

Council Tax Referendums and Levying Bodies

Purpose of report

For information.

Summary

This report summarises a legislative change on bringing levies into the definitions used for council tax referendum purposes which is in the Local Audit and Accountability Bill, now being considered by the House of Lords.

Recommendation

That the Executive notes the response of officers and agrees to receive further reports as the measure progresses through Parliament.

Action

Officers to continue to liaise with DCLG officials and to report back to the Finance Panel.

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Council Tax Referendums and Levying Bodies

Background

1. The current law on council tax referendums was enacted through the 2011 Localism Act. It provides, in short, that if a council or major preceptor (such as a fire or police body) agrees a council tax increase above a limit set by the Secretary of State then they have to hold a referendum to agree it. The calculation for determining whether a referendum has been triggered currently excludes charges made to the authority's budget by levying bodies.
2. The law came into being in time for 2012-13 budgets to be set. Different principles were set in 2012-13 and in 2013-14. So far, no council or major precepting body has triggered a referendum. However, in the 2013/14 budget setting the exclusion of levies allowed a number of authorities to set headline Council Tax increases above the Secretary of State's limit of 2 per cent.
3. In the light of the experience in 2013, the Government has signalled that they intend to change the law in one important respect. This is included in clause 39 of the Local Audit and Accountability Bill which has now been introduced into the House of Lords with its second reading on May 22.
4. The proposed change would have the effect of bringing levies into the calculation for determining whether a referendum is required. This means that if a levying body increases its charge by more than the Secretary of State's prescribed level, the local authority would then have to absorb the additional cost by making additional cuts in order to avoid holding a referendum.
5. The clause also contains provision for those councils which set council taxes above 2 per cent in 2013/14 due to levies not being taken into account to have a different excessiveness principles applied to them in 2014-15, which would enable the Secretary of State to require these authorities in effect to take account of 2013/14 increases in levies in setting their 2014/15 budgets. This would affect eight authorities (Wandsworth, Bolton, Bury, Manchester, Oldham, Rochdale, Stockport and Tameside). In total, these authorities would have been able to raise £7.3 million less in council tax had the new law applied.
6. The change contemplated by the Department for Communities and Local Government (DCLG) officials will change the definition of 'relevant basic' so that it includes levies. The main levying bodies by type, those which levy the largest sums on authorities, are;
 - 6.1. Integrated transport authorities, affecting the Metropolitan Districts;
 - 6.2. Joint waste authorities, affecting some Metropolitan Districts and London Boroughs but not those who run their own waste disposal services;

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- 6.3. Environment Agency levies for flood defence, affecting Met Districts, London Boroughs, Counties and Unitaries;
 - 6.4. Residuary Pension Fund Authorities, affecting the former Met Counties and London; and
 - 6.5. Internal Drainage Boards, affecting Districts.
7. In addition, there are a large number of smaller levying bodies which operate across the country covering a wide range of purposes such as country parks, garden squares and commons.
8. This means that two otherwise similar authorities can be affected by this change in different ways. From that viewpoint, whether levies are included or excluded from the calculation, there will be some unfairness in the system. However, there is no known single list of levying bodies or the amounts they charge.

Issues

9. The different way in which authorities are affected means it is difficult for the LGA to have a definitive policy on whether levies should be in or out of the calculation. However, officers have taken the view that change to the law needs to be justified by an improvement in the current position for authorities in general. The proposed law change, in simply repositioning a problem, does not do this.
10. The key problem with including levies in the referendum calculation is that levying bodies are all, to a greater or lesser extent, only semi-accountable to local authorities and therefore to local electors. The degree to which local authorities can influence the decisions of levying bodies depends upon such factors as: the statutory terms under which they are established; the governance arrangements of each body; and how many other local authorities are involved.
11. This position is further complicated by the fact that many co-opted members who sit on levying bodies have been advised that they may not take the interests or views of their parent authority into account when considering matters relating to the levying body. This puts co-opted members into a difficult and potentially conflicted position.
12. Whilst it is a matter for individual levying bodies and local authorities to provide advice to members, and members who find themselves in this position should consult local officers, it is indeed the case that, when appointed to an external body, members' first and primary duty when acting in that role is to the body to which they have been appointed and they should act in that body's best interests. In relation to the draft legislation, it is therefore possible to envisage any number of circumstances in which this may lead to unresolvable conflicts. The Code of Conduct of some Council and indeed the Governance Framework of Levying Bodies may require elected members who sit on levying bodies to comply with their disclosure of such interests rules.

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13. Another issue is that it is possible to envisage circumstances in which levying bodies may have little choice but to increase a charge, for example in the event of a significant loss or an emergency. This may be most graphically illustrated by, for example, a case where an internal drainage board is required to carry out emergency repairs to prevent flooding and needs to raise finance accordingly. In that case, the related District would have the choice of either matching the increase from savings from its own services or putting the matter to a referendum.
14. Arguably a positive outcome from a change in legislation is that it could bring to the fore something which has been an issue in local government for many years; namely the status of levying bodies and how they can be brought within a democratic framework.

Response

15. LGA officers, together with officers from London Councils and Treasurers' Societies have been discussing the change with DCLG officials. We have been encouraging them to consult on the change more widely, particularly as we understand there are mixed views in local government on the desirability of including levying bodies in the calculation.
16. There is also an issue as to the extent to which councils themselves are able to change levies, or if they are passed through to them with little opportunity to change them (such is the case for example for the Environment Agency) and the extent to which levy increases may follow on changes which fit in with broader ministerial priorities (such as the City Deal in Greater Manchester).
17. The LGA has briefed peers on the Bill. We have made it clear that we are opposed in principle to the current council tax referendum legislation, as it means that the decision as to whether or not a council tax increase is excessive and a local referendum needs to be held is that of the Secretary of State. The LGA opposes this as a centrally imposed limit should not be included as local elections are the opportunity for people to pass judgement on their council.
18. Having said that, we are opposed to the new change, as including increases in levies set by outside bodies in the calculation of council tax referendum limits adds further uncertainty to council finances and could lead to further reductions in essential local services. We are also opposed to the retrospection included in the Bill as it is not fair on authorities which have taken decisions in good faith based on legislation in place at the time.
19. Levying bodies vary in size from integrated transport authorities and waste disposal authorities to commons conservators and garden squares. Appendix A includes a summary of the main levies, the basis on which they are set and the basis for their distribution.
20. We understand from DCLG officials that although Ministers' minds are made up as far as the policy is concerned, there are implementation issues that relate to when councils receive information from levying bodies and how levies are distributed (which can be on the basis of council taxbase or population) and that DCLG might look at consulting on these in order to smooth implementation.

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21. As suggested above, whilst there is no 'one size fits all' solution to this issue, officers propose that we continue to press for a review of levying bodies to ensure that they can be brought more closely into the accountability framework.
22. It should be noted that this legislative change does not cover local precepts – that is those set by parish and town councils. The Secretary of State already has powers to set principles to force parish and town councils to have referendums on council tax increases. However, he has not so far chosen to exercise this power.

Financial Implications

23. This is core work for the LGA and is contained within existing budgets.

Appendix A - Further detail on the main levying bodies

- a) Integrated Transport Authorities
- Boards formed of members from each authority, generally 2-3 per authority, under [Local Government Act 1985](#)
 - Apportioned on basis of population under [The Transport Levying Bodies Regulations 1992](#)
- b) Joint Waste disposal authorities
- Boards formed of members from each authority, numbers from each authority specified in Waste Regulation and Disposal Authorities Order 1985
 - Apportioned on basis of tonnage under [The Joint Waste Disposal Authorities \(Levies\) \(England\) Regulations 2006](#)
- c) Environment Agency
- Levies set by Regional Flood and Coastal Committees; these have a chair appointed by the Secretary of State plus 11-25 members of which no more than 11 are appointed by the EA, the remainder being appointed by constituent authorities [Regional Flood and Coastal Committees \(England and Wales\) Regulations 2011](#) The levy is voted for by the county and unitary members of the RFCC;
 - The levy is shared on the basis of council taxbase. See The Environment Agency (Levies) (England and Wales) Regulations 2011
- d) Internal Drainage Boards
- Elected board members under [Land Drainage \(Election of Internal Drainage Boards\) \(Amendment\) Regulations 1977](#)
 - Apportioned on basis of number of hereditaments under [Land Drainage Act 1991](#)
- e) Pensions Authorities (eg LPFA)
- Board of not less than 7 and not more than 11 members appointed by the Secretary of State, and at least half of the members excluding the chairman shall be appointed following consultations with such representatives of local government in London as appear to the Secretary of State to be appropriate.
 - Apportioned on basis of population under [The London Government Reorganisation \(Pensions etc\) Order 1989](#) (and other local legislation for other authorities).

For the different types of levies:

1. There are six ITAs, one in each of the English Met areas.
2. There are six joint waste authorities covering:
 - 2.1. Merseyside;
 - 2.2. Greater Manchester (excluding Wigan); and
 - 2.3. four in London covering 21 boroughs (the other London boroughs act as their own waste authority and don't pay a levy).

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3. Environment Agency Regional Flood and Coastal Committees (RFCCs) levy counties and unitaries.
4. Some pensions authorities – set up following the dissolution of the Greater London Council and Metropolitan Councils in the 1980s – the LPFA and South Yorkshire Pensions Authority issue levies.
5. Drainage boards levy District Councils.
6. The table below shows levies as % of total Council Tax Requirement. The vast majority of districts pay no levy or minimal levy but there are exceptions e.g. 54% of Boston's Council Tax Requirement is for drainage board levies.

Collection Authority	Levies and Special Levies 2013/14 as % of CTR
<u>CLASS TOTALS</u>	
Greater London	10%
Metropolitan Districts	28%
English Unitary Authorities	0%
English Shire/Districts	1%
England	11%
<u>REGIONAL TOTALS</u>	
South East (exc. London)	0%
Greater London	10%
East of England	1%
East Midlands	2%
North East	8%
North West	30%
South West	0%
West Midlands	12%
Yorkshire & the Humber	13%