



Council tax: local referendums

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Author: Mark Sandford

Section Parliament and Constitution Centre

Under provisions in the *Localism Act 2011*, local authorities, fire authorities, and Police and Crime Commissioners are required to determine whether the amount of council tax they plan to raise is excessive. A set of principles defined by the Secretary of State, and approved by the House of Commons, is used by authorities to decide if the amount to be raised is excessive. An authority proposing an excessive increase must also make substitute calculations, based on a non-excessive council tax level, and this takes effect if the council tax level initially set by the authority is rejected in the referendum.

The provisions first applied in the 2012-13 financial year. No authorities held a referendum in either 2012-13 or 2013-14. For the 2013-14 financial year, the principles stated that billing authorities could not raise their council tax by more than 2% without holding a referendum. An exception was made for billing authorities which are in the lowest quartile of council tax in their category (i.e. local authority, fire authority, or Police and Crime Commissioner), which were only required to hold a referendum if they planned an increase over 2% *and* over £5.00.

So far the scheme has not been applied to parish and town councils, though the Secretary of State has said that this may be revisited in the future.

Referendums are to be organised by billing authorities and there is provision for recovery of expenses where the referendum is held on behalf of a precepting authority. Rules for the conduct of referendums have been set out in regulations.

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1 Background

1.1 Capping

The Government first introduced powers under which it could limit the amount of tax raised by local authorities in 1984. The *Rates Act 1984* gave the Government power selectively to 'cap' local authority rate levels. In 1991 a universal capping power was introduced which capped any authority whose planned budget exceeded a given level of increase or expenditure. This system applied to the community charge (or "poll tax") and then to its replacement, council tax, which was introduced from April 1993.

The Labour Government elected in 1997 replaced what it called "crude and universal"¹ capping system with reserve powers to cap selectively. In essence, the Secretary of State determined the capping principles for a given financial year. These had to relate to the size of an authority's budget requirement but also, in practice, related to planned increases in council tax as well. The Minister then decided, in the light of these principles, whether any authorities had set excessive budget requirements.

Authorities could be "designated" in-year or "nominated" in respect of future years. These capping powers were not used until 2004-05 but after that, according to the DCLG, 36 authorities were capped (43 times overall). Of these, 16 were subject to in-year designation which meant that they were required to re-bill taxpayers immediately.²

Sir Michael Lyons recommended the abolition of capping in the final report of his independent inquiry into local government. He said:

Capping is a sign that central and local government have together failed to make the system work, and represents a short-term response to tax increases which are a symptom of problems elsewhere in the system – namely the pressure on local budgets and hence council tax, combined with a lack of local flexibility and unclear accountability. While it is born out of understandable motives, capping confuses accountability and can have perverse effects.³

1.2 Coalition Government policy

The Conservative Party's 2009 policy document on local government, *Control shift*, stated:

The problem with... 'capping' is that it takes the power of decision about local spending and local taxation out of the hands of local voters, and hands it to remote central bureaucracies. **That is why a Conservative government will introduce a new system that uses local referendums to control the level of local taxation – providing a direct link between local residents and the spending decisions of the local authorities to whom they pay their council taxes. A referendum will be triggered if an authority proposes a council tax increase above the national threshold.**⁴

¹ Labour manifesto 1997.

² DCLG, *Localism Bill – Provision for referendums to veto excessive council tax increases: impact assessment – consultation stage*, August 2010, p11

³ Lyons Inquiry into Local Government, *Place-shaping: a shared ambition for the future of local government*, March 2007, *Executive Summary* p10. Fuller discussion of this issue can be found in part 4 (pp127-8) of the report.

⁴ Conservative Party, *Control shift: returning power to local communities*, February 2009, http://www.conservatives.com/News/News_stories/2009/02/Its_time_to_transfer_power_from_the_central_state_to_local_people.aspx

The Coalition's programme for government repeated the promise in the Conservative general election manifesto that:

We will give residents the power to veto excessive council tax increases.⁵

A consultation paper on the practicalities of the proposed scheme was published on 30 July 2010.⁶ The paper sketched out the main features of the referendum scheme. An impact assessment, published in August, set out the key policy objectives as:

1. To ensure that excessive council tax increases occur only where they have a clear mandate from local people.
2. To abolish central government capping powers.⁷

The referendum scheme was introduced via the *Localism Act 2011*. It applies to England only.

2 Referendum requirements

2.1 The principles for 2013-14

The council tax referendum principles for 2013-14 were announced in a Written Ministerial Statement on 19 December 2012.⁸ The principles stated that:

- Local authorities would be required to hold a referendum if they wished to increase their *relevant basic amount of council tax* by over **2%** for 2013-14. The 'relevant basic amount of council tax' is the basic charge on a Band D property, adjusted to remove the effect of any levies on the council by levying authorities.⁹

This applies to district and unitary billing authorities; fire authorities; and police and crime commissioners. (The latter two classes of authority are precepting authorities, and the 2% applies to the level of their precept.)

The 2% provision does not apply to any other precepting or levying authorities.¹⁰

- For local authorities which had a basic amount of council tax in the lowest quartile of their category of authority, a referendum will only be required if the proposed increase in the relevant basic amount of council tax is both over 2% *and* increases the relevant basic amount by over £5.00. The *Local Government Chronicle* has produced a list of authorities which, by virtue of their current council tax levels, could increase their council tax by more than 2% under this provision. This is reproduced in the Appendix.

⁵ The Coalition, *Our programme for government*, May 2010, p28

⁶ DCLG, *Local referendums to veto excessive council tax increases: consultation*, July 2010

⁷ DCLG, *Localism Bill – Provision for referendums to veto excessive council tax increases: impact assessment – consultation stage*, August 2010, p1

⁸ [HC Deb 19 December 2012 c103-104WS](#)

⁹ This decision was trailed at the Conservative Party conference in October 2012: see <https://www.gov.uk/government/news/third-year-of-council-tax-freeze-announced>

¹⁰ Media reports in January 2013 noted that Rochdale MBC had planned to set a "3.5% increase" by omitting transport and waste bodies' precepts from their calculations. Rochdale planned to increase its *relevant basic amount of council tax* by less than 2%. However, the transport and waste levies in Greater Manchester, set by the city-wide transport and waste bodies, rose by over 2%, leading to an increase in tax-payers' bills of over 2%. These levies do not form part of the *relevant basic amount of council tax*, hence the 3.5% increase was permissible without a referendum.

- A 'freeze grant', equivalent to a 1% rise in council tax, will be available to local authorities which freeze their council tax.¹¹
- Parish and town councils will not face a referendum requirement, but the Secretary of State "intends to revisit this issue next year, having considered the extent to which local precepting authorities have exercised restraint in relation to council tax this year."¹²

2.2 The principles for 2012-13

In 2012-13, the Government applied a referendum limit of 3.5% for council billing authorities (except the City of London, which had a limit of 3.75%), and 4% for fire and rescue authorities and police authorities. The Government's written statement also confirmed that parish and town councils would not be covered, but that the issue would be revisited in 2013-14.¹³

The Government operated a 'freeze grant', paid to councils which froze their council tax for 2012-13.¹⁴ Councils which froze their council tax would obtain a grant equivalent to a 2.5% increase in council tax; for the City of London the figure would be 2.75%, and for police and fire authorities the figure would be 3%.

No authorities held a referendum in advance of either the 2012-13 or 2013-14 financial years.

2.3 The working of the scheme

The following summary of the scheme is based on the explanatory notes to the *Localism Act 2011*:¹⁵

- The Act sets a duty on billing authorities, major precepting authorities (e.g. county councils, police and fire & rescue authorities, the GLA) and local precepting authorities (e.g. parish councils) to determine whether their relevant basic amount of council tax for a financial year is excessive.
- A set of principles determined by the Secretary of State is used to decide whether an authority's council tax level is excessive. One or more principles may be set but they must include a comparison between council tax levels for the year under consideration and the previous year. He may determine principles for particular categories of authority. The principles could include a *de minimis* threshold designed to exempt smaller parishes where the absolute level of council tax raised is very small.¹⁶
- The principles must be specified in a report to be laid before the House of Commons before the date on which the local government finance report for the year is approved by resolution of the House.

¹¹ Indicative amounts available to local authorities can be seen here:
<http://www.local.communities.gov.uk/finance/1314/indfrgrant.pdf>

¹² HC Deb 19 December 2012 c103-104WS

¹³ See the Written Ministerial Statement at HC Deb 31 January 2012, c.41-43WS

¹⁴ See HC Deb 14 November 2011, c.28WS

¹⁵ *Localism Act 2011: Explanatory notes*

¹⁶ *Ibid*, para 164

- An authority proposing to set an excessive council tax level is required to make substitute calculations which will take effect if the proposed amount of council tax is rejected in a referendum. The substitute council tax level must be below the amount which is considered excessive under the principles.¹⁷
- Where a major precepting authority sets an excessive council tax increase, it must notify the appropriate billing authority which will then hold a referendum. Where this means that two or more billing authorities will be required to hold a referendum, they must be held on the first Thursday in May (or such other date specified by the Secretary of State). Billing authorities will be able to recover from precepting authorities the costs of referendums held on the latter's behalf.
- Referendums triggered by the actions of billing authorities or local precepting authorities can be held at any time of the billing authority's choosing, subject to this being no later than the first Thursday in May (or such other date specified by the Secretary of State).
- Entitlement to vote is based on inclusion in the register of electors and on eligibility to vote in local government elections for a particular area. A simple majority of those voting will determine the outcome. Where multiple referendums are held on behalf of a major precepting authority, a majority of persons voting in all of the referendums taken together will determine the outcome.
- The Secretary of State is empowered to make regulations concerning the conduct of referendums including such matters as the question to be asked, publicity, expenditure limits and so forth (see later section).
- In the event that a referendum rejects an increase, the billing authority would be able to issue new bills, offer refunds at the end of the year or allow credits against liability the following year, although individual council taxpayers would be entitled to a refund on demand.¹⁸

Where it appears that an authority will be unable to discharge its functions effectively or to meet its financial obligations unless it sets an increase in council tax which exceeds the principles, the Secretary of State has a power to direct that the referendum provisions do not apply. It is anticipated that this power would only be used in the most pressing of circumstances, such as where the High Court has been appointed as receiver.¹⁹

3 Referendum regulations: publicity, expenses and costs.

The [Local Authorities \(Conduct of Referendums\) \(Council Tax Increases\) \(England\) Regulations 2012](#) (SI 2012/444) cover topics such as the question to be asked, publicity and restrictions on expenses as well as setting out detailed rules on polling. On the issue of publicity, the explanatory memorandum states:

7.4 To ensure people living in the authority's area are aware that a council referendum is due to be held and that they are informed of key information relating to the referendum, regulations 4 to 6 provide that the authority triggering the referendum must publish a detailed notice of referendum in its local area.

¹⁷ *Localism Act 2011* schedule 5: this inserts clause 52ZF into the *Local Government Finance Act 1992*.

¹⁸ See DCLG, [Local referendums to veto excessive council tax increases: consultation](#), July 2010, p9

¹⁹ See, for example, speech by Earl Attlee at HL Deb 30 June 2011 c1971.

7.5 Once this notice has been published (and triggered the period of campaigning), in accordance with regulation 11, an authority may publish an additional statement setting out the reasons for the excessive increase, and the likely consequences if its council tax increase is not approved. This statement will be subject to the campaign expenses limit for the referendum and published no later than 28 days before the poll. To ensure the authority is not able to unduly influence the result of the referendum, regulation 10 places restrictions on the publication of other promotional material by or on behalf of the authority.

Baroness Hanham summarised the expenditure limits as follows:

There will be a restriction on the amount individuals or bodies can spend on a referendum campaign. This is £2,362 plus 5.9 pence for each entry in the relevant electoral registers. Breach of the limit in certain circumstances will be a criminal offence.²⁰

Separate regulations concerning such matters as the dates by which precepting authorities must inform billing authorities that they have set an excessive council tax increase, were laid before Parliament on 24 February, coming into force on 16 March. These are the [Local Authority \(Referendums relating to Council Tax Increases\) Regulations 2012](#) (SI 2012/460).

An impact assessment on the scheme, published in August 2010, set out the estimated costs of other referendums including the elected regional assembly referendum in the North East, mayoral referendums and non-binding council tax referendums. Tower Hamlets Council had estimated that a stand-alone mayoral referendum might cost up to £250,000 but, if combined with council elections, the additional cost was estimated at around £70,000. The paper concluded:

...it seems reasonable to estimate the range of costs of such referendums as £85,000 - £300,000. Actual costs will vary depending on the size of the authority and whether the referendum is combined with a local election.²¹

The paper noted that rebilling costs for recently-capped authorities have been £380,000 for Lincolnshire Police Authority in 2008-09 (£1.22 per household) and £626,000 for Surrey Police Authority in 2009-10 (£1.29 per household). However, the principal benefit of the policy was said to be that local electors can choose the level of tax and services that best matches their preferences.

4 Views and responses on the referendum provisions

Eric Pickles, Communities Secretary, has referred to the new policy as “a radical extension of direct democracy”.²² A DCLG press release quoted him as follows:

Since 1997 people have seen their council tax more than double, pushing typical bills to £120 a month. We are getting to grips with this with another council tax freeze deal and by radically extending direct democracy over big bill increases with a new local tax lock.

²⁰ HL Deb 14 February 2012 cGC54

²¹ DCLG, [Localism Bill – Provision for referendums to veto excessive council tax increases: impact assessment](#), January 2011, p10-11

²² DCLG, [New people power to end the era of soaring council tax](#), 30 July 2010

Councils have a moral obligation to help hard-working families and pensioners with the cost of living. If they want to hike taxes on their local residents above 3.5 per cent they'll now need to get a direct democratic mandate to do it.²³

The Local Government Group submitted written evidence to the Public Bill Committee on the Localism Bill. This stated:

15. We agree with the Government that it is for local people to determine whether a proposed council tax rise is excessive. The decentralising thrust of this proposal is mitigated, however by the proposals that Ministers will nationally fix the rate of tax that should trigger a referendum. A localist approach would provide local areas the freedom to decide and set a level of tax to raise and what to spend it on and to hold this to account through the ballot box at local elections; giving local voters greater choices and influence in local elections as a result.²⁴

Lord Jenkin of Roding (Con), and Lords Tope and Shipley (Liberal Democrat), spoke at committee stage against the power of the Secretary of State (a) to determine what constitutes an excessive rate of council tax - "that is likely to be very different in different circumstances in different areas around the country"²⁵ – and (b) to decide how the referendum is to be conducted.

Lord McKenzie of Luton, Labour Shadow Spokesman, said that the provisions in the Bill effectively amounted to "a capping regime" but acknowledged that "successive Governments have reserved the right to limit increases in domestic taxation when they have been judged to be excessive."²⁶ He was, however, concerned that prescribed referendum arrangements would stack the cards against councils whose proposals trigger a referendum.²⁷

Ministers have argued that the new arrangements would allow councils greater freedom than in the past, even if the final decision rests with the taxpayers:

[Robert Neill] The great advantage for councils is that if they believe that they have a case to put to their electorate that they should set a council tax increase greater than that set as the trigger by the Secretary of State, they can do so. Councils cannot do that at the moment. Therefore the council has the opportunity to make its case to the electorate about whether it should be allowed to impose a council tax increase above the trigger limit. That is a much more liberal approach from central Government.²⁸

A number of commentators considered that the process would serve to undermine the role of elected representatives. Professors George Jones and John Stewart wrote as follows to the *Local Government Chronicle*:

The local budget is the result of a process of balancing expenditure priorities, which cannot be expressed in a simple yes/no question. It damages representative democracy since it destroys the whole point of local elections, if elected councillors see their judgments based on their electoral promises overturned in a referendum called by a minister.²⁹

²³ DCLG, *New powers for public to stop council tax rises this year*, 8 December 2011

²⁴ House of Commons Public Bill Committee on the Localism Bill, *Memorandum submitted by the Local Government Group (L114)*, February 2011

²⁵ Lord Jenkin of Roding at: HL Deb 5 July 2011 c133

²⁶ HL Deb 30 June 2011 c1968

²⁷ *Ibid* and HL Deb 5 July 2011 cc135-6

²⁸ Public Bill Committee proceedings, 8 February 2011 (tenth sitting), c439

²⁹ Letter: "Council tax referendums are damaging", *Local Government Chronicle*, 5 August 2010, p9

Clive Betts (Lab), Chairman of the Communities and Local Government Select Committee, said at second reading of the Localism Bill:

I believe in elective, representative democracy, so I do not understand why it is necessary for the Bill to spell out what the Secretary of State thinks is a proper increase in council tax... ...there can only be a one-way referendum if a Secretary of State thinks that a council tax increase might be excessive, as defined by him. Why can we not just leave it up to elected local representatives to make such decisions?³⁰

³⁰ HC Deb 17 January 2011, c578

Appendix: local authorities with low council tax

The following local authorities, by virtue of their current levels of council tax, would be able to raise their council tax by more than 2% in 2013-14 without raising it by more than £5.00: they would, therefore, be able to avoid a referendum. The table shows the amounts by which they could raise their council tax without requiring a referendum.³¹

Council	Maximum increase without a referendum
Breckland	8%
West Oxfordshire	6%
Hambleton	6%
South Staffordshire	5%
Tewkesbury	5%
Basingstoke & Deane	5%
North Dorset	5%
Wychavon	5%
Hinckley & Bosworth	4%
East Lindsey	4%
Broxbourne	4%
Broadland	4%
South Cambridgeshire	4%
Vale of White Horse	4%
South Oxfordshire	4%
East Devon	4%
King's Lynn & West Norfolk	4%
Cherwell	4%
East Northamptonshire	4%
West Dorset	4%
Exeter	4%
Charnwood	4%
Stratford-on-Avon	4%
Test Valley	4%
Huntingdonshire	4%
Wellingborough	4%
Sedgemoor	4%
Rushcliffe	4%
Malvern Hills	4%
South Norfolk	4%
West Somerset	4%
Wycombe	4%
Chichester	4%
Eastleigh	4%
Daventry	4%

³¹ The source of the table is Ruth Keeling, "Districts given thumbs up for tax rises of up to 8%", *Local Government Chronicle* [paywall], 2 January 2013

East Hampshire	4%
South Kesteven	4%
Taunton Deane	4%
Runnymede	4%
Forest Heath	4%
Blaby	4%
South Hams	4%
North Norfolk	4%
East Cambridgeshire	4%
North Kesteven	4%
Chesterfield	4%
Horsham	4%
Fareham	4%
Ashford	4%
Ribble Valley	4%