

## Precept Consultation

### What is in this for local councils?

Local councils will be aware that under the Localism Act 2011, Government can make an annual decision on whether to introduce automatic precept referendums where they deem precept increases to be 'excessive' for local councils. Government is able to decide what the threshold will be for triggering referendums and to which councils this trigger will be applied. Although these referendums have been applied to other types of local authorities, Government has threatened to apply them to local councils but, to date, has not done so.

This could be all about to change with plans outlined in *2017/18 Local Government Finance Settlement: Technical Consultation Paper* which was published on 15 September 2016.

All councils are affected and will wish to consider making a response to this important consultation on fundamental aspects of their financial arrangements.

The proposals define principles for applying automatic referendums to the highest spending councils but all councils will be concerned about the precedent this would set and about the specific question in the proposals about whether to extend referendums to all local councils. If this proceeds, it would be the first time a Government has interfered with the ability of local councils to determine for themselves what money should be raised for the local community. Even if the community has been fully consulted and wants an increase, the taxpayer would be forced to pay for the additional cost of an automatic referendum in order to be able to raise its own money for its own needs, based on a blanket threshold set centrally by Government.

The threshold proposed in this consultation for larger councils is lower and catches more councils than previously anticipated. Government could alter the threshold up or down, once it has considered the consultation responses and, it should be underlined that there is a suggestion of applying automatic referendums to all local councils.

In summary, the proposal is 'that referendum principles are introduced for town and parish councils whose Band D precept is higher than that of the lowest charging district council for 2016/17 (£75.46), and which have a total precept for 2016/17 of at least £500,000, while taking account of transfers of responsibilities, and that consideration is given to the extension of referendums to all local precepting authorities.'

This LAIS advises you about the consultation and provides some of the points that have previously been raised in objecting to the application of automatic precept referendums to assist those formulating responses to the consultation.

This consultation can be responded to via an online survey at <https://www.surveymonkey.co.uk/r/583WBQL>, via email to [LGConsultation@communities.gsi.gov.uk](mailto:LGConsultation@communities.gsi.gov.uk) or in writing to James Livingston, Department for Communities and Local Government, 2<sup>nd</sup> Floor, Fry Building, 2 Marsham Street, London, SW1P 4DF.

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**References to local councils:** 32

**Pages:** 26

## Background

This LAIS reports on the proposals outlined in *2017/18 Local Government Finance Settlement: Technical Consultation Paper* which was published on 15 September 2016.

The Localism Act 2011 contain provisions which allow Government to set a threshold amount above which any increase in precept (council tax) will be deemed ‘excessive’<sup>1</sup>. Exceeding this amount will automatically trigger a local referendum. That referendum must be held, and won, before an authority can increase council tax by more than the threshold amount. This can be applied to billing authorities, major precepting authorities (such as the county councils, Police and Crime Commissioners and fire and rescue authorities) and local precepting authorities (local councils). An authority proposing to set an excessive council tax level is required to make substitute calculations which will take effect if the proposed ‘excessive’ amount of council tax is rejected in a referendum. The substitute council tax level must be below the specified ‘excessive’ threshold amount. Entitlement to vote in the referendum 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.

While it is understood that the principle of enabling a formal mechanism for a vote of the electorate in relation to precept increases fits well with Government policy, the blanket application of a centrally set threshold, is one that local councils have tended to resist owing to the difficulties of applying a simplistic solution to the finances of local councils which have a significantly different context to those of other public service providers. Additionally, the costs imposed by the referendum process are a considerable additional burden for local people.

For the current year 2016-17, Government provided that a referendum must be held under the following circumstances:

- For district councils: if council tax is to be increased by 2% or more and more than £5.00 on a Band D property;
- For Police and Crime Commissioners (PCCs) and fire and rescue authorities, if council tax is to be increased by 2% or more. For PCCs whose council tax is in the lowest quartile of their category of authority, if councils tax is increased by more than £5.00 on a Band D property;
- For local authorities with responsibility for social care (county and unitary authorities): if council tax is to be increased by 4% or more (the additional 2% being ring-fenced for social care);
- For the Greater London Authority: if council tax is to be increased by 2% or more;

The decision was made that referendums were not to be applied for local councils for 2016-17. No freeze grant was made available in 2016-17. This was a grant previously provided to authorities which were subject to referendum thresholds and applied where they froze their council tax. Local councils were encouraged to freeze their precepts but no grant was offered for doing so.

Many reports published in 2014 and 2015, proposing devolution of various powers to local government, proposed that the referendum regime should be ended and that local authorities should be free to set council tax levels without any reserve powers being available to the Government. This suggestion is made in the City Growth Commission’s *Powers to Grow* (2014); the Local Government Association’s *Investing in our Nation’s Future* (2014); and the final report of the Independent Commission on Local Government Finance (2015). The Government rejected these suggestions.<sup>2</sup> Government’s position is that it would be open to a future

<sup>1</sup> Sections 72-80 and Schedule 5-7.

<sup>2</sup> Parliamentary research briefing Council Tax: Local Referendums February 12 2016 p.14 (see references below)

Government simply to not set ‘principles of excessiveness’ for a given financial year, whilst retaining the power to do so in statute.

In practice, there has been a considerable decrease in local government resources with local councils under increased pressure to take on assets and services and major devolution plans are afoot, and yet this is the stage at which Government commences a formal consultation into applying referendums to local councils for 2017-18.

Government cites the increase in precepts for the current financial year as a reason for considering automatic referendums. This is the published precept summary information in relation to Band D properties for 2012-13 to 2016-17<sup>3</sup>:

<b>Average Band D Council Tax levels set by parishes in England</b>					
	2012-13	2013-14	2014-15	2015-16	2016-17
Total number of precepting parishes	9,065	8,805 <sup>(a)</sup>	8,813	8,810	8,817
Tax base (thousands) <sup>(c)</sup>	8,046.2	7,307.4 <sup>(b)</sup>	7,424.2	7,560.4	7,754.2
Aggregate of local precepts (£000)	384,104	367,048 <sup>(b)</sup>	388,808	409,146 (R)	445,065
Average parish precept per Band D (£)	47.74	50.23	52.37	54.12	57.40
Change (£)		2.49	2.14	1.75	3.28
Percentage change		5.2%	4.3%	3.3%	6.1%

*|| The break in the data shows when DCLG started collecting council tax levels set by parishes, up to and including 2012-13 these data were collected by the Chartered Institute of Public Finance and Accountancy (CIPFA)*

*(a) In some cases parishes group together for precepting purposes. Data collected by CIPFA up to and including 2012-13 split all groupings and listed all parishes individually. This makes the number of parishes setting a precept from 2013-14 onwards look smaller than in previous collections.*

*(b) In April 2013 Council Tax Benefit was replaced by locally designed Council Tax Support Schemes. Council tax support is paid in the form of a grant passed down to parishes from their billing authorities and is not included in the local precept; individuals who receive reduced bills because of this support also will not be included in the tax base. Therefore, from 2013-14 onwards council tax support has reduced the parish precepts and tax base relative to 2012-13.*

*(c) Council tax payers in the Charter Trustees for the City of Durham have only been included once here, although they are actually spread across multiple parishes in Durham*

However, there were many reasons for this increase including local councils filling gaps in needed services and assets when local government funding reduced for those authorities affected by Government policy on local government expenditure, adjusting their finances in light of the impact of the potential introduction of referendums and/or increasing precepts back up owing to the reduction in Council Tax Support funding in cases where this had been paid to local councils but later reduced or withdrawn.

<sup>3</sup> Council tax statistics for town and parish councils: 2016-17 England (see references below)

## Detail

The *2017/18 Local Government Finance Settlement: Technical Consultation Paper* which was published on 15 September 2016 contains important information for local councils about their own finances and the financial arrangements within public services more broadly, described below.

### The Multi-Year Settlement

**Consultation Question 1:** *What other, additional grants, beyond those set out in para 2.2.2, should the Government consider including in the multi-year offer?*

Government expands on its commitment to provide multi-year settlements to those local authorities that receive funds distributed through central Government and produce a suitable four-year efficiency plan. The funds that Government provides to these authorities include Revenue Support Grant, Business Rates and related top-up payments, Rural Services Delivery Grant and Transition Grant<sup>4</sup>. This does not apply to local councils. The lack of central Government funding arrangements for local councils means that all of their money has to be raised locally, including through the precept, an important contextual issue when considering automatic precept referendums. Any authorities that do not take up the multi-year settlement offer will continue to be subject to the annual process of determining the level of funding they will receive from Government.

### Distribution of the Improved Better Care Fund

**Consultation Question 2:** *Do you agree with the proposed methodology for allocating funding for the improved Better Care Fund as outlined in paragraph 2.3.4?*

The Better Care Fund is described as improved and allocates funding worth £105 million in 2017/18, £800 million in 2018/19 and £1.5 billion in 2019/20. The consultation concerns the distribution of the fund with the stated intention that it will recognise that authorities have different capacities to raise council tax. Consequently, the allocation of funding will be through a separate grant to local government, using a methodology (detailed at para 2.3.4 in the consultation) which provides more funding to those authorities which benefit less from the adult social care council tax precept.

### Council Tax Referendum Principles for Local Authorities

**Consultation Question 3:** *Do you agree with the council tax referendum principles for 2017-18 proposed in paragraphs 3.2.1 to 3.2.2 for principal local authorities?*

The proposal is to maintain the same referendum principles as applied in 2016-17 (see *Background* above).

### Council Tax Referendum Principles for Parish and Town Councils

**Consultation Question 4:** *Do you agree that referendum principles should be extended to larger, higher-spending town and parish councils in 2017/18 as set out in paragraphs 3.3.3 to 3.3.4?*

**Consultation Question 5:** *Do you agree with the proposed approach to take account of the transfer of responsibilities to town and parish councils as outlined in paragraph 3.3.5?*

**Consultation Question 6:** *Do you agree with the suggestion that referendum principles may be extended to all local precepting authorities as set out in paragraph 3.3.6? If so what level of principle should be set?*

**Consultation Question 7:** *Do you have views on the practical implications of a possible extension of referendum principles to all local precepting authorities as set out in paragraph 3.3.7?*

<sup>4</sup> These are the funds specified in para 2.2.2. as referred to in the consultation Question 1

The proposals in this consultation would have effect in 2017-18. Consequently, local councils need to consider the potential impact that implementation would have on their budgets. For example, even if a major project is planned as a result of a community needs survey or to avoid loss of a needed asset or service where a principal authority is cutting back expenditure, councils and their communities could be faced with the additional cost of an automatic precept referendum and, consequently, the budget implications need to be considered.

Government states in this consultation: *'We recognise the value of parishes and the greater role in service delivery that many are performing to deliver ambitious services for their residents.'* It then cites the 6.1% increase in 2016-17 from the previous year's total precept and notes that this increase is greater than the increase in the 5 previous years.

Government singles out an estimated 120 of the *'larger, higher spending'* councils as ones to which it is minded to apply precept referendums. Specifically, it proposes referendums apply to those whose Band D precept is higher than that of the lowest charging district council for 2016-17 (£75.46) with a total precept for in that year of at least £500,000. They would be allowed increases of less than 2% or up to and including £5 (whichever is the higher) without triggering a referendum (as per the shire districts).

Interestingly, Government *'wishes to ensure that parishes continue to have the flexibility to take on responsibilities from other tiers of local government without being unduly constrained by council tax referendum principles.'* So, an exemption will apply *'where there has been a transfer of responsibilities, and where three conditions are satisfied:*

- i. *the parish council and a principal council covering the area of the parish council have each resolved that a particular function carried out by the principal council in relation to the parish council's area in the financial year 2016-17 is to be carried out instead by the parish council in the financial year 2017-18*
- ii. *the parish council and the principal council have agreed the reasonable cost of the exercise of that particular function in the parish council's area by the parish council in the financial year 2017-18*
- iii. *that the agreed cost, if collected by way of the parish council precept, would take the parish council over the threshold of a 2% or £5 increase on the previous year.'*

This appears to be a cumbersome process and it is difficult to comprehend how and who will judge concepts, such as *'reasonable cost'* in ii.

While recognising that Government has a particular policy direction that it wishes to pursue, it is of concern that in only three sentences in the section on precept referendums (3.3), Government sums up its intention to consider taking away historic local freedoms and to apply precept referendums not only to about 120 larger councils but all of the thousands of other councils in the country: *'A large proportion of parishes are modest in size – for example, around 4,000 parishes have precepts of £25 or less. However, the Government is aware that increases in these precepts continue to concern local tax payers and is therefore prepared to consider extending referendums to all parishes.'*<sup>5</sup> *'We recognise that issues of proportionality, practicality and cost could be raised by such a step, and would welcome views on this.'*<sup>6</sup>

The annual threat to impose automatic precept referendums shows an apparent failure to recognise the differences between local councils and their principal council counterparts. Among the issues that local councils and their Associations will be considering as part of their own responses to the consultation are:

- The extent to which these proposals sit well with Government's claimed localism principles. For the first time local council finances would be controlled by central Government. Unlike principal authorities, local council expenditure is not dominated by statutory duties imposed by central Government but is based

<sup>5</sup> Para 3.3.6

<sup>6</sup> Para 3.3.7

on local need. Notably, Government accepts that increases in precept should be able to legitimately exceed 2% without the additional cost of a referendum in the sole circumstances where expenditure is a direct result of taking on responsibilities divested by other local authorities (which is a result of central Government policy of reducing their expenditure) but not where expenditure results from normal community decisions about local need e.g. for a village hall roof repair. Shifting expenditure from one tier of local government to another appears to be considered legitimate whereas community-derived initiatives and freedoms are being undermined by these proposals. Although local councils and communities often feel obliged to take on additional costs arising from cessation of a service or asset by a principal local authority, they have not, in many cases, had any say in whether a principal authority divests that service or asset and are left with little choice when the alternative is to lose that service or asset completely.

- The impact is of particular concern to councils facing major housing growth as they will need to expand their support to more residents. So much development is now not attracting Community Infrastructure Levy or s.106 funding and appropriate infrastructure will be lacking. Some significant costs are likely to fall to the local council precept. Areas with growing populations will have growing needs and growing precepts. Government should be encouraging communities to support such development, in line with its pro-housing growth strategy, whereas in reality the threat of precept referendums provides another reason for communities to fear inappropriate growth.
- Whether local public meetings, surveys and community plans will become wasteful effort and expenditure as, ultimately, the decision on whether to proceed with actions will be taken through a referendum involving only the mobile, committed, vocal and voting part of the electorate.
- The fact that automatic precept referendums based on a centrally dictated threshold would impose disproportionate and unwanted costs on communities which could undermine important local initiatives, without any evidence being produced by Government that any precept increases have been for anything other than justifiable reasons and community benefit.
- Whether applying a 2% threshold to local councils is meaningful. The application of a centrally-defined, technical, target-type assessment of what is an 'excessive increase' is to misunderstand the unique nature and responsiveness of each local council, as defined and shaped by its own local community. For example, the application of a 20% figure on last year's precept of £500 amounts to £100 and on a £50,000 precept is £10,000 and in each case the amount could represent a single modest community project at a small cost per council tax paying household. In either case to count the increase as 'excessive' and add on the cost of a referendum would be disproportionately burdensome on that community and could make the project unviable. If the principle were ever applied to the smallest councils, buying a village bench would be prohibitively costly as the 2% would be triggered and a referendum would be applied. Even 2% of £500,000 is only £10,000, again the cost of a relatively modest community project. If a council wanted to invest in upgrading to environmentally friendly lighting which would save money in the long-term, they might have to add on the cost of a referendum, undermining the business case for the project and costing the hard-working taxpayer more than needed. The unjust application of blanket thresholds is particularly apparent in a local council context where some councils, under local pressure to increase services have introduced precepts for the first time or have started providing services, where they did not previously. The percentage increase is technically 'high' when starting from a low base but, in practice, results in a negligible bill compared to the existing precepts of many of their neighbours.
- The 6.1% increase in precepts is an average increase which, quite properly, would have reflected a considerable variation with many councils applying no or a negligible increase and others responding to significant local pressure to increase local expenditure on services and assets.
- The particular context for local councils of limited financial resources and small reserves, will mean that the short notice of these proposals, if implemented, could also cause serious financial problems for projects mid-term and where there is contractually committed expenditure in 2017-18. It is not in the public interest to cause situations where a referendum returns a 'no' vote with resultant financial

difficulty and even bankruptcy for councils used to precepting freedom and not used to having to stockpile funds. This will have an adverse effect of individuals and businesses.

- Whether these proposals undermine and undervalue local councils who are inherently cautious guardians of the public purse and draw on considerable volunteer and goodwill support in a way that their more remote principal authorities cannot do. To impose costs on communities when they do have to spend some money will directly counter any free resource contributed by the community, making it less likely that volunteers will come forward.
- The poor timing of these proposals for local council budget rounds. With local councils tending to have carefully contained staffing and resources, having to make last minute contingency plans and budgets will be difficult.
- The high number of factors which can cause an increase in expenditure which are outside of local council control e.g. emergency situations, legal costs such as those arising from unauthorised encampments and costs arising from general central Government policy, such as the national living wage and pensions.
- The costs that arise directly out of central Government policy in relation to local Government. This includes the threat of precept referendums leading many councils, without large reserves, to recognise that they would need to budget for referendum costs in the event of a needed precept increase. Additionally, the failure of Government to compel billing authorities to pass on the Localisation of Council Tax Support Scheme compensation funding to local councils meant that when it was withdrawn or reduced, many councils had to increase their precepts considerably to get to former levels or risk being unable to pay staff, businesses and any other contract obligations. Increased costs have also arisen for local councils which have protected needed local services and assets valued by the local community but divested under considerable central Government pressure for a divestment programme by principal local authorities. Where the grant was unpaid from the outset, councils were left having to increase precepts to counter the changes made to the council tax base by Government.
- Comparing the precept to principal authority council tax does not give a true picture of relative expenditure. The precept is often the only or main source of funding for local councils which can make larger local council precepts look misleadingly 'high' and comparisons unfair relative to their principal local authority counterparts who receive additional funding from central Government sources to enable their own greater expenditure.
- While there might be some evidence about concerns regarding the level of council tax raised by principal authorities, it is not clear what evidence Government is relying on when it refers to taxpayers having concerns about local council precepts. Given that councils are embedded within the communities they serve and which directly pay for the services from which they benefit, complaints tend to be rare.
- When Government introduced a 'cap' on principal local authority expenditure by imposing a council tax referendum threshold, it also introduced a reward payment for 'freezing' the charge to counter some of the harm caused by imposing this burden on those authorities. Significant adjustments were required in order to deliver their services without increasing council tax. No such freeze grant has been proposed for local councils, despite the inherent difficulty in managing the burden of increased demand for services at a local level and the relatively small reserves available to local councils to manage any financial constraint.

### The Business Rates Evaluation Adjustment

**Consultation Question 8:** *Do you agree with the methodology for calculating the revaluation adjustment to business rates tariff and top-up payments as outlined in paragraphs 3.4.1 to 3.4.8?*

The next business rates revaluation takes effect from 1 April 2017. Government states that the intended result is that the total business rates bill will remain the same in real terms although there will be fluctuations in the actual amount per local authority area.

'Local share' is defined on page 25 of the consultation as 'The percentage share of locally collected business rates that is retained by local government. This is set at 50%.' Given the Government commitment to the 50% business rate retention scheme and to ensuring that it will put in place compensating measures to ensure that the retained business rate income is the same before and after revaluation, this consultation covers their proposed way of achieving this in three stages of adjustment.

Local councils will be aware that, despite pressure to extend business rate funding to local councils, there appears to be no evidence that this matter is being taken forward by Government, although there is a clear value to businesses of many local council activities. Councils with particular concerns about this will wish to consider making comments within their responses and should not feel confined to only answering the particular question (8) posed within the consultation.

### Adjustments to Business Rates in areas piloting 100% business rates retention

**Consultation Question 9:** *Do you agree that the methodology, as outlined in paragraphs 3.5.5 to 3.5.13, for calculating changes to the local share of business rates and tariff and top up payments is correct and does not adversely affect non-pilot areas?*

Of particular interest to councils in areas with devolution deals, is the fact that Government has made commitments to 100% business rates retention in areas with ratified devolution deals with the local share being increased from as early as 2017/18. However, the pay-off is that in order to ensure this is fiscally neutral in these devolution areas, Government is exploring the cessation of other grants and funding, devolving more services to them and adjusting their business rate tariffs and top-ups. The methodology for dealing with the business rates adjustment is set out in the consultation in paras 3.5.5. to 3.5.13.

### Voluntary transfers of funding to Mayoral Combined Authorities

**Consultation Question 10:** *Are you considering a voluntary transfer of funding between the Combined Authority and constituent authorities?*

**Consultation Question 11:** *Do you have any comments on the impact of the proposals for the 2017-18 settlement outlined in this consultation document on persons who share a protected characteristic? Please provide evidence to support your comments.*

This part addresses the fact that, if new mayoral authorities and all the local authorities agree, there could be a transfer of funding. The proposals note the options of transferring the funding in the form of a grant, as a share of the business rates or as a share of the council tax. In the latter case it would be necessary to ensure that there are no additional burdens on the council tax payer. The consultation questions do not ask for views on the options but ask whether a transfer is being considered and how the proposals might affect people with protected characteristics.

### References

The 2017/18 Local Government Finance Settlement: Technical Consultation Paper can be found at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/553334/Post\\_HA\\_-\\_Draft\\_Settlement\\_Summer\\_Consultation\\_v2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553334/Post_HA_-_Draft_Settlement_Summer_Consultation_v2.pdf)

Parliamentary research briefing Council Tax: Local Referendums February 12 2016 can be found at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05682>

Parliamentary research briefing Council Tax Reduction Schemes August 9 2016 can be found at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06672>

LAIS1333 Localism Act 2011 and LAIS1373 Automatic Precept Referendums can be obtained through your local Association.

Council tax statistics for town and parish councils: 2016-17 can be found at <http://opendata.cambridgeshireinsight.org.uk/dataset/council-tax-statistics-town-and-parish-councils-2016-17-england/resource/3e2391bc-be33-4756>