

# Consultation Paper

## *Local referendums to veto excessive council tax increases*

### Briefing from the CIPFA Benefits and Revenues Service

#### August 2010

This consultation paper was issued by the Department for Communities and Local Government (DCLG) on Friday 30 July 2010.

<http://www.communities.gov.uk/publications/localgovernment/vetocounciltaxincreasesconsult>

- The consultation lasts six weeks and ends on 10 September 2010.
- The proposed legislation is set to come into effect as soon as possible, which is understood to mean April 2013.
- The Geographical scope is England. The relevant legislation covers both England and Wales but the administration of council tax in Wales is a matter for the Welsh Assembly Government. The Assembly has been invited to take the power too.
- The topic of the consultation is a proposal to allow local referendums to veto excessive council tax increases as an alternative to capping by central government.
- The scope of consultation is to seek views on the practicality and technical feasibility of the scheme, particularly from local authority practitioners.
- The Consultation Paper has been sent to local authorities (including police authorities, fire and rescue authorities and local precepting authorities). Also representative organisations (including the LGA, London Councils, IRRV, CIPFA, NALC) and others with an interest in local taxation issues.
- Other consultations that have a bearing on this include one on 'freezing' council tax increases for the next two years. This paper is delayed. We understand that it will appear closer to the date of the Comprehensive Spending Review (to be published 20<sup>th</sup> October), so that ministers have as much flexibility as possible in deciding the level at which any freeze may operate.
- The vehicle for bringing this legislation before Parliament is the Localism Bill.

### Referendums – who and when

The paper proposes to replace the 'capping' legislation with a mechanism for the local electorate to vote on increases in council tax that breach a level set by the Government.

- In this context 'council tax' means figures set by:
  - billing authorities (the Common Council of the City of London, London boroughs, metropolitan districts, non-metropolitan districts, and unitary authorities)
  - major precepting authorities (the Greater London Authority, non-unitary county councils, police authorities, and fire and rescue authorities) and
  - local precepting authorities (the sub-treasurer of the Inner Temple, the under-treasurer of the Middle Temple, town, parish or community councils, the chairman of a parish meeting, and charter trustees)
- Referendums will also apply to directly elected Police and Crime Commissioners (when they come into being), who will replace police authorities (but not in the Metropolitan Police area) and, who will set police forces' budgets.
  - **Comment** - These commissioners will be independently scrutinised, and the scrutineers will have a power to challenge the police precept and invoke a referendum too. Quite how these two powers will interact is not clear.
  - **Comment** - No mention is made of 'levying bodies', some of which levy on major precepting authorities, others on billing authorities. Clarification was

sought from DCLG, who do not consider that there is any need to change from the present arrangement under capping, because, for the most part levying bodies are democratic bodies. So it would appear that they will continue to be part of the budget requirement of those authorities and might affect the ability of the authority, potentially subject to a referendum, to keep within the limit, especially if it is a 'new' levying body, or is levying for the first time.

- Under these proposals, the Government would "determine a 'principle' based on a comparison of an authority's level of council tax with the level in the previous year. The legislation will enable the Secretary of State to set additional 'principles'; it will also allow him to determine different sets of 'principles' for different categories of local authorities."
- The 'principles' will be published in a report for approval by the House of Commons. If the principles are approved, any authority planning an excessive council tax increase will be required to prepare a 'shadow budget' based on the maximum non-excessive council tax increase allowed by the principles.
- They will also be required to serve notice on the Secretary of State.
- Any billing authority, local precepting authority or major precepting authority which exceeds the 'principles' will be required to hold a referendum of all registered local electors.
- **Comment** - So, if the GLA were to fall foul of the 'principles', the voters of London would have to be balloted to decide whether the precept was collectable.
- There is nothing in the paper that explains *exactly* how such a ballot would work.
- The Government intends to model the provisions for council tax referendums on the existing provisions for mayoral referendums where relevant and appropriate.
  - This would include:
    - placing certain (undefined) restrictions on the steps that may be taken, and the expenditure that may be incurred, by a local authority in connection with a referendum
    - requiring the referendum to take place within a specified time period
    - setting out the structure of the question to be asked
- The organisation and administration of referendums will fall to billing authorities and will be based on the existing provisions for mayoral referendums.
- Local authorities will be able to hold referendums at any point after the House of Commons has approved any 'principles' set. Referendums must take place no later than the first Thursday in May. This has been proposed to ensure that the process is not subject to delay and that local authorities have certainty over their budgets as quickly as possible in the new financial year.

## What is deemed to be an excessive increase?

- The Government intends to put forward 'principles' at around the same time as publication of the provisional Local Government Finance Report and to have both that Report and the report containing the 'principles' debated by the House of Commons at the same time.
  - When authorities set council tax increases that are large (in percentage terms), but the cash increase is small, the Government is proposing to prevent such authorities from being required to hold a referendum – and, at the same time protecting the large majority of smaller parish councils and other local precepting authorities. The Government's policy is to include a standard *de minimis* principle which would provide a 'double lock' mechanism.
    - This would exclude authorities where either (a) the increase in the basic amount of council tax is below a defined amount or (b) the total income generated (i.e. the council tax requirement) is below a fixed level.
    - The Government is minded to give the Secretary of State discretion to determine different sets of principles for different categories of authorities (such as police authorities and fire and rescue authorities) – and to determine how those categories are defined.

## Referendums – Organisation

As mentioned above, the organisation and administration of referendums will fall to billing authorities and will be modelled on the existing provisions for mayoral referendums where relevant and appropriate.

- The legislation will allow billing authorities to recoup costs where referendums are held on behalf of a precepting authority. It will also require that only one referendum is held in circumstances where an excessive increase is set by more than one authority in the same geographical area.
- The legislation will require the authority proposing the excessive increase ('the relevant authority') to prepare supporting factual material setting out the proposed council tax increase and budget, the comparative non-excessive council tax rise and shadow budget, and the estimated cost of holding the referendum.
- "At the same time that bills are sent to council taxpayers, the billing authority will send this information, together with polling cards, to every registered local elector."
- **Comment -**
  - Logistically, this could be difficult, especially given the timescales to which demand note dispatch are subject.
  - It is not clear whether CLG expects polling cards and the relevant information to go *with* the bills or 'at the same time' means just that, but separately
  - It is doubtful whether any authority in the country could send both in the same envelope.
  - Is Electoral Registration geared up to getting out polling cards in a matter of a few weeks? The minimum notice for a General Election and for by-elections, is, apparently, three weeks and that can be very tight for EROs
  - A particular problem is coinciding elections (and referendums) on the same day, which is generally intended to save on cost.
  - Another problem is the increased number of postal votes and the verification process for them.
  - How will this fit in with schedules of despatch companies.
  - Can mailing machines cope with the extra documents?
  - How are minor precepting authorities going to comply with the need for a shadow budget and the 'factual material' needed within the timescales proposed?
- The paper goes on to say "Local councillors would of course be free to make the case for any excessive increase, but the relevant authority would be prohibited from campaigning on the issue."
- There would only be one referendum in each geographical area, but there would be a separate vote for each element of the overall council tax bill where an authority had set an excessive increase. Voters in these areas would be given a number of voting forms (or a number of separate questions on the same form).
- There will be no minimum requirement for voter turnout and a simple majority of those voting will be sufficient to determine the outcome of the referendum. If a majority vote in favour of the increase, the relevant authority would continue to receive transfers from the Collection Fund based on its original budget.
- **Comment -**
  - Using the example of the GLA, all voters in London would be allowed to vote. As this would be a multi-area ballot, would the results from all the ballots be added together and the result based on a simple majority of voters across London, or would any dissenting populace in one borough be able to veto the precept?
  - CLG have subsequently indicated that all the votes would be added together to find out whether the increase is approved or not..

## Rejection by ballot

- If the proposed rise in council tax were rejected, the relevant authority would immediately adopt the shadow budget and transfers from the Collection Fund would be reduced accordingly. It would also be required to inform the Secretary of State by notice.

- The billing authority would be able to issue new bills immediately, offer refunds at the end of the year or allow credits against liability in the following year. But, billing authorities will be required to refund (and re-bill) any local resident who requests this.
- **Comment -**
- CLG indicate that the former would apply.
  - This is easier written than done. As with capping, the re-billing process is labour intensive and requires software changes in some instances. Previous experience is that it can cost over £100,000 even in a relatively small authority.
  - Even though the capping legislation will be repealed, many of the provisions will have to be replicated for referendums, and informal guidance written by ourselves and the IRRV will still, largely, continue to be relevant because it relates to council tax billing law as applied to mass re-billing.

## The demise of capping

The Government intends to repeal Chapter 4A of the 1992 Act, but until referendums are in place it reserves the option to use existing capping powers where necessary.

The requirement for authorities to calculate a budget requirement, was introduced specifically for the purposes of capping. The paper poses the question as to whether, with the abolition of capping, there is any need to retain the requirement for authorities to calculate a budget requirement – and whether the repeal of the budget requirement would remove a reporting burden on authorities (bearing in mind that there will still be a duty to calculate a council tax requirement).

### Comment -

- Is not the budget requirement something that flows naturally from the council tax requirement and would need to be calculated in order to determine the level of local funding required, i.e.  $BR - NNDR - RSG = CTR$  (excluding a couple of minor adjustments) so not really an added burden for authorities to complete, but rather something they need/would want to know.

Under capping legislation, alternative notional amounts (ANA) reports are produced for authorities where there have been significant changes in function, finance or structure. The Government sees no further need for these reports. Under the referendum regime, local authorities would be able to explain the impact of any functional, finance or structural changes in the material they produce to accompany the referendum – and local people would then be able to vote on the basis of that information.

## Our Further Speculation Comment and Questions

Despite the efforts to make this process difficult and costly, as a preceptor one may still go for a higher (than nationally set) council tax increase, unlikely but possible.

- Example reasons for this are;
  - A one off large increase in council tax would enable future CT increases to be increased against that base figure. e.g. a one off 10% increase followed by future 2% increases this could make it beneficial.
  - If one targeted the increase for a particular purpose, thereby getting funding for something that would normally be expected to be funded from the existing precept this would increase your overall resources and may make the increase more acceptable to the public.
  - Linked to the above and thinking further into the future if Big Society takes off, the public themselves may wish to increase council tax to pay for specific initiatives they have thought of... almost similar to a local business rate supplement idea but in this case for council tax.
  - If more than one preceptor in an area wanted a referendum they could share the costs especially if the reason they needed the money could be joined up e.g. police and local authority to tackle anti social behaviour.
- Problems - clearly there are several:

- For planning the cost of a referendum would need to be known in order to determine if the cost outweighs the increased level of income received as a consequence i.e. the cost consumes the extra income.
- The issues of undertaking a referendum for local authorities that have multi-authority areas e.g. for police they will have several local authorities they would need to consult with to undertake the referendum.
- As the public are faced with one bill covering all the preceptors, there would need to be clarity as to what the public are voting for and which authority it represents otherwise the other preceptors could be tarnished as a consequence of the referendum.

## Conclusions

This appears to be another building block in the Coalition Government's 'Transparency' agenda. There are other proposals for referendums that might affect those proposed here, such as the scrutineers of police commissioners having power to call a referendum on the Commissioner's proposed police precept. So there could be a whole tranche of referendums happening simultaneously in some areas.

Notwithstanding the amount of detail that is missing from the paper, it is a brave authority that would risk going to a referendum. Subjecting itself to a referendum will be an expensive and, administratively, difficult process which has to be carried out over a very short timescale.

Given that the question to be asked will be defined in legislation, no lobbying by the authority will be allowed, and there will be no minimum turnout, it is hard to see how any authority, including Town Councils would feel that they had any chance of receiving a 'yes' vote in favour an 'excessive' increase.

**This paper is a joint effort of CIPFA Networks Advisors.**

## Consultation Questions

**Question 1.** Do you agree that local precepting authorities, such as town and parish councils, should be included within the provisions for council tax referendums? If so,

- are there details about the budget setting process for local precepting authorities which need to be taken into account?
- will the 'double lock' mechanism work to protect the majority of town and parish councils?

**Question 2.** Are the Local Authorities (Conduct of Referendums) (England) Regulations 2007 the right model for organising and administering council tax referendums?

**Question 3.** Are there any practical difficulties in requiring council tax referendums to take place no later than the first Thursday of May?

**Question 4.** What are the advantages and disadvantages of holding a council tax referendum on the same day as another local referendum, or jointly with a local and/or general election? Current regulations allow for higher expenses per elector in a referendum than in a local election – would this raise any concerns if both votes are held on the same day?

**Question 5.** What provision, if any, should be made for properties where the council tax payer is not a local elector?

**Question 6.** Does the timetable at Annex A provide sufficient stability and certainty for local authorities when planning their budgets? Does it provide sufficient time to organise and administer referendums?

**Question 7.** Is it right to give local authorities the discretion to issue new bills immediately, offer refunds at the end of the year or allow credits against liability in the following year?

**Question 8.** How should billing authorities treat bank interest earned on excessive increases that have been rejected in a referendum?

**Question 9.** What practical difficulties, if any, would there be for a billing authority seeking to recoup the cost of a referendum held on behalf of one or more precepting authorities?

**Question 10.** Are there any technical difficulties with the removal of alternative notional amount reports?

**Question 11.** With the abolition of capping, is there any reason why authorities should be required to calculate a budget requirement each year?

## Annex A – Local referendums: illustrative timetable

Late November/ early December	<ul style="list-style-type: none"> <li>• Provisional Local Government Finance Report published for consultation.</li> <li>• Provisional council tax referendum principles announced.</li> </ul>
December to March	<ul style="list-style-type: none"> <li>• Precepting and billing authorities draw up budgets and proposed council tax levels in the usual way.</li> <li>• Authorities planning to set excessive council tax increases also draw up shadow budgets and prepare material informing residents about the forthcoming referendum (including how they will be able to vote), and billing authority calculates cost of referendum.</li> </ul>
January	<ul style="list-style-type: none"> <li>• Provisional Local Government Finance settlement consultation ends. Ministerial decisions on Formula Grant and council tax referendum principles announced.</li> </ul>
February	<ul style="list-style-type: none"> <li>• Parliament approves final Local Government Finance Settlement allocations and the report containing the council tax referendums principles.</li> <li>• 14 February – deadline for bodies that levy on local authorities to set their levy.</li> </ul>
March	<ul style="list-style-type: none"> <li>• 1 March – major precepting authorities set budgets, and shadow budgets where necessary.</li> <li>• 11 March - billing authorities set budgets and shadow budgets where necessary.</li> <li>• Billing authorities send out council tax bills and details of referendum and supporting material.</li> </ul>
May	<ul style="list-style-type: none"> <li>• Referendums to be held by the first Thursday in May at the latest.</li> <li>• Billing authority to: <ul style="list-style-type: none"> <li>- inform relevant precepting authorities, council taxpayers and electors of result of referendums</li> <li>- send out details of new budget/refunds where necessary</li> <li>- charge relevant precepting authorities for cost of holding the referendum</li> </ul> </li> <li>• If the rise in council tax is rejected, the relevant authority immediately adopts the shadow budget.</li> </ul>
February/March of the following year	<ul style="list-style-type: none"> <li>• Refunds paid to residents where necessary.</li> </ul>



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