

**THE LEGAL FRAMEWORK FOR SETTING THE COUNCIL TAX****Setting the Council Tax**

- A1. Section 1 of the Local Government Finance Act 1992 establishes the basic duty of a billing authority to levy and collect the Council Tax in respect of dwellings within its area.
- A2. It requires every “billing authority” (local authority) to set a Council Tax for each financial year.
- A3. The process of setting the Council Tax and the setting of a balanced budget are closely linked as the Council Tax is a major source of income and will be set at a level to enable the Council to meet its financial obligations for the following year, or in other words, for it to be able to balance its books. The Council is then under a legal obligation to publish details of the amount set.
- A4. The amount of Council Tax set by the billing authority must be set before 11<sup>th</sup> March in the preceding financial year, although failure to do so does not affect validity of an amount set after that date (but would result in the Council having acted and while it had not set the Tax continuing to act unlawfully and open to challenge). No amount may be set before the earlier of 1<sup>st</sup> March or the date of issue to the billing authority of the precept from the major precepting authority. A setting of an amount of Council Tax will be void and of no legal effect if it fails to meet these requirements or those relating to relevant calculations set out in the Act.
- A5. This decision to set the Council Tax is reserved to the authority and cannot be taken by the Cabinet or delegated to officers (Regulation 4 of the Local Authority (Functions and Responsibilities) (England) Regulations 2000/2853). However, the Cabinet has responsibility for preparing, revising and submitting estimates and other amounts to the authority for consideration by the authority when reaching its decision on the Council Tax. The “estimates” relate to the budget proposals, which, having taken account of income and grant, lead to the Council Tax “calculation”. The “calculation” relates to the amount of Council Tax that the Council itself formally “calculates” before the decision to set the level of Council Tax is made.

**Balancing the Budget**

- A6. Before setting the level of the tax, the Council must have agreed a balanced budget, differentiated by services, which is sufficient to meet estimated revenue expenditure, levies, contingencies, any deficit estimated to be brought forward from previous years, and any amounts required to be transferred between funds. As part of the achieving of a balanced budget the Council must ensure that its income is sufficient to achieve and maintain sufficient reserves. The level of the budget requirement itself must not be unreasonable having regard to the Council’s fiduciary duty to its tax payers.

- A7. Setting a budget which does not balance could be subject to a declaration by the Courts of the accounts being illegal and anything done as a direct result of that would also be vulnerable to being overturned (R v Liverpool CC Exp. Ferguson [1985]).
- A8. Members will be aware of the provisions of the Localism Act with regard to Council Tax. Previously, central government had the power to 'cap' Council Tax rises. If Ministers thought that local authorities were increasing taxes excessively they could stop them doing so by way of a cap. Under these new provisions the Secretary of State will determine a limit for Council Tax increases which has to be approved by the House of Commons. If an authority proposes to raise taxes above this limit they will have to hold a referendum to get approval for this from local voters who will be asked to approve or to veto the rise. The authority is, therefore, under a legal obligation, in order to avoid the need for a referendum, taking into account guidance from the Secretary of State, to decide whether its relevant basic amount is excessive.
- A9. The legislation lays down in detail the matters which an authority must take into account in general terms with regard to income and expenditure and by taking one away from the other this results in the "council tax requirement" for the year. Previously the calculation resulted in its budget requirement. The Council is then under a legal obligation should it have a requirement to calculate the tax by dividing the council tax requirement by its Council Tax base - which was agreed by Council on the 24<sup>th</sup> January 2022.
- A10. The role of the Director of Finance as the Council statutory finance officer (s151 Local Government Act 1972) is pivotal. Members are under a duty (and may expose themselves to liability if they do not) to take his advice unless they have good and rational reason to not do so pursuant to the Code of Conduct.
- A11. Under Section 25 of the Local Government Act 2003, the Council's Chief Financial Officer is required to report to the Council on the robustness of the estimates made for the purposes of the calculations, and the adequacy of the proposed financial reserves. The Council is under a duty to have regard to the report when making decisions about the calculations in connection with which it is made.
- A12. Another consideration which members must take into account in reaching their decisions is the views of business ratepayers (Section 65 of the Local Government Finance Act 1992).
- A13. Failure to set a balanced budget or set a Council Tax would also have practical implications as the Council could be faced with acute cash flow and potential collection difficulties.

### **Member Voting**

- A14. Section 106 of the Local Government Finance Act 1992 makes it a criminal offence for any member with arrears of Council Tax which have been outstanding for two months or more to attend any meeting at which a decision affecting the budget is to be made, unless the member concerned declares at the outset of the meeting that he or she is in arrears and will not be voting on the decision for that reason. The member concerned must not vote but may speak. If a Cabinet member has arrears outstanding for two months or more, they are prevented from taking any part in such a decision. The application of Section 106 of the 1992 Act is very wide and members should be aware that the responsibility for ensuring that they act within the law at all times rests solely with the individual Member concerned.

### **Common Law Duties**

- A15. In making decisions in relation to the revenue budget and the Council Tax the Council (and its Members), as well as having a duty to ensure that the Council acts in accordance with its statutory duties, must act reasonably and must not act in breach of its fiduciary duty to its ratepayers and Council Tax payers.
- A16. In reaching decisions on these matters, Members are bound by the general principles of administrative law. Local authority decisions need to be rational, prudent and made in accordance with recognised procedures. A local authority's discretion must not be abused or fettered and all relevant considerations must be taken into account. No irrelevant considerations may be taken into account, and any decision made must be one which only a reasonable authority, properly directing itself, could have reached. The resources available to the Council must be deployed to their best advantage.
- A17. There is an overriding legal duty on Members to act prudently, responsibly, in a businesslike manner and in the best interests of the general body of local taxpayers. In deciding upon expenditure, the Council must fairly hold a balance between recipients of the benefits of services provided by the Council and its local taxpayers. Members should note that their fiduciary duty includes consideration of future local taxpayers as well as present local taxpayers. Fiduciary duty is also likely to include acting in good faith with a view to complying with statutory duties and financial prudence in the short and long term.
- A18. In approving the budget and the individual lines the Council is not making decisions as to the implementation, form or detail of service delivery. These are by law, in the most part matters for the Executive - being the Cabinet and Cabinet Members and on occasion delegated Chief Officers.
- A19. In making those subsequent decisions the decision makers will be required to consider all relevant matters including the results of any consultation and the Council's equality duties. Further the decision maker will be aware of the fact that should they consider it appropriate, for example when being asked to make service changes to achieve a budget reduction and having taken into account all relevant facts (including but not limited to the results of any consultation and after due consideration of the Council's equalities duties)

they have the option of not making the budget reductions detailed within the overall budget. They will still be required to balance the budget overall via for example finding the savings from elsewhere or using reserves and otherwise comply with the Council's rules on budget setting and management. However, while being required to find balancing savings or alternative funding, there is the flexibility to allow the level of savings or even the saving itself to be disregarded should on detailed analysis the decision makers consider it to be appropriate.

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<sup>1</sup> FSO – subject to the scheme of delegation Chief Officers can vire between budget headings within their department. The ED Corporate Services can transfer resources in consultation with the relevant ED or Director of Public health. The transfer will be reported to the Cabinet at the earliest possibility