

Precept consultation

What is in this for local councils?

Local councils will be aware that under the Localism Act 2011, Government has powers to make an annual decision on whether to introduce automatic precept referendums where they deem increases in local council precepts to be 'excessive'. The decision includes what threshold would apply for triggering referendums and to which councils this trigger would 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 the publication of *The 2018/19 Local Government Finance Settlement: Technical Consultation Paper* which was published this month.

Last year, a similar consultation threatened to define principles for applying automatic referendums for the highest spending local councils. The proposal was "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."

No such proposed limitation to larger councils is referred to in the consultation this year. Instead it declares: "Last year, the Government issued a challenge to town and parish councils to demonstrate restraint when setting precept increases that are not a direct result of taking on additional responsibilities, and to make precept decisions more transparent to local tax-payers. The continuation of this position in 2018-19 is contingent upon the Government receiving clear evidence of how the sector is responding to this challenge. The Government expects parishes, in setting their precepts, to consider all available options to mitigate the need for council tax increases, including the use of reserves where they are not already earmarked for particular purposes or for "invest to save" projects which will lower on-going revenue costs. Any revised proposals will be set out at the time of the provisional local government finance settlement later in the year."

All councils are potentially affected by the outcome of this consultation and will wish to consider making a response to this important consultation on fundamental aspects of their financial arrangements. Councils are reminded that there is no mention of Government limiting this consideration to a particular size of council.

If referendums are introduced at any point, 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.

This LAIS advises you about the consultation and provides some of the points that have 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/lgsettlement1819> via email to LGFConsultation@communities.gsi.gov.uk or in writing to Roger Palmer, Department for Communities and Local Government, 2nd Floor, Fry Building, 2 Marsham Street, London, SW1P 4DF.

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References to local councils: 3

Pages: 28

Background

This LAIS reports on the proposals outlined in *The 2018/19 Local Government Finance Settlement: Technical Consultation Paper* which was published this September.

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’¹. Exceeding this centrally set 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. Government is entitled to restrict application of referendums to all or some of each category of authority. 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 complications 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 extra burden for local people.

In this latest consultation at para 4.2.1 (see below and summary box above) indicates that Government will be making its decision on local council referendums, taking into account evidence of the extent of precept restraint when setting precept increases that are not a direct result of taking on additional responsibilities and the extent to which precept decisions have been made more transparent to local tax-payers. The statement is clear that local councils should answer to Government for their local decisions. No mention is made of the principle of localism - local people knowing best what expenditure is needed in their own community and having the power to take action. Government expects local councils to consider their reserve funds before increasing precept. However, traditionally many local councils, have limited reserves. Many have had to adjust their finances over recent years owing to the impact of the potential introduction of referendums and/or have had to increase 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.

Detail

The consultation 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: *Do you agree that the government should continue to maintain the certainty provided by the 4-year offer as set out in 2016-17 and accepted by more than 97% of local authorities?*

Government expands on its continued stated commitment to provide greater certainty to principal authority finances by providing multi-year settlements to those local authorities that receive funds distributed through central Government and produce a suitable four-year efficiency plan. 2018-19 would be the third of the four years of the multi-year settlement. 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 Grant². This

¹ Sections 72-80 and Schedule 5-7.

² These are the funds specified in para 2.2.2. as referred to in the consultation Question 1

does not apply to local councils. The lack of central Government funding arrangements for local councils means that all local council funding has to be raised locally, including through the precept, an important contextual issue when considering automatic precept referendums, below. Any principal 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. There is recognition that there should be account taken of future events such as the transfer of functions between local authorities and mergers etc. A second wave of pilots have been launched with the opportunity for principal authorities to pilot 100% business rates retention in 2018.

New Homes Bonus and Planning Effectively

Consultation Question 2: *Do you agree with the New Homes Bonus allocation mechanism set out above?*

Consultation Question 3: *Do you agree that the approach should be based on data collected by the Planning Inspectorate? If you disagree, what other data could be used?*

Consultation Question 4: *Do you agree with the proposed appeal/challenge procedure for the dataset collated by Planning Inspectorate? If you disagree, what alternative procedure should be put in place?*

Consultation Question 5: *Are there alternative mechanisms that could be employed to reflect the quality of decision making on planning applications which should be put in place?*

Consultation Question 6: *Which of the two mechanisms referenced above do you think would be more effective at ensuring the Bonus was focussed on those developments that the local authority has approved?*

Consultation Question 7: *Do you think that that the same adjustments as elsewhere should apply in areas covered by National Park Authorities, the Broads Authority and development corporations?*

Consultation Question 8: *Do you think that county councils should be included in the calculation of any adjustments to the New Homes Bonus allocations?*

The proposal is to link payment of the bonus to the housing delivery test or the standard approach to local housing need. So, Bonus would not be paid where planning authorities were under-delivering against Government-set targets. They would consult on any further changes to the Bonus before implementation in 2019-20 and are reviewing the baseline (currently 0.4%) below which the Bonus will not be paid. Measures to further incentivise housing development inevitably would have an impact on communities. Government indicates that the income created has contributed to the available money for Adult Social Care. One thing to watch out for is that Government will be consulting on limiting the Bonus payment to those homes approved by the local authority (rather than the Planning Inspectorate on appeal) or reducing the payment based on the ratio of successful appeals to residential planning decisions or in relation to specific appeals; this could be seen as a further disincentive to local authorities to refuse applications; if they refuse an application and the appellant wins an appeal, they will have incurred costs and will lose Bonus funds while still having the impact of the new housing. Government is also seeking views on how the national parks, Broads Authority, development corporation and county councils should be taken into account in the Bonus paid to planning authorities. Currently, “county councils in two-tier areas...receive 20% of Bonus payments, but are not the planning authority” for relevant decisions.

Council Tax Referendum Principles for Local Authorities

Consultation Question 9: *Do you have views on council tax referendum principles for 2018-19 for principal local authorities?*

Consultation Question 10: *Do you have views on whether additional flexibilities are required for particular categories of authority? What evidence is available to support this specific flexibility?*

These proposals relate to the circumstances in which automatic referendums will apply should specified authorities exceed a threshold set by Government for the increase in council tax/precept. The proposals in this consultation would have effect in 2018-19 and councils will have to wait until the provisional local government settlement later this year to find out the conclusions from this consultation. Historically, local councils have not been significantly controlled or directed in their activities or expenditure by Government, unlike their principal local authority counterparts.

For 2018-19 the proposal in relation to referendum principles is:

- A core principle of less than 2% would apply to shire counties, unitary authorities, London boroughs, the Greater London Authority, fire authorities, and Police and Crime Commissioners except those whose Band D precept is in the lower quartile of that category.
- A 2% principle for the general functions of Mayoral Combined Authorities and the relevant police principle would apply to the Greater Manchester Combined Authority’s police functions.
- A continuation of the Adult Social Care precept of an additional 2% with additional flexibility to increase the precept by 1% to 3% in 2018-19 would apply, provided that increases do not exceed 6% between 2017-18 and 2019-20 for county councils, unitary authorities and London boroughs (including the Common Council of the City of London and the Council of the Isles of Scilly), subject to consideration of the use made of the Adult Social Care precept in the previous year.
- Increases of less than 2% or up to and including £5, whichever is higher, would apply for shire district councils.
- Increases of less than 2% or up to and including £5, whichever is higher, would apply for police precepts in the lowest quartile.

In terms of local councils, the relevant part (4.2.1) is included in full below:

“4.2 Council tax referendum principles for town and parish councils.

4.2.1 Last year, the Government issued a challenge to town and parish councils to demonstrate restraint when setting precept increases that are not a direct result of taking on additional responsibilities, and to make precept decisions more transparent to local tax-payers. The continuation of this position in 2018-19 is contingent upon the Government receiving clear evidence of how the sector is responding to this challenge. The Government expects parishes, in setting their precepts, to consider all available options to mitigate the need for council tax increases, including the use of reserves where they are not already earmarked for particular purposes or for “invest to save” projects which will lower on-going revenue costs. Any revised proposals will be set out at the time of the provisional local government finance settlement later in the year.”

All councils should consider the potential impact that implementation would have on their budgets and should consider whether they have evidence or comments which should be provided to Government within their response to the consultation. There is no suggestion in the proposal that this would only apply to larger local councils.

The result of implementation would, for example, mean that even if a major project were planned as a result of a community needs survey or because of an urgent unforeseen need, 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.

Although Government refers to the fact that last year it was taking into account that some precept increases arise as “a direct result of taking on additional responsibilities”, it is not clear how it would define “taking on additional responsibilities”. So, if this concept were carried forward, would this be on the same basis as proposed last year and confined to certain negotiated transfers between a principal authority and a local council, or would it extend to picking up assets and services which had been ceased by public service providers or indeed to providing new services where a local council was otherwise inactive or where a new need arises?

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 on

local need. Clarity is needed about whether and how Government would take into account expenditure as *“a direct result of taking on additional responsibilities”*. Last year, shifting expenditure from one tier of local government to another appeared to be considered a legitimate reason for a precept increase whereas community-derived initiatives and freedoms were not respected. 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 and not all households pay council tax. 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 an inevitably small percentage 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 become prohibitively costly as the numbers involved would be so small but a costly referendum would be applied.
- How Government would define, assess and apply its idea of excluding the cost of *“invest to save” projects which will lower on-going revenue costs*.
- 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 particular context for local councils of limited financial resources and small reserves, will mean that the short notice of these proposals (with decisions in the Autumn), if implemented, could also cause serious financial problems for projects mid-term and where there is contractually committed expenditure in 2018-19. 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 could 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 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. Some have staged increases over a number of years.

- 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-driven sources to enable their own greater expenditure.
- While there might be some evidence about public concerns regarding the level of council tax raised by principal authorities, it is not clear what evidence Government would be relying on if it claims that 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 need to take particular account of new local councils, which have no prior Band D figure and where it would be unfair to apply excessive increase referendum principles in the first few years of their existence given the unreliability of amounts initially determined for their budgets by a principal authority.

The Business Rates Evaluation Adjustment

The last business rates revaluation took effect from 1 April 2017. The methodology for adjusting the tariffs and top-ups to ensure, as far as practicable, that the retained income will be the same after revaluation, given the introduction of the 50% business rates retention scheme, has been decided.

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.

Mayoral Combined Authorities

Consultation Question 11: *What factors should be taken into account in determining an Alternative Notional Amount for Combined Authority mayors?*

New combined authority mayors can raise a precept and Government is consulting on the notional figures that should be used for comparative purposes to determine whether a referendum is to be triggered, there being no previous Band D amount for the previous year.

Transfer of Fire functions from County Councils to Police and Crime Commissioners

Consultation Question 12: *Do you agree with the proposed approach to correcting the reduction in relevant county councils' income from the Adult Social Care precept?*

This part addresses the need to fairly transfer Settlement Funding Assessment and council tax precept to the Police and Crime Commissioners. There would also be a need to establish what notional baseline would be used in the absence of a Band D figure for the purpose of establishing whether an excessive increase referendum would be triggered. The concern has also arisen that transfers would affect the council tax base and would potentially

reduce the money available for Adult Social Care. Without reducing by a proportionate amount the money available to the PCC Fire and Rescue Authority, Government proposes to adjust the Alternative Notional Amounts to restore the amount which was previously available from the Adult Social Care precept for county councils.

Equalities impacts of these proposals

Consultation Question 13: Do you have any comments on the impact of the proposals for the 2018-19 settlement outlined in this consultation document on persons who share a protected characteristic? Please provide evidence to support your comments.

References

The 2018/19 Local Government Finance Settlement: Technical Consultation Paper can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/645012/2018-19_Local_Government_Finance_Settlement_-_technical_consultation.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, LAIS1373 Automatic Precept Referendums, LAIS1393 Precept Consultation and LAIS1400 Precept Data 2017-18 can be obtained through your local Association.

Council tax statistics for local councils: 2017-18 can be found at <https://data.gov.uk/dataset/civil-parish-council-tax-level-data>

Council tax analytical tools for local councils can be found at http://lginform.local.gov.uk/reports/lgastandard?mod-metric=3541&mod-area=E92000001&mod-group=AllRegions_England&mod-type=namedComparisonGroup