

**EXPLANATORY MEMORANDUM TO  
THE LOCAL AUTHORITY (REFERENDUMS RELATING TO COUNCIL TAX  
INCREASES) REGULATIONS 2012**

**2012 No. 460**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1. The Local Authority (Referendums Relating to Council Increases) Regulations 2012 (“the Regulations”) make provision in relation to council tax referendums and the changes to local authority requisite calculations made by the Localism Act 2011 (“the 2011 Act”).
  - 2.2. Chapter 1 of Part 5 of the 2011 Act makes a number of amendments to the Local Government Finance Act 1992 (“the 1992 Act”). In particular, in relation to England it introduces council tax referendums which must be held if an authority sets an excessive relevant basic amount of council tax (“relevant amount”) and it changes the requisite calculations which authorities must make when calculating their council tax for a financial year.
  - 2.3. The Regulations amend a number of existing statutory instruments (see regulation 2 and the Schedule). The amendments are consequential and give full effect to the changes made by the 2011 Act in respect of council tax referendums and requisite calculations.
  - 2.4. If a precepting authority sets an excessive amount of council tax any referendums must be held on its behalf by its billing authorities. The Regulations prescribe the dates by which precepting authorities must notify their billing authorities if they set an excessive relevant amount for a financial year (see regulations 3 and 5).
  - 2.5. Where a billing authority holds a council tax referendum on behalf of a precepting authority it can recover its costs from the precepting authority. The Regulations modify that position where one or more billing authorities (“the defaulting authorities”) fails to hold a referendum in accordance with Chapter 4ZA of Part 1 of the 1992 Act. In this situation a defaulting authority is unable to recover its costs and it must also pay the costs of any other billing authorities which do hold a referendum (see regulations 4 and 6).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1. None.
4. **Legislative Context**
  - 4.1. The 2011 Act makes a number of amendments to the 1992 Act. In particular-

- council tax referendums are introduced in relation to England (see section 72 of, and Schedule 5 to, the 2011 Act), and
  - the way in which council tax is calculated by authorities in England is changed (see sections 73 to 79 of the 2011 Act),
  - various amendments consequential to those changes are made (see Schedules 6 and 7 to the 2011 Act).
- 4.2. The Regulations make consequential amendments to other statutory instruments as a result of these changes. In particular, the amendments to the Local Authorities (Calculation of Council Tax Base) Regulations 1992 in paragraphs 3(a)(i) and (c) and 5 of the Schedule to the Regulations fulfil the Secretary of State's obligations–
- to specify rules for the calculation of item T in section 52ZX(5) of the 1992 Act, and
  - to prescribe a period within which a billing authority must notify a local precepting authority of this item.
- 4.3. Where a major precepting authority sets an excessive relevant amount for a financial year it must notify its billing authorities and referendums must be held by each of those authorities in relation to that amount (see sections 52ZK and 52ZN of the 1992 Act). If the excessive relevant amount is approved by the referendum that amount continues to have effect for the year (section 52ZO(3) of the 1992 Act). If it is not so approved a substitute amount calculated by the major precepting authority takes effect (sections 52ZO(5) and 52ZP of the 1992 Act).
- 4.4. Similarly, where a local precepting authority sets an excessive relevant amount for a financial year it must notify its billing authority and the billing authority must hold a referendum in relation to the amount (see sections 52ZM and 52ZN of the 1992 Act). Again if the excessive relevant amount is approved by the referendum that amount continues to have effect for the year (section 52ZO(3) of the 1992 Act). If it is not so approved a substitute amount calculated by the local precepting authority takes effect (sections 52ZO(5) and 52ZP of the 1992 Act).
- 4.5. Regulation 3 (in the case of major precepting authorities) and regulation 5 (in the case of local precepting authorities) specify the dates by which the notifications mentioned in paragraphs 4.3 and 4.4 must be made. A later date has been prescribed for the financial year beginning on 1st April 2012 to ensure that the Department complies with the 21 day rule.
- 4.6. A billing authority which holds a referendum on behalf of a precepting authority in the circumstances mentioned in paragraphs 4.3 and 4.4 is able to recover its costs in connection with the referendum from the precepting authority (see section 52ZN(7)). Furthermore, if the excessive amount is not approved by the referendum, the billing authority will need to set a new amount of council tax to take into account the precepting authority's substitute precept (a demand for payment of council tax based upon the precepting authority's substitute calculations). The billing authority will be able to

recover its costs of setting a new amount of council tax from the precepting authority (see section 31(4A) and (5)).

- 4.7. Regulation 4 (in the case of major precepting authorities) and regulation 6 (in the case of local precepting authorities) modify how the cost recovery rules mentioned in paragraph 4.6 operate in certain circumstances.
- 4.8. Regulation 4 applies where one or more billing authorities (“the defaulting authorities”) fail to hold a referendum in accordance with Chapter 4ZA of Part 1 of the 1992 Act (“Chapter 4ZA”). In this situation the defaulting authorities are unable to recover their costs and they must also pay the costs of any billing authorities which have held a referendum in accordance with Chapter 4ZA.
- 4.9. Regulation 6 makes similar provision to regulation 4. Since a local precepting authority can issue a precept to one billing authority only, the modifications made by regulation 6 simply ensure that the billing authority cannot recover its costs from the precepting authority where it fails to hold a referendum in accordance with Chapter 4ZA.

## **5. Territorial Extent and Application**

- 5.1. This instrument applies in relation to England only.

## **6. European Convention on Human Rights**

- 6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- What is being done and why

- 7.1. The Coalition Programme for Government included a commitment to give residents the power to veto excessive council tax increases. This was to ensure that excessive council tax increases occur only where there is a clear mandate from local people. The Localism Act 2011 subsequently abolished central government powers to cap council tax and made provision for binding referendums to be held on excessive council tax increases. The aim is to shift decision making on excessive council tax increases from central government to the local electorate.
- 7.2. The repeal of the Secretary of State’s capping powers and introduction of a new system of council tax referendums meant that it was possible to simplify the process by which authorities calculate council tax. Authorities are no longer required to calculate a budget requirement as an intermediate step in council tax calculations. Authorities must instead calculate a council tax requirement, which is (in essence) the amount of council tax which the authority must raise in order to finance its proposed budget for the year.
- 7.3. The Regulations ensure the new system of council tax referendums operates appropriately and make consequential amendments to give effect to the changes made to the calculations authorities must make to determine their council tax for a financial year.

- Consolidation

7.4. This is the first exercise of the enabling powers.

## **8. Consultation outcome**

8.1. A public consultation was undertaken on the Government's policy to introduce council tax referendums. "*Local referendums to veto excessive council tax increases*" was published on 30 July 2010. It sought views on a wide range of issues relating to the operation of referendums, including proposals to allow billing authorities to recoup their costs, and changes to requisite calculations. Over 1200 responses were received and Government took account of these when formulating its policies on council tax. No further consultation was carried out.

## **9. Guidance**

9.1. The Department is not planning to publish any guidance in relation to the Regulations.

## **10. Impact**

10.1. The impact on business, charities or voluntary bodies is nil.

10.2. The impact on the public sector is that:

Authorities will need to comply with the Regulations when calculating a local precepting authority's relevant amount for a financial year and making the notifications mentioned in the Regulations. The modified costs provisions will also apply to a billing authority if it fails to hold a referendum.

10.3. An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1. The legislation does not apply to small business.

## **12. Monitoring & review**

12.1. There are no plans for a formal review of the Regulations.

## **13. Contact**

Mark Rickard at the Department for Communities and Local Government Tel: 0303 444 2090 or email: [mark.rickard@communities.gsi.gov.uk](mailto:mark.rickard@communities.gsi.gov.uk) can answer any queries regarding the instrument.