

# LOCAL GOVERNMENT ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part II: Council Tax Regulation

##### *Section 30 and Schedule 1: Regulation of council tax and precepts*

69. *Section 30* of the Act inserts a new Chapter IVa into Part I of the Local Government Finance Act 1992, and provides for the new chapter to have effect from 1 April 2000. References to sections in what follows are references to the proposed new sections of the 1992 Act.
70. *Section 52A* defines the authorities which will be affected by this Chapter.
71. *Section 52B* gives the Secretary of State the power to take action against an authority (under *section 52D*) if he decides that its budget requirement for the year under consideration is excessive. The Secretary of State must determine a set of principles that will be used to decide if the budget requirement is excessive and this set of principles must contain a comparison of the budget requirement for the year under consideration with that of an earlier year. The Secretary of State may also determine categories of authorities and any principles applied to authorities must be the same for all authorities within the category. If the Secretary of State does not determine categories, the same set of principles must be used for all authorities.
72. *Section 52C* provides that the Secretary of State may set a notional amount for the budget requirement for an authority. It may be used to set a notional amount for an authority where there has been a change in function or boundary so that a valid comparison can be made with the budget requirement for the year under consideration. It may also be used to set a notional amount where there was no budget requirement set for an earlier year.
73. *Section 52D* enables the Secretary of State, if he decides that the budget requirement is excessive, to designate or nominate the authority.
74. *Section 52E* sets out the procedure that is followed if the Secretary of State designates an authority under *section 52D*. This is 'in year' designation and the procedure would normally start as soon as possible after the beginning of the financial year, in April or May.
75. The Secretary of State must notify the authority that it has been designated and inform it of the set of principles used to decide that its budget requirement was excessive and the category into which the authority falls. He will also state the amount which he proposes should be the maximum amount for the budget requirement for the year and the target amount for the budget requirement. The target amount is the maximum amount which the Secretary of State considers should be the budget requirement for the authority without it being excessive. In most cases it is expected that the maximum set for the year will be the same as the target amount. However, where the Secretary of State considers that the local authority should reduce its budget requirement over several years to reach

the target, he may set a different maximum for the year. The Secretary of State will also inform the authority when he expects it to reach the target amount (uprated as necessary e.g. because of inflation). The local authority then has 21 days to accept the maximum amount or challenge it and put forward an alternative.

76. *Section 52F* sets out the procedure if the local authority challenges the maximum amount. After the Secretary of State has considered any information put forward by the local authority he will inform the local authority of the amount which will be the maximum for its budget requirement of the year. The amount decided by the Secretary of State as the maximum for the year may not exceed an amount already calculated by the local authority, but may be greater or smaller or the same as that already notified by the Secretary of State under section 52E. He may also alter the target amount for the year. This may be necessary if he alters the maximum amount as future year designation is triggered if the budget requirement is above the target.
77. The maximum amount will be set out in an order which must be approved by resolution of the House of Commons. The local authority is then informed of the maximum amount in a notice.
78. *Section 52G* provides for the procedure if a local authority accepts the maximum amount. The Secretary of State simply sends the local authority a notice confirming the maximum amount.
79. *Section 52H* provides for what happens if the local authority does not challenge the maximum amount or accept it. The maximum amount will be set out in an order which must be approved by resolution of the House of Commons. The local authority is then informed of the maximum amount in a notice.
80. *Section 52I* provides for what a billing authority must do if it receives a notice informing it of the maximum amount. It must make substitute calculations so that its budget requirement is at or below the maximum amount.
81. *Section 52J* provides for what a precepting authority must do if it receives a notice informing it of the maximum amount. It must recalculate its budget requirement so that it is at or below the maximum amount.
82. *Section 52K* sets out the procedure that applies if an authority which has received a notice setting out the maximum amount fails to recalculate its budget requirement within 21 days, or 35 days in the case of the Greater London Authority. If it is a billing authority, it cannot transfer any resources from its collection fund to the general fund. Thus it cannot make use of any council tax collected. In the case of a precepting authority, the authority which collects council tax on its behalf has no power to transfer this money to it. These restrictions apply until the local authority has recalculated its budget requirement.
83. *Section 52L* provides for what happens if an authority is nominated rather than designated under section 52D. The Secretary of State informs the local authority that it has been nominated, the set of principles used to decide that its budget requirement was excessive and the category into which the authority falls. He also informs the local authority of the target amount for the budget requirement. It is expected that local authorities that are nominated would be informed of the nomination early in the financial year, around May or June.
84. Once a local authority has been nominated, the Secretary of State will decide whether to proceed under *section 52M* or under *section 52N*.
85. *Section 52M* sets out the procedure for an authority that is designated after being nominated. This is 'following year' designation and affects the year after the year under consideration. Generally it is expected that the local authority will be nominated at around the same time as in-year designation takes place, i.e. around May or June.

*These notes refer to the Local Government Act 1999  
(c.27) which received Royal Assent on 27 July 1999*

However, designation for the following year will not take place until around the time of the announcement of the provisional finance settlement i.e. November/December.

86. The Secretary of State will notify the authority of the designation, the amount which he proposes should be the maximum amount for the budget requirement for the following year, the target amount for the budget requirement for that year (which may be the same as the maximum amount) and when he expects the authority's budget requirement not to be excessive.
87. The Secretary of State will also inform the authority how long they have to challenge or accept the maximum amount. It is expected that the period will be timed to coincide with the end of the consultation period for the provisional local government financial settlement.
88. The authority may challenge the maximum amount and put forward an alternative or it may accept it.
89. Section 52N provides for the procedure if an authority is nominated by the Secretary of State but is not designated. Instead, the Secretary of State will determine an amount which will be taken as the notional budget requirement for the year under consideration. This notional amount will be used in any future years when making comparisons to decide whether or not the budget requirement in future years is excessive. The local authority will have 21 days in which to challenge this amount. At the end of the 21 days the Secretary of State will determine the notional amount (taking into account any challenge by the local authority) and notify the local authority. It would be expected that this would take place shortly after nomination, around June or July.
90. *Section 52P* sets out the procedure that will be followed if an authority is designated after it has been designated in a previous year. If an authority has been designated for a year, a maximum amount and a target amount will have been set. If the budget requirement set by the authority for the year is higher than the target amount, then this section operates and the local authority will be designated for the following year.
91. This procedure is the same as that described for section 52M because, as in that section, the authority is being designated for the following year. And again it is expected that this procedure will start at around the same time as the provisional local government finance settlement is announced, in November or December.
92. *Sections 52Q, 52R, 52S, 52T, 52U, and 52V* set out the procedures that will be followed once an authority has been designated for the following year. The procedures are very similar to those described for in-year designation. These sections set out what happens if the local authority challenges the maximum amount, accepts the maximum amount, or does not challenge or accept the maximum amount. They also provide that an authority must make substitute calculations once it receives a notice of the maximum amount and set out what happens if they fail to make substitute calculations.
93. *Section 52W* provides that the budget requirement should be calculated according to definitions set out in the Local Government Finance Act 1992 and the Greater London Authority Bill (when enacted).
94. *Section 52X* provides that, for the purposes of this Chapter, the budget requirement of a billing authority should be net of local precepts, as should the target amount and maximum amount set by the Secretary of State. However, the Secretary of State may, by order, provide that local precepts be included.
95. The Local Government Finance Act 1992 provides that billing authorities must set their budget requirement by 11 March and major precepting authorities must do so by 1 March. *Section 52Y* requires local authorities to provide the Secretary of State with their budget requirement seven days after it has been set. This information is needed by the Secretary of State to decide whether or not the budget requirement is excessive. The

billing authority must also inform the Secretary of State of any local precepts, as the Secretary of State needs to know what these are to work out the net budget requirement.

96. Capping powers in Wales under the 1992 Act are currently exercised by the Secretary of State for Wales. The Act provides that the National Assembly for Wales will exercise the new reserve powers to limit local authority expenditure in Wales. *Section 52Z* does three things to that end:
- *subsection 52Z(1)* provides for the new Chapter IVa of the 1992 Act to apply separately in Wales and England. Section 63(1) of the 1992 Act has a similar effect at the moment;
  - *subsection 52Z(2)* makes various modifications to Chapter IVa for Wales. They are explained in more detail below;
  - *subsection 52Z(3)* provides for any order made by the National Assembly for Wales under Chapter IVa to be in the form of a statutory instrument. The Assembly procedures for such instruments are set out in sections 64 to 68 of the Government of Wales Act 1998 and in its standing orders.
97. The modifications made by subsection 52Z(2) are:
- substituting the National Assembly for Wales for each reference to the Secretary of State (subparagraph 52Z(2)(a)). This ensures that the new reserve powers in Wales are exercised by the Assembly;
  - removing references to Parliamentary procedures (subparagraph 52Z(2)(b) and most of subparagraph 52Z(2)(c)). The Government of Wales Act 1998 provides that, for functions transferred to the Assembly, Parliamentary procedures for reports, orders etc will generally cease to apply. The modifications ensure that Parliamentary procedures will not apply to the Assembly's exercise of the reserve powers;
  - changes flowing from the existence in Wales of a council fund instead of separate general and collection funds (the modifications relating to subsections 52K(2) and 52V(3) in subparagraph 52Z(2)(c), and subparagraph 52Z(2)(d)). Section 38 of the Local Government (Wales) Act 1994 requires each county and county borough council in Wales to establish and maintain a council fund.
98. *Section 31* provides that if the budget requirement of a major precepting authority is excessive, that authority shall make payments to the billing authorities to which it issues a precept. Excessiveness is to be determined by criteria specified by the Secretary of State. These criteria may be based on such factors as the Secretary of State sees fit, which can be different from the factors used to decide if the budget requirement is excessive for the purpose of Chapter IVa. The calculation of the payment shall be in accordance with regulations which will also require the precepting authority to provide information to the billing authority. This section applies for the financial year beginning on 1 April 1999 and subsequent years and comes into force on Royal Assent. In the year beginning on 1 April 1999, excessiveness shall be determined by the Secretary of State (and not in accordance with specified criteria). In Wales the powers of the Secretary of State shall be exercised by the National Assembly for Wales.