

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (CONDUCT OF REFERENDUMS) (COUNCIL TAX INCREASES) (ENGLAND) (AMENDMENT) REGULATIONS 2013

2013 No. 409

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 Authorities (Conduct of Referendums) (Council Tax Increases) (England) (Amendment) Regulations 2013 (“the Regulations”) amend the provisions governing the conduct of council tax referendums held under Chapter 4ZA of Part 1 of the Local Government Finance Act 1992 (“the 1992 Act”). Specifically, the regulations substitute the wording to be used in the council tax referendum question, and also make amendments to the ballot paper to be used in the referendum to reflect this revised wording.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 A referendum must be held under Chapter 4ZA of Part 1 of the 1992 Act where a billing authority, major precepting authority or local precepting authority in England determines that its relevant basic amount of council tax for a financial year (within the meaning of section 52ZX of the 1992 Act) is excessive.

4.2 “Billing authority” has the meaning given in section 1(2) of the 1992 Act and accordingly district councils, London borough councils, the Common Council of the City of London and the Council of the Isles of Scilly are billing authorities. Certain county councils will also be billing authorities where orders have been made under Part 2 of the Local Government Act 1992 (“the LGA 1992”) or Part 1 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) (see section 18(1) of the LGA 1992 and section 19 of the 2007 Act). “Major precepting authority” has the meaning given in section 39(1) of the 1992 Act and accordingly county councils, the GLA, police and crime commissioners and fire and rescue authorities are major precepting authorities. “Local precepting authority” has the meaning given in section 39(2) of the 1992 Act and accordingly the sub-Treasurer of the Inner Temple, the under-Treasurer of the Middle Temple, parish councils, parish meetings and Charter Trustees are local precepting authorities.

4.3 The question of whether the amount set as an authority's relevant basic amount of council tax for a financial year is excessive is to be decided in accordance with a set of principles determined by the Secretary of State for the financial year under section 52ZC of the 1992 Act. Any principles determined by the Secretary of State for a financial year must include a comparison between an authority's relevant basic amount of council tax for the year under consideration and the amount set by the authority in the preceding financial year (section 52ZC(3)). The principles must be set out in a report and approved by the House of Commons on or before the date on which the local government finance report for the year is approved under section 78A of the Local Government Finance Act 1988 (section 52ZD of the 1992 Act). This usually takes place in late January or early February of the financial year preceding the year under consideration.

4.4 Where a billing authority has determined that its relevant basic amount of council tax for a financial year is excessive it must make arrangements to hold a referendum before the first Thursday in May in the financial year (or such other date as is specified by order) (section 52ZG of the 1992 Act). Where the authority setting an excessive council tax increase is a precepting authority, it must notify each billing authority to which it issues precepts and those billing authorities will then be required to make arrangements to hold a referendum in relation to the precepting authority's relevant basic amount of council tax for the financial year on or before the first Thursday in May (section 52ZN of the 1992 Act). Where a precepting authority issues precepts to two or more billing authorities each of those billing authorities will be required to hold a referendum on the first Thursday in May (or such other date as is specified by order) and the result will be determined depending upon whether the major precepting authority's relevant basic amount of council tax is approved by a majority of persons voting in all of those referendums taken together (section 52ZO of the 1992 Act).

4.5 If an authority's relevant basic amount of council tax for a year is approved in a referendum, that amount continues to have effect for the year (section 52ZH(3) and 52ZO(3) of the 1992 Act). If it is not so approved, substitute calculations producing an amount of council tax which is not excessive by reference to the principles, will have effect (section 52ZH(5) and 52ZO(5) of the 1992 Act).

4.6 These regulations make amendments to the Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) Regulations 2012 ("the 2012 Regulations") (which make provision for the conduct of referendums held under Chapter 4ZA of Part 1 of the 1992 Act) to alter the wording of the question to be asked in a referendum.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State for Communities and Local Government, Brandon Lewis, has made the following statement regarding Human Rights:

In my view the provisions of The Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) (Amendment) Regulations 2013 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The Localism Act 2011 implemented the Government's policy to enable local electors in England to approve or veto excessive council tax increases in referendums and abolish central government capping powers. Where an authority sets a council tax increase in excess of a limit determined by the Secretary of State and approved by the House of Commons, a binding referendum must be held on that increase.

7.2 The 2012 Regulations provide for the conduct of those referendums to ensure that they are conducted effectively and consistently. In particular, they prescribe the wording of the question to be asked in the referendum and require the following question to appear on ballot papers:

Part of the council tax in your area goes to _____.
For the financial year beginning on 1st April ____ _____ has decided to increase the amount it charges by ____.

That decision is subject to the result of a referendum.

If most voters in _____'s area choose 'yes', the increase will be ____.
If most voters in _____'s area choose 'no', the increase will be ____.

Do you agree with _____'s decision to increase the amount it charges by ____?

7.3 The Electoral Commission had expressed concerns about the wording of this question following a period of consultation. In response to this, during Lords Grand Committee consideration of the Regulations on 14 February 2012, Baroness Hanham gave an undertaking that the Government would work with the Electoral Commission to agree revised wording for the referendum question in the Regulations. No council tax referendums were held in the financial year 2012-13 as no authorities set an amount of council tax in excess of the referendum principles determined by the Secretary of State. Accordingly, no referendums have been held using the wording of the question set out in the 2012 Regulations.

7.4 These Regulations substitute the wording to be used in the referendum question following further consultation with the Electoral Commission, and also make amendments to the ballot paper to be used in the referendum to reflect this revised wording.

The Referendum Question

7.5 Regulation 2 of, and Schedule 1 to the Regulations substitutes the wording of the question to be asked in the referendum, for a new form of wording.

7.6 Regulation 3 and Schedule 2 amend the ballot paper form to reflect this revised wording and provide that voters are to be asked the following question:

Part of the council tax in your area goes to _____.
For the financial year beginning on 1st April ____ _____ has set an increase of ____ in the amount it charges.

If most voters choose 'yes', the increase will be ____.
If most voters choose 'no', the increase will be ____ instead.

Do you want _____ to increase the amount it charges by ____?

- Consolidation

7.7 As these are only minor amendments it is not considered necessary to make a consolidated set of Regulations.

8. Consultation outcome

8.1 The Government has consulted the Electoral Commission, as required by section 52ZQ (6) of the 1992 Act.

8.2 Bob Neill MP, then Parliamentary Under-Secretary of State wrote to Jenny Watson, Chair of the Electoral Commission on 17 July 2012 seeking the Commission's view on a proposed revised wording of the referendum question. Peter Wardle, Chief Executive of the Electoral Commission replied on 31 July 2012. Mr Wardle set out the Commission's view that, on balance, the Commission is satisfied that the revised question wording is likely to be intelligible for voters and noted that the Government had now taken account of almost all the recommendations made in its assessment of the original referendum question.

8.3 Mr Wardle's letter highlighted some wider issues about the complexity of the issue at hand in a council tax referendum and the need for Government to ensure that fair and timely explanatory information is provided to voters who take part in any referendum. The

Government remains satisfied that the information provisions within the 2012 Regulations ensure that such information is provided.

- 8.4 The relevant correspondence between the Department for Communities and Local Government can be found at the following addresses.

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/151717/NeillB-to-WatsonJ-2012-07-17-Council-Tax-Referendum-Question.pdf

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/151716/WardleP-to-NeillB-2012-07-26-Revised-council-tax-referendum-question-comments.pdf

9. Guidance

9.1 The Department intends to provide updated explanatory information to local authorities to aid understanding of the revised referendum question as well as the wider points of procedure in the 2012 Regulations.

10. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

This instrument amends the wording of the referendum question that must be put to the local electorate in the event that an authority or Police and Crime Commissioner sets a relevant basic amount of council tax in excess of the principles set by the Secretary of State. It does not have an impact on authorities or Police and Crime Commissioners themselves.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department does not intend to put in place any formal mechanism for monitoring and reviewing the Regulations. The Department maintains dialogue and liaison with the Electoral Commission and the Association of Electoral Administrators. Any issues relating to the Regulations will be identified through these channels.

13. Contact

Nick Littlewood at the Department for Communities and Local Government can answer any queries regarding the instrument (Tel: 0303 444 2096 nick.littlewood@communities.gsi.gov.uk).