

# LOCALISM ACT 2011

---

## EXPLANATORY NOTES

### COMMENTARY

#### **Part 5: Community Empowerment**

##### *Chapter 1: Council Tax*

##### *Section 72: Referendums relating to council tax increases*

162. *Subsection (1)* gives effect to Schedule 5 which inserts a new Chapter 4ZA into Part I of the Local Government Finance Act 1992. *Subsection (2)* gives effect to Schedule 6.

##### **Schedule 5: New Chapter 4ZA: Referendums relating to council tax increases**

##### **New Section 52ZB: Duty to determine whether council tax excessive**

163. New section 52ZB sets out the duty on billing authorities, major precepting authorities and local precepting authorities to each determine whether their relevant basic amount of council tax for a financial year is excessive. If an authority's relevant basic amount of council tax is excessive, the provisions in relation to the duty to hold a referendum apply.

##### **New section 52ZC: Determination of whether increase is excessive**

164. New section 52ZC provides that a set of principles determined by the Secretary of State will be used to decide whether an authority's relevant basic amount of council tax for the year is excessive. One or more principles may be set. The set of principles must include a comparison between the relevant basic amount of council tax for the year under consideration, and the preceding year. Two different relevant basic amounts of council tax are applicable to the area of the Greater London Authority because the special expense of the Mayor's Office for Policing and Crime<sup>1</sup> relates to only part of the Greater London Authority's area. The different amounts are defined as the unadjusted relevant basic amount and the adjusted relevant basic amount in new section 52ZX(3). Principles which apply to the Greater London Authority may only make a comparison between unadjusted relevant basic amounts of council tax, a comparison between adjusted relevant basic amounts of council tax or a comparison between unadjusted relevant basic amounts of council tax and a comparison between adjusted relevant basic amounts of council tax. A comparison between unadjusted relevant basic amounts of council tax and adjusted relevant basic amounts of council tax cannot therefore be made. Other than the principle comparing relevant basic amounts of council tax, the Secretary of State can determine other principles. One of the other principles could potentially include a *de minimis* threshold or thresholds. This may state that neither council tax increases, nor a basic amount of council tax, would be considered excessive if these are below a specified threshold level.

---

<sup>1</sup> Once the relevant provisions of the Police Reform and Social Responsibility Act 2011 are in force, the Metropolitan Police Authority will be replaced by the Mayor's Office for Policing and Crime.

165. New section 52ZC also provides that the Secretary of State may determine principles for particular categories of authority. The principles must be applied to all authorities falling within that category. Where the Secretary of State determines categories and an authority does not fall within any category, its relevant basic amount of council tax for the financial year cannot be determined as excessive. Where no categories are determined, any principles determined will apply to all authorities.

**New section 52ZD: Approval of principles**

166. New section 52ZD provides that the principles for a financial year 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 of Commons. Where the report is not laid, or not approved by resolution of the House of Commons, no principles can take effect and no authority's relevant basic amount of council tax can be determined as excessive for the year under consideration.

**New section 52ZE: Alternative notional amounts**

167. New section 52ZE provides the Secretary of State with the power to make a report setting alternative notional amounts to be used in place of an authority's relevant basic amount of council tax for the preceding year. The alternative notional amounts will be used when making a comparison with an authority's relevant basic amount of council tax for the year under consideration to determine whether its council tax is excessive. An alternative notional amount report may be made when an authority did not exist at the beginning of the financial year preceding the one under consideration, or where the functions of an authority have changed. This is to enable a like-for-like comparison of council tax changes for the purposes of determining whether an amount of council tax is excessive by reference to the principles. The amount should be set out in a report that may relate to more than one authority. It must contain such explanations as the Secretary of State thinks desirable of the need for an alternative notional amount to be calculated and the method of calculation, and must be laid before the House of Commons. The report takes effect if approved by resolution of the House of Commons.

**New section 52ZF: Billing authority's duty to make substitute calculations**

168. New section 52ZF sets out what a billing authority must do if it sets an excessive council tax increase. It must make substitute calculations which will have effect, in the event that the authority's proposed excessive increase in council tax is rejected in a referendum or the authority fails to hold a referendum when it is required to do so. The amount calculated as an authority's relevant basic amount of council tax in the substitute calculations must be below the amount which is considered excessive under the principles.

**New section 52ZG: Arrangements for referendum**

169. New section 52ZG provides that a billing authority must make arrangements to hold a referendum where the billing authority itself has set an excessive increase in council tax. The referendum can be held at any time of the authority's choosing subject to this being no later than the first Thursday in May or a date specified by the Secretary of State by order.

**New section 52ZH: Effect of referendum**

170. New section 52ZH requires the billing authority to inform the Secretary of State of the result of the referendum. Where the result of the referendum is that an authority's excessive increase in council tax is rejected the authority's substitute calculations have effect for the financial year.

**New section 52ZI: Failure to hold referendum**

171. New section 52ZI sets out the position where a billing authority is required to hold a referendum but, for any reason, fails to do so by the deadline date which would be either the first Thursday in May, or another date the Secretary of State may specify by Order. In such circumstances, the authority's substitute calculations will have effect.

**New section 52ZJ: Major precepting authority's duty to make substitute calculations**

172. New section 52ZJ provides that where a major precepting authority sets an excessive council tax increase it must make substitute calculations, which will have effect in the event that the authority's proposed council tax increase is rejected in a referendum. The substitute calculations will also have effect where a referendum is not held on an excessive increase by the required date. The amount calculated as an authority's relevant basic amount of council tax in the substitute calculations must be below that which is considered excessive under the principles. The section outlines the different methods of calculation which are required by (i) all major precepting authorities except the Greater London Authority and (ii) the Greater London Authority, to reflect the different way in which it must make its calculations.

**New section 52ZK: Major precepting authority's duty to notify appropriate billing authorities**

173. New section 52ZK provides that where a major precepting authority has set an excessive increase in council tax it should notify each appropriate billing authority that its council tax is excessive and that the billing authority is therefore required to hold a referendum. The section outlines the different calculations which must be included in the notification for (i) all major precepting authorities except the Greater London Authority and (ii) the Greater London Authority, to reflect the different way in which it calculates its basic amount of council tax. The date by which the notification is to be given is to be prescribed by the Secretary of State in regulations.

**New section 52ZL: Local precepting authority's duty to make substitute calculations**

174. New section 52ZL provides that where a local precepting authority sets an excessive council tax increase it must make substitute calculations which will have effect in the event that the authority's proposed increase is rejected in a referendum. The substitute calculations will also have effect where a referendum is not held on an excessive increase by the required date. The amount calculated as an authority's relevant basic amount of council tax in the substitute calculations must be an amount below that which is considered excessive under the principles.

**New section 52ZM: Local precepting authority's duty to notify appropriate billing authority**

175. New section 52ZM requires that where a local precepting authority has set an excessive amount of council tax it must notify its appropriate billing authority that it is required to hold a referendum. The section sets out the calculations which must be included in the notice. The date by which the notification is to be given is to be prescribed by the Secretary of State in regulations.

**New section 52ZN: Arrangements for referendum**

176. New section 52ZN provides that where a major or local precepting authority sets an excessive amount of council tax and gives the required notification to a billing authority, the billing authority must make arrangements to hold a referendum. The referendum 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 a date specified by the Secretary of State by Order.

However, where a precepting authority sets an excessive increase in relation to which two or more billing authorities must organise a referendum, the referendums must be held on the first Thursday in May or such other date as the Secretary of State may specify by Order. This section provides that, subject to any regulations made by the Secretary of State, the billing authority can recover the costs of holding a referendum triggered by a precepting authority from that precepting authority.

#### **New section 52ZO: Effect of referendum**

177. New section 52ZO requires that the precepting authority must inform the Secretary of State of the result of the referendum. Where the result of the referendum is that an authority's increase in council tax is rejected the authority's substitute calculations have effect for the financial year.

#### **New section 52ZP: Failure to hold referendum**

178. New section 52ZP sets out the position where a billing authority is required to hold a referendum on behalf of a precepting authority but, for any reason, fails to do so by the deadline date of the first Thursday in May or such other date as is specified by Order. In such circumstances, the precepting authority's substitute calculations have effect.

#### **New section 52ZQ: Regulations about referendums**

179. New section 52ZQ allows the Secretary of State to make regulations concerning the conduct of referendums. It also allows the Secretary of State to make provision in regulations to combine polls where more than one referendum on a council tax increase is being held or where other elections or referendums are being held.

#### **New sections 52ZR to 52ZW: Directions**

180. New sections 52ZR to 52ZW make provision for a situation in which an authority is in financial difficulty. Under new section 52ZR if it appears to the Secretary of State that an authority will be unable to discharge its functions in an effective manner, or unable to meet its financial obligations unless it sets a council tax increase which exceeds the principles determined under new section 52ZC, the Secretary of State may direct that the referendums provisions do not apply to the authority for a financial year. In the case of the Greater London Authority, a direction may be given where it appears to the Secretary of State that one or more of the Greater London Authority's constituent bodies will be unable to discharge its functions in an effective manner or one or more of the bodies will be unable to meet its financial obligations unless it sets a council tax increase which exceeds the principles. The Greater London Authority's constituent bodies are the Mayor of London, the London Assembly or a functional body. For the Greater London Authority, a direction may only be given after the authority has calculated its council tax for the financial year. For other authorities, a direction may also be given before the authority has calculated its council tax for the financial year. A direction may not be given in any case where an authority's relevant basic amount of council tax for the financial year has been rejected in a referendum.
181. Under new sections 52ZS and 52ZT, where a direction is given to a billing authority or a major precepting authority other than the Greater London Authority, the direction must state the amount that is to be the authority's council tax requirement for the financial year. Where the direction is given before the authority has calculated its council tax, the authority is required to comply with the Secretary of State's direction when calculating its council tax for the financial year. If the direction is given after the authority has calculated its council tax the authority must make substitute calculations to comply with the direction.
182. Under new section 52ZU, where a direction is given in relation to the Greater London Authority, the direction must state the amount that is to be the council tax requirement for the relevant constituent body. The Greater London Authority must then make

substitute calculations in relation to the relevant constituent body to comply with the direction and it may also make substitute calculations for other constituent bodies. Where the substitute calculations result in an increase in the consolidated council tax requirement for the Greater London Authority, or the council tax calculations made for the Greater London Authority would differ from the last relevant calculations made, the Greater London Authority must make substitute calculations. The increase in the Greater London Authority's consolidated council tax requirement as a result of the substitute calculations must not exceed the increase which was required to be made to the component council tax requirement for the relevant constituent body to comply with the direction.

183. New section 52ZV provides that where a direction is given in relation to a local precepting authority, the direction must state the amount that is to be the amount of the local precepting authority's council tax requirement for the financial year. This amount is to be treated as the authority's council tax requirement for the year.
184. New section 52ZW sets out the time period in which an authority must make substitute calculations where it is required to do so after a direction has been issued. Where a billing authority fails to make the required calculations within the time period stated it will have no power to transfer any amount from its collection fund to its general fund. This restriction will continue to apply until the authority makes the required substitute calculations. Where a precepting authority fails to make the required substitute calculations within the relevant time period, no billing authority to which it has power to issue a precept will be able to pay anything in respect of a precept issued until the precepting authority makes those calculations and issues any precept that is required to be issued in substitution.

#### **New section 52ZX: Meaning of relevant basic amount of council tax**

185. New section 52ZX sets out the meaning of an authority's relevant basic amount of council tax and how this should be calculated. Two different definitions of the relevant basic amount of council tax are applicable to the area of the Greater London Authority. The unadjusted relevant basic amount of council tax relates to the area of the Greater London Authority in relation to which the special expense of the Mayor's Office for Policing and Crime does not apply. The adjusted relevant basic amount of council tax relates to the part of the Greater London Authority's area to which the special expense of the Mayor's Office for Policing and Crime does apply.

#### **New section 52ZY: Information for purposes of Chapter 4ZA**

186. New section 52ZY provides that the Secretary of State may require an authority to supply information for the purpose of the performance of the Secretary of State's functions under this Chapter. Where an authority fails to comply, the Secretary of State may exercise those functions based on such estimates and assumptions as the Secretary of State sees fit. The Secretary of State may also take account of any other available information.

#### **Schedule 6: Council tax referendums: further amendments**

187. Schedule 6 of the Localism Act makes further amendments in relation to council tax referendums. In particular, it amends Chapter 4A of the Local Government Finance Act 1992 which deals with the limitation of council tax and precepts so that the Secretary of State will no longer have the power to cap council tax increases and the provisions of this Chapter will only continue to apply in relation to Wales.
188. A number of other amendments are made in the Schedule. Paragraph 37 amends Schedule 6 to the Greater London Authority Act 1999 so that the procedure for determining the Greater London Authority's consolidated council tax requirement includes a duty to prepare and approve a substitute consolidated council tax requirement. This duty will apply if the amount determined as the Greater London

Authority's consolidated council tax requirement for the year results in a relevant basic amount of council tax which does not comply with the principles approved under new section 52ZD. The amount determined as the authority's substitute consolidated council tax requirement under Schedule 6 will be used when the Greater London Authority makes substitute calculations under new section 52ZJ.

### ***Sections 73 to 79 - Local authority requisite calculations***

189. **Sections 73 to 79** amend the calculations ("the requisite calculations") which billing authorities, major precepting authorities and local precepting authorities in England must make to determine their basic amounts of council tax for a financial year. The principal effect of these sections is to replace the obligation to calculate a budget requirement for a financial year with an obligation to calculate a council tax requirement. This change has been made possible in relation to England by the repeal of the Secretary of State's power to cap an authority's budget requirement (see generally paragraphs 4 to 28 of Schedule 6) and the introduction of referendums in relation to council tax increases (see section 72 and Schedule 5).
190. Under previous legislation an authority's budget requirement for a financial year was the amount that the authority requires from council tax, revenue support grant, redistributed non-domestic rates and certain other income sources in order to finance its budget for the year. Powers in the Local Government Finance Act 1992 and the Greater London Authority Act 1999 were used to make annual Alteration of Requisite Calculations Regulations in relation to England the purpose of which was to ensure that the requisite calculations for local authorities in England operate appropriately each financial year. In particular, those Regulations ensured that the correct items were taken into account in the respective calculations of an authority's budget requirement and its basic amount of council tax.
191. The changes made by sections 73 to 79 place local authority requisite calculations on a simpler footing and avoid the need for regulations each financial year.
192. Under the new provisions an authority's council tax requirement for a financial year is the amount that the authority requires from council tax alone in order to finance its budget for the year and this amount is used to calculate the authority's basic amount of council tax. This approach simplifies the council tax calculations, since it avoids the need to deduct revenue support grant, redistributed non-domestic rates and the other income sources from the authority's budget requirement before the authority's council tax is calculated.
193. The new provisions also make explicit reference to "proper practices". Proper practices for these purposes are the accounting practices that govern the preparation of local authorities' annual accounts. Including references to proper practices in the requisite calculations simplifies and clarifies the operation of those calculations.

### ***Section 73 – References to proper accounting practices***

194. **Section 73** amends the definition of "proper practices" in section 21 of the Local Government Act 2003 so that that section applies to the Local Government Finance Act 1992 and the Greater London Authority Act 1999. This amendment enables the term "proper practices" to be used in the amendments which are made to those Acts by sections 74 to 79.

### ***Section 74 – Council tax calculations by billing authorities in England***

195. **Section 74** inserts new sections 31A and 31B into the Local Government Finance Act 1992. In relation to England these provisions replace sections 32 and 33 of that Act which require a billing authority to calculate its budget requirement and basic amount of council tax for a financial year.

196. New section 31A requires a billing authority to calculate its council tax requirement each financial year. A billing authority is required to calculate its expected outgoings and income for the year under new section 31A(2) and (3). Where the authority's expected outgoings exceed its expected income the difference is the authority's council tax requirement for that year (new section 31A(4)).
197. New section 31A(5) to (9) specifies rules in relation to the calculations and new section 31A(10) enables the Secretary of State to alter the calculations and the rules by regulations. The calculations must be made before 11th March in the financial year preceding that to which they relate (new section 31A(11)).
198. New section 31B(1) requires a billing authority to calculate its basic amount of council tax for the year by dividing its council tax requirement by its council tax base. A billing authority's council tax base must be calculated in accordance with regulations made by the Secretary of State (new section 31B(3)) and this amount must be notified to the major precepting authorities that have power to issue precepts to the billing authority within the prescribed period (see the definition of item T in new section 31B(1)).

### ***Section 75 – Council tax calculations by major precepting authorities in England***

199. **Section 75** inserts new sections 42A and 42B into the Local Government Finance Act 1992. In relation to England these provisions will replace sections 43 and 44 of that Act which require a major precepting authority (other than the Greater London Authority) to calculate its budget requirement and basic amount of council tax for a financial year.
200. The provisions operate in a similar way to new sections 31A and 31B inserted by section 74 of the Localism Act. New section 42A requires a major precepting authority to calculate its council tax requirement each financial year. A major precepting authority is required to calculate its expected outgoings and income for the year under new section 42A(2) and (3). Where the authority's expected outgoings exceed its expected income the difference is the authority's council tax requirement for that year (new section 42A(4)).
201. New section 42A(5) to (10) specifies rules in relation to the calculations and new section 42A(11) enables the Secretary of State to alter the calculations and the rules by regulations. The calculations must be made before 1st March in the financial year preceding that to which they relate (see section 41(4) of the Local Government Finance Act 1992).
202. New section 42B(1) requires a major precepting authority to calculate its basic amount of council tax for the year by dividing its council tax requirement by its council tax base. A major precepting authority's council tax base is the aggregate of the amounts which are calculated by the billing authorities to which the authority issues precepts as their council tax bases for their areas or parts of their areas (see the definition of item T in new section 42B(1)). These calculations must be made in accordance with regulations made by the Secretary of State (new section 42B(3)).

### ***Section 76 – Calculation of council tax requirement by the Greater London Authority***

203. **Section 76** amends sections 85 and 86 of the Greater London Authority Act 1999.
204. Previously section 85 of the 1999 Act required the Greater London Authority to calculate component budget requirements for each of the constituent bodies and a consolidated budget requirement for the Greater London Authority as a whole. That section is amended so that the Greater London Authority is instead required to calculate component and consolidated council tax requirements (see generally section 76(1) to (9) of the Localism Act). As with other major precepting authorities the calculations must be made before 1st March in the financial year preceding that to which they relate (see section 41(4) of the Local Government Finance Act 1992)

205. Section 86 of the Greater London Authority Act 1999 specifies rules in relation to the calculations made under section 85 of that Act. Those rules are amended in consequence of the amendments made to sections 85, 88 and 89 of that Act (see generally section 76(10) to (15) of the Localism Act).
206. In particular, new subsections (4D) to (4F) of section 86 of the Greater London Authority Act 1999 enable the Secretary of State to prescribe amounts of grant which the Greater London Authority must use in making calculations in respect of the Mayor's Office for Policing and Crime<sup>2</sup> under section 85 of that Act. These new subsections have been inserted as a result of amendments to sections 88 and 89 of the Greater London Authority Act 1999 and the changes are more fully explained in relation to section 77 below.

### ***Section 77 – Calculation of basic amount of council tax by the Greater London Authority***

207. **Section 77** makes amendments to sections 88 and 89 of the Greater London Authority Act 1999 and the way in which the Greater London Authority calculates its basic amounts of tax under those sections. These amendments are consequential to the amendments made by section 76 of the Localism Act.
208. The Metropolitan Police Authority (currently) exercises functions in relation to the metropolitan police district. That area constitutes part only of the Greater London Authority's area and as a result the Greater London Authority is required to calculate two basic amounts of council tax-
- a basic amount (calculated under section 88 of the Greater London Authority Act 1999) for that part of its area which is outside the metropolitan police district, and
  - a basic amount (calculated under section 89 of the Greater London Authority Act 1999) for that part of its area which is within the metropolitan police district.
209. As previously drafted the basic amount calculated under section 88 of the Greater London Authority Act 1999 does not include the component budget requirement of the Metropolitan Police Authority, whereas that calculated under section 89 of that Act does.
210. In addition, the Greater London Authority Act 1999 enables the Secretary of State to prescribe amounts in relation to certain grants which represent the portion of those grants which relate to defraying the Metropolitan Police Authority's budget requirement in whole or in part (see items P1 and P2 in sections 88(2) and 89(4) of that Act). In other words, the Secretary of State is able to prescribe amounts of grant which the Greater London Authority must allocate to the Metropolitan Police Authority.
211. The amendments to section 88 of the Greater London Authority Act 1999 (see section 77(1) to (5) of the Localism Act) alter the way in which the basic amount of council tax is calculated under that section. The basic amount of council tax under section 88 is calculated by dividing the Greater London Authority's consolidated council tax requirement by the Greater London Authority's council tax base for the whole of its area. However, the council tax requirement of the Mayor's Office for Policing and Crime<sup>3</sup> is excluded from the calculation (see generally new subsection (2) of section 88 of the Greater London Authority Act 1999).
212. The amendments to section 89 of the Greater London Authority Act 1999 (see section 77(6) to (9) of the Localism Act) also alter the way in which the basic amount of council tax is calculated under that section. What in effect is the basic amount of council tax payable in respect of the Mayor's Office for Policing and Crime is calculated

---

<sup>2</sup> The Police Reform and Social Responsibility Act 2011 will transfer the functions currently exercised by the Metropolitan Police Authority to the Mayor's Office for Policing and Crime.

<sup>3</sup> As mentioned above, the Metropolitan Police Authority is to be replaced by the Mayor's Office for Policing and Crime.

by dividing the council tax requirement for that body by the council tax base for the metropolitan police area (see generally new subsection (4) of section 89 of the Greater London Authority Act 1999).

213. As part of the amendments made by sections 76 and 77 of the Localism Act, items P1 and P2 are omitted from sections 88 and 89 of the Greater London Authority Act 1999 and replaced by new subsections (4D) to (4F) of section 86 of that Act. These new subsections will play a similar role in relation to the calculations for the Mayor's Office for Policing and Crime as items P1 and P2 currently play in relation to the calculations for the Metropolitan Police Authority.

### ***Section 78 – Council tax calculations by local precepting authorities in England***

214. **Section 78** inserts new sections 49A and 49B into the Local Government Finance Act 1992. In relation to England these provisions will replace sections 50 and 51 of that Act which require a local precepting authority to calculate a budget requirement for a financial year and enable such an authority to make substitute calculations for that year.
215. New section 49A requires a local precepting authority to calculate its council tax requirement each financial year. A local precepting authority is required to calculate its expected outgoings and income for the year under new section 49A(2) and (3). Where the authority's expected outgoings exceed its expected income the difference is the authority's council tax requirement for that year (new section 49A(4)).
216. New section 49B enables a local precepting authority to calculate a substitute council tax requirement for a financial year, but the substitute calculations have no effect if the amount calculated would exceed that previously calculated by the authority.

### ***Section 79 – Council tax: minor and consequential amendments***

217. **Section 79** and Schedule 7 make a number of minor and consequential amendments to other enactments as a consequence of the provisions in sections 73 to 78. In particular, a number of provisions in the Local Government Finance Act 1992 are amended so that they apply in relation to Wales only.

### ***Section 80 – Council tax revaluations in Wales***

218. **Section 80** amends the Local Government Finance Act 1992 to provide the Welsh Ministers with the power, by order, to determine the timing of council tax revaluations in Wales, rather than being bound to the timetable for Wales currently set out by the Local Government Finance Act 1992. This provides the Welsh Ministers with the option to cancel the planned 2015 council tax revaluation in Wales. The orders are subject to the affirmative resolution procedure in the Assembly.