

LOCAL GOVERNMENT (PAY ACCOUNTABILITY) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Local Government (Pay Accountability) Bill as introduced in the House of Commons on 11 December 2023 (Bill 65).

- These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities with the consent of Paul Bristow MP, the Member introducing the Private Member's Bill, in order to assist the reader and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

The government supports the introduction of the Local Government (Pay Accountability) Bill, which was introduced to the House of Commons by Paul Bristow MP on 11 December 2023 as a private members bill. The Bill seeks to make provision about the approval of certain remuneration paid to local government employees in England. The Bill will require relevant authorities to gain approval by resolution before advertising employment of a role or appointing a person as an employee to a role on terms and conditions that would allow for an annual salary of £100,000 or more, in respect of new appointments only.

Policy background

1. The Government has historically taken an interest in the remuneration of local government employees, and in this regard considers that the highest salaries in local government should be subject to greater oversight to ensure proper accountability and use of taxpayer money.
2. The Localism Act 2011 saw the introduction of pay accountability measures which was an important step in ensuring accountability over local decisions on pay and reward.
3. Sections 38-43 of the 2011 Act require relevant authorities to prepare pay policy statements, particularly on the remuneration of its Chief Officers for the financial year 2012-13 and each subsequent year. In addition, Section 40 of the Act includes provision for the Secretary of State to issue guidance in relation to pay policy statements.
4. In February 2012, the Department published statutory [*Openness and Accountability in Local Pay*](#) (OALP) guidance, setting out key principles that underpin pay accountability in the Act.
5. This guidance recommends that full council (comprised of councillors in the case of local authorities), or a meeting of members (comprised of elected members in the case of other relevant authorities), should be given the opportunity to vote before large salary packages are offered in respect of a new appointment. Within this guidance, it states that the Secretary of State considers that £100,000 is the right level for that threshold to be set.

6. Local authorities must have regard to the OALP guidance when exercising their functions under the pay accountability provisions. However, this guidance is not mandatory or binding (i.e., authorities must simply “have regard” to it).
7. Whilst Local Authorities are independent employers, statutorily responsible for workforce pay, the government supports the viewpoint that the highest salaries in local government should be subject to greater oversight. As such, the Government supports the introduction of the Local Government (Pay Accountability) Bill.
8. The Bill will require relevant authorities to gain approval by resolution for annual salaries of £100,000 or more, in respect to new appointments only. Approval by resolution will be required prior to a post being advertised or an employee appointed to a role.
9. The Bill will also confer a power to allow the Secretary of State to amend the £100,000 salary figure through regulations made by statutory instrument. Whilst the Secretary of State considers that £100,000 is currently the appropriate level to capture senior pay, this may change as a result of future landscapes. In this regard, it is appropriate for the Bill to make provision to allow for the Secretary of State to change the threshold, to capture any potential changes in the future local government environment, e.g., wage inflation.
10. Overall, the Bill seeks to ensure proper scrutiny and accountability is in place for salary offers. This will further promote and protect the principle of best value for money for the taxpayer. The net effect of the Bill will be to make what is already in statutory guidance a mandatory requirement for local authorities when recruiting to senior posts.

Legal background

11. Section 112 of the Local Government Act 1972 (“the 1972 Act”) requires local authorities to appoint such officers as they think necessary for the proper discharge by the authority of their functions and carrying out any obligations incurred by certain agreement. Appointed officers hold office on such reasonable terms and conditions (including conditions as to remuneration) as the authority “thinks fit”.
12. The Localism Act 2011 (“the 2011 Act”) inserted a new requirement (see Section

112 (2A) of the 1972 Act) that local authority appointments were subject to S.41 of the 2011 Act (requirement for determinations relating to terms and conditions of chief officers to comply with pay policy statement).

The explanatory notes for the 2011 Act state as follows:

“Section 41 requires the relevant authority to comply with its pay policy statement for the relevant financial year when making a determination that relates to the remuneration, or other terms and conditions, of a chief officer of the authority”

13. Section 38 of the 2011 Act requires relevant authorities to prepare a pay policy statement for the financial year 2012–2013 and each subsequent financial year, detailing the authority’s policies on the remuneration of its employees. The pay policy statement must set out the authority’s policies on the remuneration of its chief officers, the remuneration of its lowest paid employees and the relationship between the remuneration of its chief officers and the remuneration of its employees who are not chief officers.
14. Section 39 of the 2011 Act requires that a relevant authority’s pay policy statement must be approved by resolution of the authority before it comes into force, and approved before the end of 31 March immediately preceding the financial year to which it relates.
15. Section 40 of the 2011 Act requires a relevant authority in performing its functions under sections 38 or 39 to have regard to any guidance issued or approved by the Secretary of State.
16. In February 2012, "The Openness and accountability in local pay: Guidance under section 40 of the Localism Act" Statutory Guidance was issued. The statutory guidance can be found at the following link: [Openness and accountability in local pay: Guidance under section 40 of the Localism Act \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/guidance/2012-02-27-openness-and-accountability-in-local-pay-guidance-under-section-40-of-the-localism-act).
17. The relevant guidance on pay accountability includes (but is not limited to) the following recommendation:

‘Full council, or a meeting of members should be offered the opportunity to vote before large salary packages are offered in respect of a new appointment. The Secretary of State considers that £100,000 is the right level for that threshold to

be set. For this purpose, salary packages should include salary, any bonuses, fees or allowances routinely payable to the appointee and any benefits in kind to which the officer is entitled as a result of their employment.'

18. S.41 of the 2011 Act requires that a relevant authority must comply with its pay policy statement for the financial year when making a determination that relates to the remuneration or terms and conditions of a chief officer of the authority.
19. Section 43 of the Localism Act 2011 provides for the definition of 'relevant authority':

(1) "relevant authority"

- (a) a county council,
- (b) a county borough council,
- (c) a district council,
- (d) a London borough council,
- (e) the Common Council of the City of London in its capacity as a local authority,
- (f) the Council of the Isles of Scilly,
- (g) in relation only to sections 38, 40 and 41 and this section, the London Fire Commissioner,
- (h) a metropolitan county fire and rescue authority,
- (i) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies [,]3
- (j) in relation only to sections 38, 40 and 41 and this section, a fire and rescue authority created by an order under section 4A of that Act; or
- (k) a corporate joint committee established by regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021.

Territorial extent and application

20. Clause 1 makes clear that the amendments affected by the Bill are to apply England only as the only authorities captured are “relevant authorities in England”.
21. Clause 2 sets out the territorial extent of the Bill, which describes the jurisdictions in which the Bill forms part of the law. The provisions of the Bill extend to England and Wales.
22. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill/Act

Clause 1: Approval of certain remuneration of local government employees

1. Clause 1 (2) of this Bill amends the Localism Act 2011 by inserting after Section 39 new section 39A 'Approval of certain salaries in England'.
2. Section 39A (1) requires relevant authorities in England to gain approval by resolution before advertising employment of a role on terms and conditions that would allow for an annual salary of £100,000 or more.
3. Section 39A (2) requires relevant authorities in England to gain approval by resolution prior to appointing a person as an employee to a role on terms and conditions that would provide for an annual salary of £100,000 or more.
4. Section 39A (3) specifies that a single resolution may be used to approve both the advertising of a post and the appointing of an employee to a post on terms and conditions that would allow for a salary of £100,000 or more. This provision prevents the circumstance where relevant authorities would be required to hold two votes of approval for an individual post– e.g., before a role is advertised and subsequently before the person is appointed to the same role.
5. Section 39A (4) sets out that approval by resolution for a pay policy statement is not to be regarded as a resolution approving a salary for the purposes of 39A (1) or (2). The intention of this provision is to make clear that relevant authorities cannot obtain general approval for annual salaries of £100,000 or more by incorporating reference to them into their pay policy statement, which is subsequently approved by resolution of the authority.
6. Section 39A (5) explains that any power of a fire and rescue authority as defined under Section 43 (1)(i) of the Localism Act 2011 will be subject to the requirement in section 39A (2), that is they may not appoint an employee to a role on terms and conditions that provide for an annual salary of £100,000 or more without first obtaining approval by way of resolution. Section 39A (6) delegates power to the Secretary of State to amend the amount of salary specified in the Bill, which is currently set at an annual salary of £100,000 or more. This confers a power on the Secretary of State to be able to change the £100,000 annual salary figure through regulations. This provision will allow the Bill to adapt to future changes in the local government landscape – e.g., where £100,000 is no longer considered a 'high' salary offer.
7. Section 39A (7) sets out that if appointment is to be other than on a full-time basis, or for less than a year, the requirements of 39A (1) and (2) are to be read as if the £100,000 annual salary amount is proportionately reduced.

8. Clause 1 (3) inserts after Section 38 (5) of the Localism Act 2011 the new section 38(6). New section 38(6) requires relevant authorities to report in their annual pay policy statement the number of appointments made following approval by resolution in the preceding financial year.
9. Clause 1 (4) amends Section 40 (guidance) of the Localism Act 2011 to substitute reference to Section 39 to instead reference '39 or 39A', to make provision for the newly inserted Section 39A. The effect of this amendment is that relevant authorities must, in performing duties under the new section 39A, have regard to any guidance issued or approved by the Secretary of State.
10. Clause 1 (5) amends Section 43(1) (meaning of relevant authority) of the Localism Act 2011 to amend paragraphs (g) and (j), to substitute "38(1) to (5)" for "38". This provision sets out that new section 38(6) does not apply to the London Fire Commissioner, or a fire and rescue authority created by an order under section 4A of the Fire and Rescue Services Act 2004. The authorities listed at sections 43(1)(g) and (j) of the Localism Act are not captured by the new section 39A.
11. Clause 1 (6) amends Section 235 (orders and regulations) of the Localism Act 2011 to insert new section (da) after subsection (7)(d), to make provision for the newly inserted Section 39A (6). This provision sets out that regulations made by statutory instruments are to be made through the affirmative procedure.
12. Subsection (7) of Clause 1 amends the subsection 2(A) of the Local Government Act 1972 (appointment of staff) to provide that a local authority's power to appoint officers on such reasonable terms and conditions as the authority thinks fit is subject to the requirements provide for in the new section 39A (2).

General

Clause 2:

Extent

13. Clause 2 (1) sets out the territorial extent of the Bill as England and Wales only (see also Annex A).

Commencement and short title

14. Clause 2 (2) provides powers for the Secretary of State to, by regulations made by statutory instrument, set the commencement date of Section 1 of the Bill.
15. Clause 2 (3) provides that, in relation to commencement of Section 1, different days may be appointed for different purposes.
16. Clause 2 (4) provides that Clause 2 of the Bill will come into force on the day

which the Act is passed.

17. Clause 2 (5) allows the Secretary of State, by statutory instrument, to make such transitional or saving provision as considered appropriate in relation to the coming into force of Section 1.
18. Clause 2 (6) specifies that the power to make regulations under clause 2 (5) includes the power to make different provision for different purposes. .
19. Clause 2 (7) specifies the Act is to be cited as the Local Government (Pay Accountability) Act.

Commencement

23. By virtue of clause 2 (4), section 2 will come into force the day on which the Act is passed. Section 1 will be commenced by regulations at least two months after Royal Assent.

Financial implications of the Bill

24. The Bill has no financial implications.

Parliamentary approval for financial costs or for charges imposed

25. N/A

Compatibility with the European Convention on Human Rights

26. This is a Private Member's Bill and the Government is not required to give a statement of compatibility with the European Convention of Human Rights ("ECHR") in accordance with Section 19(1)(a) of the Human Rights Act 1998.
27. The Department for Levelling Up, Housing and Communities has, nevertheless, considered the question of compatibility and has concluded that the Bill is compatible with the ECHR.

Related documents

28. The following documents are relevant to the [Bill/Act] and can be read at the stated locations:

- Local Government Act, 1972 [Local Government Act 1972 \(legislation.gov.uk\)](#)
- Localism Act, 2011 [Localism Act 2011 \(legislation.gov.uk\)](#)
- Localism Act 2011, Explanatory Notes [Localism Act 2011 - Explanatory Notes \(legislation.gov.uk\)](#)
- Openness and accountability in local pay, 2012 [Guidance Under section 40](#)

Annex A - Territorial extent and application in the United Kingdom

The territorial extent and application of the Bill is summarised as follows – the Bill extends to England and Wales but applies to England only.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	No	No	No	No	No	No
Clause 2	Yes	No	No	No	No	No	No

Minor or consequential effects

There are no provisions which would have a minor or consequential effect outside England.

Subject matter and legislative competence of devolved legislatures

All of the clauses of the Bill make provision in relation to local government. Local government is a devolved matter in Scotland, Wales and Northern Ireland. The Scottish Parliament, the National Assembly for Wales and the Northern Ireland

Assembly could therefore make corresponding provision in respect of these measures. ^[6]

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