gives authorities in England an explicit power to "support, facilitate, or be represented at religious or similar events".

It has been argued by the DCLG that, left unchallenged, the High Court ruling could prevent local councillors from laying a wreath at a Remembrance Sunday event. At Second reading in the Lords, Lord Cormack even suggested the Bill was necessary to allow councils to close roads so people attending such ceremonies could do so safely.⁷

The High Court ruling simply clarified that local authorities have no power to hold prayers as part of their formal meetings or to summon councillors to such a meeting at which prayers are on the agenda.

S111 (1) of the LGA 1972, which also applies to Parish Councils, provides: "(1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions."

Councillors should be free to facilitate and attend important local community events – where there may sometimes be a religious element, and there is absolutely nothing in law that currently prevents them from doing so. Those suggesting otherwise should provide the legal basis for their assertion, or face the accusation that such assertions are baseless panic mongering.

History/background

The judgement followed a Judicial Review initiated by the National Secular Society to challenge the practice of saying prayers as part of the formal business of council meetings in Bideford Town Council (Devon).

⁶ <http://www.theguardian.com/local-government-network/2012/apr/05/eric-pickles-localism-town-hall-prayers-confusion>

⁷ <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/150227-0002.htm#15022739000459>

The ruling was an important step in recognition of secularism as a basis for equality in public life and public office. Simply, it ensured that all elected councillors, whatever their religious beliefs, would be treated with equal respect at council meetings.

Mr Justice Ouseley, the Judge in Charge of the Administrative Court at the High Court, stated in his ruling that the 1972 Local Government Act did not give councils the power to introduce a religious dimension to their meetings:

"I do not think that the 1972 Act, dealing with the organisation, management and decision-making of local Councils, should be interpreted as permitting the religious views of one group of Councillors, however sincere or large in number, to exclude or, even to a modest extent, to impose burdens on or even to mark out those who do not share their views and do not wish to participate in their expression of them. They are all equally elected Councillors."

Lack of Scrutiny

We are concerned that this Bill has received very little in the way of scrutiny. There was no debate at Second Reading in the Commons, all the MPs selected to scrutinise the Bill in Committee were wholly in favour of it and the Third reading and Report Stage were combined and took place on a Friday when most MPs were in their constituencies. Just a handful of MPs were in the chamber to complete the Bill's passage through the House of Commons, and they acknowledged that any division would probably have been inqorate. The only parliamentary opposition to the Bill in the House of Commons came from Conservative MP James Arbuthnot, who argued that "the NSS has a point" and the absence of prayers from the formal business of local authority meetings didn't impede the religious freedoms of believers or deny anybody the right to pray. He rightly pointed out that if councillors wish to meet for prayers before the meeting, they can do so now, without any change in the law.

At Second reading in the Lords, Crossbench peer Nicholas Trench, The Earl of Clancarty, raised a number of concerns shared by the National Secular Society, matters of principle as well as practicalities, which he said "we ignore at our peril". He pointed out that it is not for their religious beliefs that councillors are elected, and therefore religion should not constitute part of the formal business of council meetings. We urge you to read his intervention.⁸

For more information please contact:

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⁸ http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/150227-0002.htm#st_129

The Bill can be downloaded here:

[HTTP://SERVICES.PARLIAMENT.UK/BILLS/2014-15/LOCALGOVERNMENTRELIGIOUSETCOBSERVANCES.HTML](http://services.parliament.uk/bills/2014-15/localgovernment/religiousetcobservances.html)

Tabled amendments to be moved in committee

Clause 1

LORD AVEBURY

Page 1, line 16, leave out from beginning to end of line 7 on page 2

Page 1, line 17, leave out "support or facilitate, or"

Clause 2

LORD AVEBURY

Page 2, line 9, leave out "138B" and insert "138A"

Page 2, line 11, leave out from beginning to "" and insert ""

Page 2, line 13, leave out "and 138B"

Page 2, leave out lines 16 to 19

Page 2, leave out lines 23 to 28

Page 3, leave out lines 10 to 13

Page 3, leave out lines 16 to 21

Page 3, line 39, leave out from beginning to end of line 8 on page 4

Page 4, line 13, leave out from "Wales" to end of line 15

Page 4, line 17, leave out "138B,"

Page 4, line 20, leave out "Sections 138A and 138B" and insert "Section 138A"

Clause 1

THE EARL OF CLANCARTY

Page 1, line 8, at end insert—

“provided that the remainder of business starts at a specified time and that this time is at least 5 minutes after the conclusion of the prayers or other observance.”

Page 1, line 17, leave out “support or”

Clause 1

THE EARL OF CLANCARTY

Page 1, leave out lines 4 to 15

Page 1, line 5, at beginning insert “Subject to subsection (4),”

Page 1, line 15, at end insert—

“(4) Local authority meetings in England may only include time for prayers or other observances, as set out in subsection (1), following agreement by a two-thirds majority of the members present at a meeting of the authority which has been called specifically for that purpose.

(5) A local authority may make an agreement under subsection (4) for a period of up to one year.”

Clause 1

THE EARL OF CLANCARTY

Page 1, leave out lines 7 and 8 and insert “silent prayers”