

LGA advice in relation to setting the budget without the Final Settlement

Dear All,

We emailed you a few days ago to let you know that the debate in the House of Commons on the 2017/18 settlement will not take place before Monday 20 February when Parliament returns from recess. We still do not know when the Department for Communities and Local Government will publish the final settlement.

We have been asked what would happen if the final settlement hasn't been agreed by Parliament prior to a local authority setting its budget. We have referred this to our lawyer who has come back with their legal opinion and this can be found in full below.

In short, there is a duty for major precepting authorities to issue a precept for 2017/18 before 1 March 2017. For other local authorities, there is a duty to set 2017/18 budgets before 11 March 2017.

There may be consequences if an authority does not set a budget before these dates. An authority still needs to make sure it sets a balanced budget and this can be done on the basis of the provisional settlement if this is the best information available at the time.

We hope this helps but you may wish, of course, to seek your own legal advice.

Full Advice

- The Local Government Finance Act 1992 (LGFA 1992) places a duty on Councils to set a balanced budget with regard to the advice of its Chief Finance Officer (section 151). Section 30(6) LGFA 1992 provides that the council has got to set its budget before 11 March in the financial year preceding the one in respect of which the budget is set, although failure to set a budget within the deadline does not in itself invalidate that budget. However, delays in complying with the duty to set a balanced budget within the deadline may have significant financial administrative and legal implications, including potentially an individual liability for those members who contributed to the failure to set the budget.
- The setting of the budget is a function reserved to full Council, who will consider the draft budget which has been prepared by the Executive (in a Leader and Cabinet or Elected Mayor model). Once the budget has been agreed by full Council, the Executive cannot make any decisions which conflict with it, although virements and year-in-year changes can be made in accordance with the council's financial regulations.
- The Act set out what the council has to base its budget calculations upon. In order to fulfil this duty, the Council must prepare detailed estimates of its expenditure for the coming year and of the resources that will be available to meet this expenditure. Account must be taken of any deficit brought forward from a previous year and the amount needed to cover contingencies. The resources include income from rents,

fees and charges and any available balances. All of these issues must be addressed in the budget report. The estimation of the detailed resource and expenditure items is the main reason for the budget process. The budget must balance, i.e. proposed expenditure must be met from proposed income from all sources, with any shortfall being the precept on the Collection Fund.

- If a budget is not set, s.66 LGFA 1992 provides that the failure or delay to or in setting the council tax can only be challenged by an application for judicial review, with either the Secretary of State or any other person with sufficient interest (which potentially could include a council taxpayer) able to apply.
- Thus failure to make a lawful Council Tax on or before 11th March could have serious financial results for the Council and make the Council vulnerable to an Order from the Courts requiring it to make a Council Tax.
- Section 40 deals with the issue of precepts by major precepting authorities. (1) For each financial year a major precepting authority shall issue a precept or precepts in accordance with this section. (5) A precept under this section must be issued before 1st March in the financial year preceding that for which it is issued, but is not invalid merely because it is issued on or after that date
- Councils are under a general duty (Section 151 of the Local Government Act 1972) to make arrangements for 'the proper administration of their financial affairs'.
- Information must be published and included in the Council Tax demand notice. Regulations require charging authorities to issue demand notices in a form and with contents as prescribed by these regulations.
- Whether or not it sets a budget, authorities have a legal duty to provide a range of statutory services and these duties are not absolved if the budget is set late. Most councils must also consider the impact on precepting authorities such as the Fire Service and the Police, to whom the council will have to pay the monies due whether or not it has collected them through council tax.
- Councils are also required (Section 65 of the 1992 Act) to consult persons or bodies appearing to be representative of persons subject to non-domestic rates in each area about proposals for expenditure (including capital expenditure) for each financial year.

Is it reasonable for Councils not to set a balanced budget with the statutory deadline due to lack of a late announcement of the final settlement from Central Government?

Taking into account the duty on LA's to set a balanced budget, councils should in these circumstances set a budget within the deadline by using best available information to them. Care must however be exercised to ensure that they do not set a deficit budget i.e. one which does not cover all anticipated expenditure with resources reasonably expected to be available which is unlawful. Where these best estimates include sums for unallocated savings or unidentified expectations of income, extreme care must be taken to ensure that the estimates are reasonable and realistic and do not reflect an unlawful intention to incur a deficit.

Kind regards
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