

The Chief Executive
County Councils in England
District Councils in England
London Borough Councils
Greater London Authority
Council of the Isles of Scilly
Police Authorities in England
The Town Clerk, City of London

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Chief Fire Officer
Fire and Rescue Authorities
Combined Fire & Rescue Authorities

16 December 2011

Dear Sir/Madam,

COUNCIL TAX REFERENDUMS

I am writing to update authorities on changes to council tax following commencement on 3 December of the Localism Act's provisions for council tax referendums and the Secretary of State's statement to the House of Commons on 8 December about the excessiveness principles he is minded set. Once the principles are finalised, each authority will be required to determine, for 2012-13, whether the council tax it has set is such as to require it to arrange a referendum seeking the support of the local electorate.

1. Sections 72 to 79 of the Localism Act change some of the details of Part 1 of the Local Government Finance Act 1992 ("the 1992 Act") governing the calculation of council tax in England.
2. Schedule 5 of the Localism Act introduced a new Chapter into the 1992 Act, making provision for council tax referendums to be held if an authority increases its council tax by an amount exceeding principles determined by the Secretary of State and agreed by the House of Commons. The Localism Act also abolished the capping regime in England. All these provisions were commenced on 3 December, and are effective with respect to the setting of council for 2012-13.
3. My letter of 14 November (attached for ease of reference) explained the details of the Government's offer of freeze grant to those principal authorities that choose not to increase council tax in 2012-13. Only authorities which decline the offer and contemplate setting increases in council tax which exceed the principles need concern themselves about the position on council tax referendums. Electoral administrators in billing authorities which are required to hold a referendum on behalf of a precepting authority would also be affected.

4. The Secretary of State has indicated the principles he is minded to set, both in a DCLG press notice and a written ministerial statement to Parliament. These are at:

Press Notice: <http://www.communities.gov.uk/news/newsroom/2046502>

Written Statement: Hansard, 8 Dec 2011: Column 38WS

5. The proposed principles are that authorities will be required to seek the approval of their local electorate in a referendum if, compared with 2011-12, they set council tax increases that exceed:

- 4% for the Greater London Authority, police authorities, and single purpose fire and rescue authorities.
- 3.75% for the City of London; and
- 3.5% for other principal authorities.

6. Authorities will need to take care that they do not inadvertently trigger a referendum by exceeding the relevant principle by some tiny margin – any increase above the relevant principle, even by a fraction of a percentage point, would require a referendum to be held. The principles relate to a comparison of the increase from 2011-12 to 2012-13 in an authority's '*relevant basic amount of council tax*' as defined by the new section 52ZX of the 1992 Act. This is derived from a calculation of the authority's basic amount of council tax, modified by leaving out of account (i) precepts issued to or anticipated by a billing authority by local precepting authorities; and (ii) the total amount of any levies or special levies issued to or anticipated by the authority. The policy is intended to ensure that increases in levies issued by levying bodies will not contribute to the triggering of a referendum. Providing the definition in the legislation is carefully followed, an authority should have no problem in determining correctly whether the council tax it has in mind to set would exceed the principles. However, there is some risk that authorities might wrongly decide that they are within the principles because the increase in their *actual* Band D amount is less than the threshold – only to find that the increase in their *relevant* basic amount exceeds it.¹

7. Authorities and other interested parties (including the public) now have an opportunity to make representations about the principles before they are finalised. Authorities should be aware, in this context, of the provisions of new sections 52ZR to 52ZW of the 1992 Act, which empower the Secretary of State to disapply the duty to hold a referendum. This would be exceptional, and is only available if it appears to the Secretary of State that unless an authority can set a council tax that is excessive by reference to the principles it will be unable to discharge its functions in an effective manner, or will be unable to meet its financial obligations. If you think there is a possibility that your authority might say it is in such a position, please contact me without delay.

¹ Each year, the Government requires a return from each authority about the council tax it has set. Until now that has been the Budget Requirement (BR) form, but that will be updated in the New Year to become the new Council Tax Requirement (CTR) form. As usual, we will provide instructions to authorities on how to complete this form; and it will continue to make some automated calculations and cross-checks. Returning this form will enable authorities to tell us whether they meet the criteria for the freeze grant (by reference to the *actual* basic amount of council tax); and will help them determine whether they have exceeded the principles that trigger a referendum (by reference to the *relevant* basic amount of council tax as described above).

8. Having considered representations from authorities and others, the Secretary of State will finalise the principles in a report to the House of Commons, and ask the House to approve these in parallel with his report on the Local Government Finance Settlement.

9. Where an authority sets a council tax increase which exceeds the relevant principle, it will be required to seek the approval of the local electorate in a referendum held in that authority's geographical area. The result of the referendum will be binding. Local authorities triggering such a referendum are, at the same time as they set their council tax for 2012-13, obliged to make substitute calculations for a council tax which does not exceed the principles. If the electorate rejects the increase that has been set, the substitute calculations will take effect and council tax liabilities must be adjusted accordingly.

10. Local precepting authorities are not included in the proposed principles. Town and parish councils would therefore not be required to hold a referendum in 2012-13. However, the Government will monitor increases in the local precepting sector and does not rule out setting principles which apply to higher spending town and parish councils in 2013-14. I am copying this letter to the National Association of Local Councils, and the Society of Local Council Clerks, but will also be grateful to billing authorities if they disseminate this information to town and parish councils in their areas.

11. In the next month or so, several statutory instruments relating to the referendums legislation will be laid. These will enact minor changes to the Demand Notice Regulations, and the Administration and Enforcement Regulations; and provide for certain details of the referendums regime. Finally, after completing consultation with the Electoral Commission, we will lay the regulations covering the conduct of council tax referendums. These will be long and complex, and will require approval by resolution of each House. Subject to the parliamentary timetable and the approval of both Houses of Parliament, the Government intends these to come into force by the time that authorities have set their council tax for 2012-13. It is however, possible that authorities could trigger referendums before these statutory rules governing their conduct are in place. **It is important to note that the statutory obligation to hold a council tax referendum will apply whether or not the regulations have come into force.**

12. We anticipate that few, if any, authorities will be inclined to trigger a referendum on council tax in 2012-13. Nevertheless, we expect authorities and electoral administrators will find it helpful to have a summary of the new arrangements. We are therefore preparing an Information Note (which we will circulate in advance of Parliamentary approval of the conduct regulations themselves) to give an outline of authorities' key responsibilities in respect of council tax referendums, including the rules we expect to apply to the conduct of those regulations. I intend to send you the Information Note at around the same time as the draft conduct regulations are laid before Parliament.

13. The Information Note will not be a definitive interpretation of the primary legislation, statutory instruments that have already come into force or been amended, or regulations which are awaiting consideration by both Houses. Any authorities that do trigger referendums will need to satisfy themselves in detail that they are complying

with all the applicable primary and secondary legislation; and must seek their own legal advice. However, with regard to the tight timescales involved, the Secretary of State has asked that his officials should make themselves available to discuss with authorities any issues which they consider require clarification.

14. If you anticipate that your authority is likely to require a council tax referendum and would like further advice at this stage, or if you have any other queries about the contents of this letter, please contact Robert Crangle at:

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Bressenden Place
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Tel: 030 344 42097

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15. I am copying this letter to chief finance officers, the Chairs of the Local Government Association and London Councils, the Chair of the Association of Police Authorities, the President of the Chief Fire Officers' Association, the Chief Executive of the Chartered Institute of Public Finance and Accountancy, the Chief Executive of the National Association of Local Councils and to the Society of Local Council Clerks.

Yours faithfully,



Mark Rickard
Divisional Manager, Council Tax
Local Government Finance