

## ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

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| 1. | Meeting:     | Cabinet   |
| 2. | Date:        | 8 <sup>th</sup> September 2010  |
| 3. | Title:       | <b>The Council's Response to the DCLG Consultation Paper on Local Referendums to Veto Excessive Council Tax Increases</b> |
| 4. | Directorate: | Chief Executive's   |

### 5. Summary

A Consultation paper on Local Referendums to veto excessive Council Tax increases was issued on 30th July by the DCLG. The paper seeks views on the practicalities of implementing local referendums on Council Tax increases at all levels of authority including parishes. Authorities' views on 11 questions are requested by email by 10th September 2010. The Council's proposed response is attached as **Appendix A**.

### 6. Recommendations

That Cabinet:

- That the proposed response to the Consultation Paper be approved as attached at Appendix A.

## 7. Proposals and Details

In line with the policies announced in the Coalition Programme for Government published in May 2010, the Department for Communities and Local Government (DCLG) issued a Consultation Paper on local referendums on Council Tax increases on 30th July for responses by 10th September 2010. Responses are requested by email. The document is a technical consultation seeking views on the practicalities of implementing Council Tax Referendums. In the introduction the Coalition Government expresses its commitment to abolishing capping “and giving local people a stronger role in determining annual increases...” in Council Tax. It is intended to introduce legislation to achieve this at the earliest opportunity.

### The Current System

The Council Tax, a tax on the capital value of domestic properties was introduced by the Local Government Finance Act 1992 and is the main source of locally raised income for local authorities. For Council Tax purposes, authorities fall into 2 categories:

- Billing authorities (like Rotherham) which issue bills and enforce collection; and
- Major precepting authorities (e.g. the Police and Fire authorities) and local precepting authorities such as; town and parish councils, which issue precepts to billing authorities for the collection of Council Tax on their behalf.

### Existing Powers

Capping powers have been used by successive governments to limit increases in taxes where “these have been judged to be excessive”. The current powers were inserted into the 1992 Act by the Local Government Act 1999 and have been used against 36 authorities. In order to take capping action the Secretary of State (SoS) must:

- a. Determine whether “the amount calculated by an authority as its budget requirement is excessive”. This is done in accordance with a set of principles. One of these principles will apply to the budget requirement and in practice there has always been at least one other principle based on Council Tax increases.
- b. If an authority sets a budget requirement considered to be excessive the Secretary of State may either - designate the authority for the year in question requiring the authority to re-bill or nominate the authority. This latter process allows the authority to be designated in advance for the subsequent financial year or set a notional budget for the year in question which will be used as the basis for measuring rises in following years and deciding whether they are excessive.

### Problems with the Present system:

1. Under the current regime central government policy has been to set capping principles after authorities have determined their budgets - meaning that they cannot be certain whether or not they would be capped.
2. Parish Precepts have been increasing more rapidly than those of English Councils in the last 5 years and these have not been covered by the current capping regime.

### **Government Proposals**

The Government intends to “introduce legislation at the earliest opportunity” to require both billing and precepting authorities setting an excessive Council Tax increase to hold a referendum. The rules will apply to billing, local precepting and major precepting authorities (and to directly elected Police and Crime Commissioners). The key elements of the proposed scheme are quoted as:

- The Secretary of State (SoS) will have the power each year to determine a principle based on “a comparison of an authority’s level of Council Tax with the level in the previous year”. It will be possible to determine different sets of principles for different categories of authority and to set additional principles. Using the previous year’s Council Tax level means that care will have to be taken in respect of Collection Fund Balances - a large change in the sums used could trigger capping.
- The capping rules (principles) will be published for the House of Commons to approve. If the rules are approved, any authority planning an excessive tax rise will be required to prepare a shadow budget based on the maximum increase allowed by the principles. It will also be necessary to “inform the SoS by notice” (the format of the notice and the time frame allowed is not given). In effect authorities will need to develop 2 budgets - the second one reflecting the capping and given the timescales discussed below it may be necessary to identify additional savings to allow for the delay in implementing a revised budget.
- Any billing or precepting authority (including local precepting authorities) which exceeds the principles will be required to hold a referendum of all registered local electors. Local authorities will be free to hold referendums at any point once the rules have been approved by the Commons but they “...must take place no later than the first Thursday in May, to ensure that the process is not subject to delay” and to give authorities some certainty over the new year’s budgets.  
This timetable would still mean that authorities could be 5 or 6 weeks into the year before they have confirmation of their budget.
- Authorities proposing “excessive increases” will be required to prepare “supporting factual material setting out the proposed Council Tax and Budget

and the comparative non-excessive council tax and shadow budget and the estimated cost of holding the referendum” to be sent out at the same time as bills to Council Taxpayers. The information will be sent with polling cards to every registered local elector. The relevant authority “would be prohibited from campaigning on the issue but local councillors will “of course be free to make the case for an excessive increase”.

- If the proposed tax rise is rejected the authority would adopt the shadow budget and reduce transfers from the Collection Fund. The authority would also be required to inform the SoS by notice. The billing authority would be able to issue new bills, offer credits at the end of the year or allow credits against liability in the following year, “however billing authorities will be required to refund and rebill any local resident who requests this”.
- It is indicated that there would only be one referendum in each area but a separate vote for each element of the overall tax bill.

## Timetable

The proposed timetable that would lead to a referendum is set out below:-

- **November/December** - As a matter of policy it is proposed that the principles will be published at around the same time as the Provisional Local Government Finance Report in late November or early December so both can be debated in Parliament at the same time.
- **December to March** - Budgets will be drawn up in the same time frame as at present.
- **January/February**- Consultation on the Provisional Local Government settlement will end in January and the allocations will be announced in February.
- **14<sup>th</sup> February** - Deadline for levying bodies to set their levy. Major precepting bodies set their budgets (and if necessary shadow budgets) by 1<sup>st</sup> March. Billing authorities set their budgets by 11<sup>th</sup> March and send out tax bills and if necessary details of the referendum.
- **May** - Referendum held by first Thursday. Billing authority releases results of referendum - sends our details of new budget and refunds (if necessary) and charges relevant authorities for the cost of the referendum. Authority concerned moves to shadow budget.
- **Year end** - Refunds paid to residents where necessary.

## Double Lock

A de minimis rule would apply excluding authorities where either a. the increase in basic amount of Council Tax is below a defined amount **or** the total income generated is below a fixed level. This will protect authorities where there is a high

increase which will not generate large sums of income. The SoS may also be given discretion to apply different sets of principles to different categories of authorities. The examples quoted relate to the impact of formula grant or service types but it could, as at present, also apply to authorities which have previously had to reduce their budgets.

### **Operation of Referendums**

It is intended that the referendum franchise will be extended to all local electors - not just those paying Council Tax as all will benefit from local services (although it excludes tax payers who do not have the right to vote in local elections). The referendum will be modelled on the provisions for mayoral referendums which would:

- Place restrictions on the steps taken and the expenditure incurred;
- Specifies a time period for the referendum;
- Sets out the structure of the questions; and
- There would be no minimum requirement for turnout and the issue will be decided on a simple majority.

### **Abolition of Capping**

The referendums will provide a direct link between local residents and local authorities spending decisions. It is intended to repeal the relevant section of the 1992 Act but until the provisions for referendums are in place the Government “reserves the option to use existing capping powers”. The 1992 Act also required authorities to calculate a budget requirement - the Government is consulting on whether there is a need to retain this requirement or if it should be repealed with capping.

### **Questions for Consultation**

The paper sets out 11 questions on the mechanics of the process these are mostly focused on the practicalities holding referendums etc. Mags Evers, Chief Elections and Electoral Registration Officer attended a recent meeting of the Electoral Services Managers of several West & South Yorkshire Authorities which produced a draft group response, the emphasis of which was to ensure that elections and referendums are run as democratically as possible, that the interests of electors are put above all else when legislation is prepared and to consider the practical implications of the process in running a local referendum. The Electoral Services Managers’ response and comments from Financial Services have been incorporated in the Council’s proposed response at **Appendix A**.

## **8. Finance**

There are no financial implications arising directly from this report, however should the proposals in the Consultation Paper be implemented they would have implications for the Council’s budget setting process and also the uncertainty around a referendum on a precepting or Parish authority’s Tax could result in delays to payments to the Council with consequent cash flow and collection losses.

## **9. Risks and Uncertainties**

Although electoral managers have identified several practical issues and concerns in respect of implementing referendums, it is nevertheless likely that the proposals will be implemented in some form. The Consultation Paper itself states that the proposals are part of the rebalancing of the role of the central state and local communities, wherever possible empowering local communities and legislation to achieve this will be introduced at the “earliest opportunity”.

The Parliamentary processes involved mean that the proposals will probably take effect for the financial year starting April 2012, with the current capping regime being maintained in the meantime. It is not clear how these proposals would interact with the Coalition Government’s proposal to implement a freeze on Council Tax from April 2011.

## **10. Policy and Performance Agenda Implications**

The proposals are intended to give local people a stronger role in determining annual increases in tax. If implemented the removal of the current capping arrangements, which is to be welcome, and the introduction of Local Referendums would require the approach to setting the Council’s annual Revenue Budget to be reviewed and revised. As they stand, the proposals have the potential to require the Council to hold referendums in respect of increases in the Council Taxes charged precepting authorities (like the Police and Fire and Rescue Authorities) and Parishes over which it has no control. These referendums could result in increased uncertainty around the Council’s own budget and expose it to the risk of delays in Council Tax collection.

It is not clear how delivering policy priorities will factor in to the setting of the principles that would set the level to trigger a referendum, or if it would be a crude percentage financial measure.

## **11. Background Papers and Consultation**

There is no indication in the consultation paper that the Secretary of State will consult outside parliament, including the Local Government Association, when seeking to set the principles that would lead to triggering a referendum.

## Background papers

- Local Referendums to Veto Excessive Council Tax Increases - A Consultation Paper - issued by DCLG 30 July 2010.
- Collective Response by Electoral Services Managers from Barnsley MBC, City of Bradford Council, Calderdale MBC, Doncaster MBC, Kirklees MBC, Leeds City Council, Rotherham MBC, Sheffield City Council and City of Wakefield Council August 2010.

## **Contact Names:**

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## APPENDIX A

### **PROPOSED RESPONSE TO CONSULTATION ON LOCAL REFERENDUMS TO VETO EXCESSIVE COUNCIL TAX INCREASES**

1. *Do you agree that local precepting authorities, such as town and parish councils, should be included with the provisions for council tax referendums? If so,*

- *Are there details about the budget setting process for local precepting authorities which need to be taken into account?*
- *Will the “double lock mechanism work to protect the majority of town and parish councils?*

As the creation of the “double lock” mechanism indicates many parish and town councils set relatively small precepts and it would seem to be excessive to include them within the provisions for council tax referendums.

2. *Are the Local Authorities (Conduct of Referendums) (England) Regulations 2007 the right model for organising and administering council tax referendums?*

This would be the correct model if the referendums are to be the responsibility of the (Local) Returning Officer but we are aware there are other models which could be considered e.g. that used in relation to Business Improvement District Ballots. However, if council tax referendums are to be held on the same day as local elections on the first Thursday in May, then legislation that mirrors that used for those elections would be the best option i.e. the above mentioned Regulations, and in order to ensure a consistency of approach there should be an overall oversight from the (Local) Returning Officer.

One concern with the proposals is that some Parish and Town Councils have difficulty in meeting the current deadlines for notifying the Council of their budgets resulting in figures arriving late or having to be estimated. This problem would be compounded if their precepts were subject to restriction.

3 *Are there any practical difficulties in requiring council tax referendums to take place no later than the first Thursday in May?*

The main difficulty surrounding this deadline is the uncertainty in relation to combination of elections. Combination presents a number of complications and electoral administrators need to know well in advance of an election if they are to be combined. Given that local authority budgets are not set until late February/early March and that Notice of Election is given 25 working days before polling (usually around 28 March) this makes effective project planning nearly impossible. Evidence of this can be found in a number of post election reports and feedback following the uncertainty surrounding the recent combination of the Parliamentary Election with local elections earlier this year. There are specific issues particularly surrounding printing of poll cards,



preparation of postal voting packs etc. which have an enormous impact on election printing suppliers as well as electoral administrators.

We would particularly draw attention to the conclusions made by Ron Gould in his report into the Scottish elections in 2007 which addressed a number of issues in relation to combination: 'We obviously recommend that all those with a role in organising future elections consider the voters' interests above all other considerations'<sup>1</sup>

**4** *What are the advantages and disadvantages of holding a council tax referendum on the same day as another local referendum, or jointly with a local and/or general election? Current regulations allow for higher expenses per elector in a referendum than in a local election – would this raise any concerns if both votes are held on the same day?*

It can be argued that holding a number of elections on the same day is better for the electorate in that they need only turn out once to a polling station and that turnout for any referendum would be increased if it is held with other polls. However, electoral administrators are well aware how much more confusing combined polls are, even when those polls are similar e.g. in our area last May when voters were voting for one candidate on the parliamentary paper and one candidate on the local government paper it was very apparent in polling stations that many electors arrived thinking they were just voting in the parliamentary election. This resulted in staff having to explain the two ballot papers, all very time consuming.

In 2012, when we presume the first council tax referendums may be held, as well as Local Elections in metropolitan areas there could well be the first Police Commissioner elections and elections of Directly Elected Mayors in 12 cities (this includes Leeds, Bradford, Sheffield and Wakefield in our area). Add to this a council tax referendum and we feel that there would be wholesale confusion in the polling stations and in people's homes when those who had applied would receive up to four different postal ballot papers. In addition to this, these proposals support a number of questions on one ballot paper on the council tax budgets of possibly more than one local precepting authority, which would add further to the difficulties for electors. We are also concerned that we would need to plan for a number of different methods of counting all presumably to be held within 24 hours of the poll. A council tax ballot paper which gives a number of questions, all to be answered 'yes' or 'no' but not all necessarily covering the same electorate e.g. a question on the Police Authority and one on an individual Parish, means a highly complicated count process in addition to counts already being held for other elections. It is important to note that all ballot papers at combined elections must be verified (a very long process) before any individual count can commence. Any further increase in the number of combined elections adds to the already significant risks surrounding the count process and increases the possibility of challenge in the courts.

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<sup>1</sup> [http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/23\\_10\\_07\\_votereport.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/23_10_07_votereport.pdf)

Past experience also shows that any additional ballot takes away from the importance of the other elections held that day; but more importantly it is a recipe for elector confusion.

It is perhaps obvious but important to note that any such referendums would have to be run on a local authority basis (rather than parliamentary constituency basis for example).

We presume the part of this question about expenses relates to those allowed to candidates or campaigning groups and feel this is not a question to which we should respond.

**5** *What provision, if any, should be made for properties where the council tax payer is not a local elector?*

Any referendum which allows, for example, in two similar banded properties where the same Council Tax is paid, only one vote in a property with a sole occupant and possibly seven or eight votes in a similar house in multiple occupation cannot be fair. It is the basic principle of 'one person, one vote' but with equal weighting which is fundamental to our democracy in the UK and these proposals do not consider that right.

There are a significant number of other issues of similar nature e.g. foreign nationals who do not appear on the register of electors but pay council tax; students who would have a vote but do not pay council tax; etc.

We would also be concerned, as mentioned in the question, with regard to absentee landlords who do not live in the area and people who have holiday homes in an area and pay council tax but are registered to vote elsewhere (there will be other categories). The register of electors is the fundamental base to the practical running of an election and this would apply under the Local Authorities (Conduct of Referendums) (England) Regulations 2007.

The Electoral Registration Officer has no access to any other information and no means of collecting it under current legislation.

This would necessitate a major change to electoral registration law to collect information regarding every person over 18, regardless of nationality and not necessarily living in the area, and there would be a number of complex difficulties in maintaining such an extended electoral register.

**6** *Does the timetable at Annex A provide sufficient stability and certainty for local authorities in planning their budgets? Does it provide sufficient time to organise and administer referendums?*

Part One - in terms of the budget setting timetable the proposals are broadly similar to the current arrangements and should not therefore cause additional difficulties for authorities.

Part two - this is the primary concern of electoral administrators in relation to these proposals. The coalition government has a number of plans to increase the number of elections: a referendum on the AV system; proposals for an elected chamber in the House of Lords; elections to Police Management Boards. All of these are likely to take place on the first Thursday in May at

varying times over the next few years and be held at the same time as local elections of varying descriptions.

We do not feel that it is possible to plan effectively for elections if we do not know until March which elections will be combined. Once again the Gould report<sup>2</sup> was clear on this matter '.....To avoid these problems, we would recommend a practice found in the electoral laws in other countries. These laws provide that electoral legislation cannot be applied to any election held within six months of the (new) provision coming into force.'

The reasons supporting our view are varied and many but include our ability to provide poll cards to inform electors correctly about elections taking place in good time to enable them to apply for postal votes; the preparation of postal voting packs – most authorities now have upwards of 15% of people who vote by post; (Rotherham has 25%) the ability of suppliers to make adequate plans for production of poll cards, postal vote packs and ballot papers; effective planning and preparation for counts including booking appropriately sized venues in advance of elections.

We feel that it is not realistic to propose questions regarding the council tax proposals of different precepting authorities on one ballot paper particularly because of the difficulty in counting ballot papers bearing more than one question. The ballot papers would have to effectively be processed twice. There will be a desire by government and local authorities to minimise cost by combining such things as poll cards and postal vote packs but this can only lead to voter confusion given the different voting systems to be used. The consultation document also proposes that supporting information explaining the referendum should be sent with poll cards but we are concerned that there would be insufficient time to prepare this information to go out with the cards prior to the election.

There are also considerable training implications for staff who work in polling stations, often only once a year, in what will be an extremely complex process to administer if there are anything up to four elections/referendums on one day.

**7** *Is it right to give local authorities the discretion to issue new bills, offer refunds or allow credits against liability the following year?*

The DCLG is not clear on the costs of rebilling - who will meet them? For Rotherham the cost of rebilling Council Tax would be £75,000. Is it assumed that by having a shadow budget the spending plans and Council Tax will be set out for tax payers and there will be no need to issue new bills as taxpayers will already have the information? The uncertainty surrounding Council Budgets in the event of a referendum is likely to result in delays in payment and increased levels of arrears, which will not only result in cash flow losses but also require additional work to collect.

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<sup>2</sup> [http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/23\\_10\\_07\\_votereport.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/23_10_07_votereport.pdf)

- 8** *How should billing authorities treat bank interest earned on excessive increases that have been rejected in a referendum?*

The sumes here are likely to be minimal. Perhaps a more important question is to ask what compensation will be offered to a billing authority where payment is delayed and arrears rates rise because a precepting authority is holding a referendum which impacts on all payments?

- 9** *What practical difficulties, if any would there be for a billing authority seeking to recoup the cost of a referendum held on behalf of one or more precepting authorities?*

We feel it would be important to set out in law which costs could be recouped from the precepting authorities so that there is a consistent approach throughout the country. However, the complications surrounding sharing costs at a number of elections held on the same day should not be underestimated.

If these referendums are held under current electoral law it will be important that the costs are recouped by the (Local) Returning Officer.

- 10** *Are there any technical difficulties with the removal of alternative notional amount reports?*

None have been identified.

- 11** *With the abolition of capping is there any reason why authorities should be required to calculate a budget requirement each year?*

The BR1 return was required for capping. However, the 1992 Act set out how Council Tax was to be calculated and this uses the Budget Requirement. It is therefore unclear what benefit there would be in not requiring the calculation for capping purposes.