



## Local referendums to veto excessive council tax increases

### Consultation

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### **Consultation**

July 2010  
Department for Communities and Local Government

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## About this consultation

### Scope of consultation

Topic of consultation	A proposal to allow local referendums to veto excessive council tax increases as an alternative to capping by central government.
Scope of consultation	This consultation seeks views on the practicality and technical feasibility of the scheme, particularly from local authority practitioners.
Geographical scope	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.
Impact assessment	Relevant provisions will be included in the Localism Bill, which will be subject to a full impact assessment.

### Basic information

To	Local authorities (including police authorities, fire and rescue authorities and local precepting authorities). Representative organisations (including the LGA, London Councils, IRRV, Cipfa, NALC) and others with an interest in local taxation issues.
Body responsible for the consultation	Department for Communities and Local Government
Duration	Six weeks (30 July to 10 September). This is in line with the arrangements agreed under the <i>Framework for Partnership</i> with the Local Government Association.
Enquiries	Jasna Begum Local Government Finance Directorate Department for Communities and Local Government Zone 5/D2 Eland House Bressenden Place London SW1E 5DU  Telephone: 030 3444 1304 Email: <a href="mailto:counciltax.consultations@communities.gsi.gov.uk">counciltax.consultations@communities.gsi.gov.uk</a>
How to respond	To either of the addresses above.
Additional ways to become involved	Not applicable.
After the consultation	The Government will take into account the responses to this consultation in its preparation of draft clauses for the forthcoming Localism Bill, to be laid before Parliament in the first Parliamentary session.
Compliance with the code of practice on consultation	This consultation complies with the Code.

## Background

Getting to this stage	The Coalition <i>Programme for Government</i> , published on 20 May 2010, stated that the Government would “give residents the power to veto high council tax increases.”
Previous engagement	Not applicable

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent and, where relevant, who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

CLG Consultation Co-ordinator  
Zone 6/H10  
Eland House  
London SW1E 5 DU

or by e-mail to: [consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk)

#### Consultation process

The Department for Communities and Local Government invites comments on the proposals set out in this document. This is a technical consultation seeking views from experts on the practicalities of implementing our proposals. Given this, the consultation will run for a shorter timeframe of six weeks – until **10 September 2010**.

When responding, please state whether you are responding as an individual or representing the views of an organisation. Responses to this consultation must be received by **10 September 2010**.

You can email your response to: [counciltax.consultations@communities.gsi.gov.uk](mailto:counciltax.consultations@communities.gsi.gov.uk)

Or you can respond in writing to:

Jasna Begum  
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## Introduction

1. Band D council tax has more than doubled since 1997-98 and high increases in the past have led to various measures designed to constrain local discretion, including council tax capping. Often these measures appeared to be based on the presumption that Government ministers and their civil servants knew better than local communities what was in their best interest. The Coalition Government is determined to reverse this presumption and to rebalance the role of the central state and local communities. This will see the Government playing a much smaller role, with powers and responsibilities being devolved to the most appropriate level, wherever possible empowering local people so that they have a direct say in important decisions that affect their lives. In relation to council tax, this means abolishing capping and giving local people a stronger role in determining annual increases. The Government intends to introduce legislation to achieve this at the earliest opportunity.

## Current system

### Council tax

2. Council tax is a tax on the capital value of domestic properties. It is the main source of locally-raised income for many local authorities and is therefore an important source of funding. The Local Government Finance Act 1992 ('the 1992 Act') provides for certain local authorities to levy and collect council tax:

- billing authorities (the Common Council of the City of London, London boroughs, metropolitan districts, non-metropolitan districts, and unitary authorities) are required to send out a bill each year to council taxpayers and to enforce collection
- 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) issue precepts to billing authorities for the collection of council tax on their behalf

3. Properties are allocated into one of eight valuation bands, from Band A to Band H, and this information is used to calculate the council tax base for an area by converting the number of actual properties into an equivalent number of Band D properties<sup>1</sup>. Billing authorities and major precepting authorities calculate their own 'basic amount of council tax'<sup>2</sup> and use this to determine the liability of individual properties. Local precepting authorities, by contrast, simply inform the billing authority of their total budget requirement for the year and leave it to the billing authority to calculate the relevant council tax. The bill which is sent to the council taxpayer shows the amounts required by each billing and precepting authority in the area and the percentage increase in each since the previous year.

<sup>1</sup> Band A properties are liable to pay two thirds of the 'standard' Band D amount. Band H properties are liable to pay double the Band D amount. The remaining bands lie in between these two points. The council tax base is a weighted average based on these proportions.

<sup>2</sup> An authority's basic amount of council tax is the amount set by the authority under section 33(1) of the 1992 Act if the authority is a billing authority, or section 44(1) of that Act if the authority is a major precepting authority. It is the amount that would be payable in respect of a Band D dwelling if all local precepts and special expenses were payable in respect of all chargeable dwellings in the authority's area.



## Capping

4. Successive governments have reserved the right to limit increases in domestic taxation where these have been judged to be excessive. Under current capping legislation (see Chapter 4A of Part 1 of the 1992 Act, which was inserted by the Local Government Act 1999), 36 authorities have had capping action taken against them since the 1999 powers were first used in 2004-05.

5. In order to take capping action, the Secretary of State for Communities and Local Government must first determine whether the amount calculated by an authority as its budget requirement is excessive, in accordance with a set of principles. If the Secretary of State sets principles, the legislation requires him to set a principle based on authorities' budget requirements. The Secretary of State may set any other principle. In practice there has always been at least one other principle based on council tax increases.

6. If a local authority sets an excessive budget requirement, the Secretary of State may either:

- designate it in relation to the year in question, which would require the authority to re-bill council taxpayers or
- nominate the authority and either:
  - (a) designate it in advance in respect of the following financial year, which effectively means that Government sets the following year's budget requirement for the authority or
  - (b) set a notional budget requirement for the year in question, against which increases in subsequent years can be measured in deciding whether or not these are excessive

7. A criticism made about capping has been the policy of central government to set capping principles after local authorities have set their budget requirements. This has meant that authorities could not be certain whether or not the council tax increases they were setting would be capped.

## Parish precepts

8. There has been a growing awareness in recent years of the council tax increases set by local precepting authorities, and of the very high precept increases set by some town and parish councils in particular. Increases in council tax revenue from town and parish councils have outstripped those for England in each of the last five years. The average town and parish precept set in some billing authorities (around £100) is larger than that of the smallest shire district of Breckland (£68). It is right that local precepting authorities should have the resources they need to support neighbourhoods and local communities. However it is also right that council taxpayers are protected from excessive increases.

# Introduction of local referendums

## Legislation

9. The Government will introduce legislation at the earliest opportunity requiring any billing or precepting authority which sets an excessive council tax increase to hold a referendum. The key elements of the scheme will be as follows:

- (a) The Secretary of State will have the power each year to 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.
- (b) These 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.<sup>3</sup> They will also be required to inform the Secretary of State by notice.
- (c) 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. Local authorities will be free 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, 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.<sup>4</sup>
- (d) The organisation and administration of referendums will fall to billing authorities and will be modelled on the existing provisions for mayoral referendums<sup>5</sup> 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.
- (e) 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. 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.

<sup>3</sup> Consistent with Section 25 of the Local Government Act 2003, the chief financial officer (for billing authorities and major precepting authorities) would be required to report on the robustness of the estimates in the shadow budget requirement and the adequacy of the reserves provided for in the calculations.

<sup>4</sup> In every year the ordinary day of election of councillors is the same day for all local government areas in England and Wales. It is the first Thursday in May or such other day as may be fixed by the Secretary of State by order (see section 37(1) of the Representation of the People Act 1983).

<sup>5</sup> The Local Authorities (Conduct of Referendums) (England) Regulations 2007.

- (f) 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. However, consistent with existing legislation<sup>6</sup>, billing authorities will be required to refund (and re-bill) any local resident who requests this.

10. This scheme will be applicable to each billing authority, local precepting authority and major precepting authority (including police authorities, fire and rescue authorities and the Greater London Authority). It would also apply to directly elected Police and Crime Commissioners when they come into being. Whilst there would only be one referendum in each geographical area, 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).

## Policy

11. It is not envisaged that the legislation will require the Secretary of State to publish principles at a specific point each year. However, as a matter of policy, the Government intends to propose principles at around the same time as publication of the provisional Local Government Finance Report and to have both the Local Government Finance Report and the report containing the principles debated by the House of Commons at the same time. This will allow local authorities to complete their budget setting and billing processes in the normal way, and to prepare shadow budgets in good time.

12. There are occasions when authorities may set council tax increases that are very large when expressed in percentage terms, even though the absolute cash increase is very small. To prevent such authorities from being required to hold a referendum – and to protect the large majority of smaller parish councils and other local precepting authorities – the Government intends, again as a matter of policy, 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 (ie. the council tax requirement) is below a fixed level.

13. The Government sees advantages in giving 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. This would allow him to take into account circumstances affecting only particular categories of authorities – for example, the potential impact of Formula Grant distribution on different categories of authorities, or pressures on a service or services provided by a particular category of authority.

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<sup>6</sup> See, for example, section 31(4) of the Local Government Finance Act 1992.

## Process

14. The Government believes it is right to require billing authorities to organise referendums given their existing responsibility for administering local government elections. The Government also believes that the referendum franchise should extend to all local electors, not just those liable for council tax, since all benefit in some way from the provision of local services. It is aware that this proposal would exclude council taxpayers who, for whatever reason, do not have a right to vote in local elections.

15. The Government intends to model the provisions for council tax referendums on the existing provisions for mayoral referendums where relevant and appropriate. In particular, this would:

- place certain restrictions on the steps that may be taken, and the expenditure that may be incurred, by a local authority in connection with a referendum
- require the referendum to take place within a specified time period
- set out the structure of the question to be asked

16. 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 an excessive increase, the relevant authority would continue to receive transfers from the Collection Fund based on its original budget. If a majority vote against an excessive increase, the relevant authority would immediately adopt the shadow budget and transfers from the Collection Fund would be reduced accordingly. In either case, the authority would be required to inform the Secretary of State of the outcome of the referendum and explain to council taxpayers the process for repayment of money where appropriate.

17. A proposed timetable for announcing the council tax principle, local authorities budgeting and billing process, and holding referendums, is attached at Annex A.

## Abolition of capping

18. The introduction of council tax referendums will provide a direct link between local residents and the spending decisions of the local authorities to whom they pay their council tax. The Government therefore intends to repeal Chapter 4A of the 1992 Act in its entirety. However, until provisions for council tax referendums are in place, the Government reserves the option to use existing capping powers to protect council taxpayers from excessive increases where necessary.

### Alternative notional amount reports

19. To ensure capping decisions are taken as fairly as possible, alternative notional amounts (ANA) reports are produced for authorities where there have been significant changes in function, finance or structure. These are technical adjustments to ensure that year-on-year comparisons of local authorities' budget requirements are made on a like-for-like basis.

20. With the abolition of capping, the Government sees no further need for these reports. Under the proposals set out above, 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.

21. Where the structural change involves the creation of an entirely new authority – for example if two or more existing authorities are merged, or where a new parish is established – it would be more difficult to judge how the council tax principle might be applied without an ANA report in the year in which the change occurred. In such circumstances, for local precepting authorities, the Government expects that the wider process which led to these sorts of structural changes would ensure they had democratic legitimacy and local support. For billing and major precepting authorities, the Government envisages putting in place bespoke arrangements where necessary to protect council taxpayers from sudden changes in their liability.

### Calculation of budget requirements

22. The requirement for authorities to calculate a budget requirement, as set out in the Local Government Finance Act 1992 (and amended by the Local Government Act 1999), was introduced specifically for the purposes of limiting council tax increases through capping. The question therefore arises as to whether, with the abolition of capping, there is any need to retain those sections of the 1992 Act which require authorities to calculate a budget requirement – and whether the repeal of the budget requirement aspects of the legislation would lift a reporting burden on authorities (bearing in mind that local authorities will still be required to calculate a council tax requirement). The Government therefore invites authorities' views on whether or not the requirement in current legislation to calculate a budget requirement should remain in place, or whether this should be repealed alongside capping.

## Questions for consultation

23. We welcome your views on the mechanics of the process outlined above – including whether there are any practical difficulties with the system proposed or any unforeseen implications. In particular we would welcome responses to the following 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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