

EXPLANATORY MEMORANDUM TO
THE COUNCIL TAX AND NON-DOMESTIC RATING (ENGLAND)
(AMENDMENT) REGULATIONS 2006

2006 No. 3395

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government (the Department) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations make miscellaneous amendments to the following Regulations-

- the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (S.I. 1989/1058) (“the 1989 Regulations”);
- the Billing Authorities (Anticipation of Precepts) Regulations 1992 (S.I. 1992/3239) (“the Anticipation of Precepts Regulations”);
- the Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 (S.I. 1992/552) (“the Discount Disregards Regulations”);
- the Council Tax (Administration and Enforcement) Regulations 1992 (S.I. 1992/613) (“the Administration and Enforcement Regulations”);
- the Council Tax (Alteration of Lists and Appeals) Regulations 1993 (S.I. 1993/290) (“the 1993 Regulations”); and
- the Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003 (S.I. 2003/2613) (“the 2003 Regulations”).

2.2 Broadly the amendments to the above Regulations fall into the following categories:

- uprating financial limits and updating definitions;
- ceasing in certain circumstances backdated council tax liabilities where a valuation list is altered; and
- minor changes to the information that must be provided by local authorities with council tax and non-domestic rates demand notices.

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

3.1 None

4. Legislative Background

4.1 Part III of the Local Government Finance Act 1988 (“the 1988 Act”) concerns non-domestic rating in England and Wales, and Part I of the Local Government Finance Act 1992 (“the 1992 Act”) concerns council tax in England and Wales. Both Acts give the Secretary of State power to make provision for certain matters by way of subordinate legislation.

4.2 The Regulations which are amended by these Regulations are identified in paragraph 2.1 above. In broad terms these Regulations address the following issues relating to non-domestic rates and council tax-

- The 1989 Regulations – These Regulations make provision for a variety of matters concerning the administration and enforcement of non-domestic rates. In particular, in relation to enforcement the 1989 Regulations make provision for charges connected with distress and costs connected with committal.
- The Anticipation of Precepts Regulations – These Regulations provide for billing authorities to include in the calculations of their budget requirements (under section 32 of the 1992 Act) certain amounts in respect of precepts not yet issued by local precepting authorities.
- The Discount Disregards Regulations – These Regulations set conditions for care workers to be disregarded for the purposes of a council tax discount under section 11 of the 1992 Act. They also prescribe additional categories of persons (additional to the categories in Schedule 1 to the 1992 Act) to be disregarded for the same purposes.
- The Administration and Enforcement Regulations – These Regulations provide for variety of matters concerning the administration and enforcement of council tax. In particular, in relation to enforcement they make provision for deductions under attachment of earnings orders, charges connected with distress and costs connected with committal.
- The 1993 Regulations – These Regulations provide for the alteration of valuation lists and for appeals to valuation tribunals where there is a disagreement about an alteration between a listing officer and a person making a proposal for the alteration of a valuation list.
- The 2003 Regulations – These Regulations specify matters which must be included in council tax and non-domestic rates demand notices, and information which must accompany those notices.

4.3 The amendments which have been made to these Regulations are further explained in the ‘policy background’ section below.

5. Extent

5.1 This instrument applies in relation to billing authorities in England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Department published a consultation paper containing the proposed amendments on 8 August 2006. A letter publicising the consultation paper was sent to all English local authorities, the Institute of Revenues, Rating and Valuation, the Local Government Association, the Association of London Government, the Valuation Office Agency, the Chartered Institute of Public Finance and Accountancy, Carers UK, the Institute of Payroll and Pensions Management, the Federation of Small Businesses, the Confederation of British Industry, the Insolvency Service, the Local Authority Civil Enforcement Forum, the National Association of Local Councils, the National Association of Connexions Partnerships, the Association of Learning Providers, the Association of Colleges, the Learning & Skills Council, the Trades Union Congress, and the National Association of Citizens Advice Bureaux on behalf of the Citizen generally, Liberata, BH&HPA, Individual, British Beer & Pub Association, King Sturge LLP/Rating Surveyors' Association, Royal Institute of Chartered Surveyors, UK PIA, EP2, GVA Grimley, Erdman Lewis Rating, Cluttons LLP, British Holiday & Homes Park Association, National Caravan Council, Easynet, Sanderson Weatherall, Edwin Hill, Baker Davidson Thomas, Evans & Payne, Hair & Son, CAPITA, Stimpsons Chartered Surveyors, CIO, Rating Surveyors Association, J D Consultancy Ltd, LSM Partners, Local Government Ombudsman, Inter Bank Rating Forum, Cyril Leonard, British Council for Offices, Bridgestone Surveyors, Valuation Tribunal Service, British Chamber of Commerce, Forum of Private Business, National Grid Plc, Jones Lang LaSalle, Rating Solutions South West, GL Hearn, Wilkinson Hardware Stores, BBG Commercial, Rapleys LLP, NAI Fuler Peiser, MUA Property Services Ltd, IBS Open systems, Allsop Chartered Surveyors, B.I.S.L, Robert Clarke Chartered Surveyors, BOC Ltd, PriceWaterhouseCoopers, Bayram Vickery Meech, Lambert Smith Hampton, Portsmouth Water, Institute Of Directors. It was also made available on the Department's web-site. The paper can currently be found on the Department's web-site at the following link:

<http://www.communities.gov.uk/index.asp?id=1502036>

The consultation period closed on 31 October 2006.

- 7.2 The Department received 59 representations in response to the consultation. A large majority of respondents supported all bar one of the changes proposed. We have amended the proposal that was not supported by a majority to reflect respondents' concerns (see paragraph 7.29). The low number of responses was expected given the minor, technical nature of the proposed amendments. A detailed analysis of the consultation responses can be found at the following link:

<http://www.communities.gov.uk/index.asp?id=1502036>

Details of the amendments are set out below.

Uprating financial limits and updating definitions;

- 7.3 There are a number of financial limits and definitions in non-domestic rates and council tax secondary legislation that have not been updated for a number of years. These amendments - together with amendments contained in the Council Tax (Discount Disregards) (Amendment) (England) Order 2006 - are intended to ensure that the original policy intention of the legislation is effective and up to date and that the financial limits reflect changes in the value of money since they were last uprated. Changes in the Retail Prices Index ("RPI") have been used as the measure of inflation.

The maximum fees that can be charged by bailiffs in connection with non-domestic rates and council tax

- 7.4 The 1989 Regulations and the Administration and Enforcement Regulations set out the rules for collecting and enforcing non-domestic rates and council tax demands. Both sets of Regulations allow billing authorities to recover and sell on goods belonging to the debtor ('distress') in respect of an unpaid bill following the grant of a liability order by the court. Recovery may only be carried out by authorised bailiffs, and under regulation 14 of the 1989 Regulations and regulation 45 of the Administration and Enforcement Regulations, billing authorities may recover the unpaid liability and the costs of employing bailiffs.

- 7.5 The maximum amounts which may be recovered in connection with distress are set out in Schedule 3 to the 1989 Regulations and Schedule 5 to the Administration and Enforcement Regulations respectively. The amounts are the same in each case and they were last uprated in 2003. Regulation 2(2) and regulation 5(3) of these Regulations amend Schedule 3 to the 1989 Regulations and Schedule 5 to the Administration and Enforcement Regulations respectively to uprate fees in line with inflation (8.4% between April 2003 and April 2006 rounded to the nearest 50 pence).

The maximum fees that may be charged by local authorities in connection with obtaining a warrant of commitment and an arrest warrant in connection with both non-domestic rates and council tax

- 7.6 If a billing authority is unable to recover and sell goods to the value of the sum owing for either non-domestic rates or council tax (including the costs of the bailiff), it may seek a warrant committing the debtor to prison. In some circumstances, the costs of doing this may be recovered from the debtor. The maximum costs that the billing authority may recover are the same for non-domestic rates and council tax. They are set out in Schedule 4 to the 1989 Regulations and Schedule 6 to the Administration and Enforcement Regulations respectively and vary according to the action that the authority has taken. They were last uprated in 1994, since when court fees have risen by £15. Regulation 2(3) and regulation 5(4) of these Regulations amend Schedule 4 to the 1989 Regulations and Schedule 6 to Administration and Enforcement Regulations respectively to uprate the maximum fees by £15 (in line with the increase in the court fee) and in line with inflation (36.3% between April 1994

and April 2006 rounded to the nearest £5) on the balance not covered by the increase in court fee.

Publication of Retail Prices Index

- 7.7 Regulation 2(4) of the Anticipation of Precepts Regulations refers to the Department of Employment as publishing the retail prices index. This is now published by the Office for National Statistics. Regulation 3 of these Regulations amends regulation 2 of the Anticipation of Precepts Regulations so as to substitute “Office for National Statistics” for “Department of Employment”.

Part I of the Carer Disregard

- 7.8 Certain care workers who provide care or support on behalf of the Crown, a charity or a local authority are ‘disregarded’ when determining whether a council tax discount is applicable under section 11 of the 1992 Act; that is, they are ignored when determining how many people are resident in a dwelling.
- 7.9 The Discount Disregards Regulations prescribe conditions which must be met for care workers to be disregarded in this way. Those conditions are set out in Parts I and II of the Schedule to the Discount Disregards Regulations. One condition in Part I is that care workers must not earn more than £36 per week to qualify for a disregard. That figure was last updated in 1998. Regulation 4 of these Regulations amends Part I of the Schedule to the Discount Disregards Regulations so that, in line with inflation (20.8% between April 1998 and April 2006 rounded to the nearest £1), the earnings limit is increased from £36 to £44 per week.

Attachment of Earnings Orders

- 7.10 Once a liability order has been granted in relation to an unpaid council tax debt the relevant billing authority can recover the debt from an employee’s wages by way of an attachment of earnings order (“AEO”). The amount that employers should deduct from an employee’s wages under an AEO is set out in the Tables in Schedule 4 to the Administration and Enforcement Regulations. The percentage that is deducted depends on the level of the employee’s net earnings and whether those earnings are paid daily, weekly or monthly. The Tables were last amended in 1998 when the earnings limits were updated in line with average earnings.
- 7.11 Before formally consulting, the Department discussed with the Citizens Advice Bureau, local authorities, the courts service and other key stakeholders how - and whether - the AEO earnings should be updated. There was a broad agreement in those discussions that, on grounds of fairness to tax payers, the limits should be updated in line with the increase with the Average Earnings Index, since deductions are based on current salary levels, and a large majority of respondents to the consultation also agreed with the proposal. Regulation 5(2) of these Regulations amends Schedule 4 to the Administration and Enforcement Regulations to update AEO earnings limits in line with increases in the Average Earnings Index (36.5% between April 1998 and April 2006

rounded to the nearest £1/£5/£10 for daily/weekly/monthly limits respectively).

Cessation of certain backdated council tax liabilities where the valuation list is corrected

- 7.12 The amendments to the 1993 Regulations (which are made by regulation 6) end the backdating of council tax liability when certain valuation list errors are corrected. The amendments are intended to introduce greater consistency in the treatment of list errors. The amendments cover two specific situations which are detailed below.
- 7.13 The first concerns the situation where a dwelling has been improved. In those circumstances a dwelling's banding will not be re-considered until a relevant transaction is carried out (for example, the dwelling is sold). If the improvements are sufficient to move the dwelling into a higher band, currently the rebanding takes effect from the date of sale (regulation 14(2) of the 1993 Regulations). This means that where there is a delay in the alteration of the valuation list (for example because the improvements are not identified until a later date) the new owner has to pay the increased council tax backdated to the date of sale.
- 7.14 The consultation paper proposed, on the grounds of fairness to tax payers, that in circumstances such as these alterations should take effect on the day the valuation list is corrected rather than the date of the relevant transaction. This would bring the position into line with cases where there are errors in the original valuation list.
- 7.15 Over three quarters of those that expressed an opinion agreed with the proposal. Those that disagreed did so mainly on the grounds that there would be some marginal loss of windfall revenue to authorities.
- 7.16 The second situation concerns property which has been treated as one dwelling, but which ought to have been treated as two (for example, because of the creation of an annexe). Currently if an additional unit of living accommodation is identified within a single property (which thus falls to be disaggregated under regulation 3 of the Council Tax (Chargeable Dwellings) Order 1992 (SI 1992/549)) generally the liability to council tax is backdated to the date when the additional living accommodation came into existence (see regulation 14(7A) of the 1993 Regulations)¹.
- 7.17 As with the first situation above, the consultation paper proposed that any alteration to a valuation list should be effective on the day the alteration is made. This would bring the position into line with disaggregation cases where the additional unit of living accommodation came into existence prior to April 1993. Thirty three of the forty seven respondents that expressed an opinion

¹ Currently there are two situations where alterations of this type take effect on the day the valuation list is altered – (i) where the alteration is made to correct an inaccuracy in the valuation list on the date it was compiled (see regulation 14(6) of the 1993 Regulations); and (ii) where the alteration is to correct an inaccuracy which arose in the course of making a previous alteration (see regulation 14(7) of the 1993 Regulations). In these cases council tax liability will not be backdated to the date when the additional living accommodation came into existence.

agreed with the proposal. Those that disagreed did so for similar reasons to those given in 7.15 above.

- 7.18 In the light of these generally supportive consultation responses, regulation 6 of these Regulations amends regulation 14 of the 1993 Regulations as proposed. In particular, regulation 6(2) and (3) makes the necessary amendments, and regulation 6(4) and (5) makes consequential amendments.

Minor changes to the information that must be provided by local authorities with council tax and non-domestic rates demand notices.

Combined authorities

- 7.19 Subject to Parliamentary approval, a new authority (Devon and Somerset Fire and Rescue Authority) will exercise functions over the areas of Devon and Somerset from 1 April 2007². As a result of the relevant combination scheme from that date Devon Fire and Rescue Authority will cease to exist and Somerset County Council will cease to exercise fire and rescue functions.
- 7.20 From the financial year beginning 1 April 2007 billing authorities in Somerset and Devon will need to include the new Devon and Somerset Fire Authority as a precepting authority on the face of their council tax demand notices. The 2003 Regulations ensure that council tax demand notices for any particular year can be compared with the previous year's bill. Regulation 7(2) and (3)(a) of these Regulations amends the 2003 Regulations to ensure that bills contain information to explain where and why figures for individual authorities will not be comparable as a result of a new combination scheme. The 2003 Regulations have been amended so that they will also apply to any future combination schemes concerning fire and rescue authorities.
- 7.21 The Department consulted on this proposed amendment within its consultation paper (at paragraph 41) on the revocation of the Devon Fire and Rescue Authority combination scheme, which consultation was published on 21 July. The single representation received on this point was in agreement with the proposal. The paper can currently be found on the Department's website at the following link:

<http://www.communities.gov.uk/index.asp?id=1501763>

Information on Penalties

- 7.22 Regulation 7 also contains a minor consequential amendment which will avoid the need to amend the 2003 Regulations whenever penalties for failure to provide information are increased. The Department consulted on uprating those penalties as part of this consultation exercise and the vast majority of respondents agreed with the proposal. However, the uprating process is being taken forward separately due to the need to amend primary legislation by way of an Order made by the Treasury.

² The new authority is created by the Devon and Somerset Fire and Rescue Authority (Combination Scheme) Order 2006 (S.I. 2006/2790). That Order is subject to a negative resolution procedure before both Houses of Parliament.

Rural rate relief

- 7.23 Section 43(6B)-(6E) of the 1988 Act and the orders made under those provisions³ set out the eligibility criteria for rural rate relief. Where a property is the only general store, post office, pub or petrol station in a rural area it may qualify the ratepayer for rural rate relief. A food shop, on the other hand, may qualify for the relief regardless of whether it is the only food shop in the area.
- 7.24 The prescribed explanatory notes which must accompany demand notices for businesses in rural areas currently suggest that a food shop has to be the only food shop in the area in order to qualify for the relief. Regulation 7 of these Regulations amends the 2003 Regulations to clarify that *any* food shop in a rural area can qualify for rural rate relief provided they meet the remaining criteria.

Former agricultural premises relief

- 7.25 Under section 43(6J) of the 1988 Act former agricultural premises relief ceased to exist from 15 August 2006. These Regulations amend the 2003 Regulations to remove all references to the relief from the explanatory notes which must accompany rates demand notices as they are now no longer relevant.

Small Business rate relief

- 7.26 The Department recently relaxed the requirements for ratepayers to apply for small business rate relief every year. Regulation 7 of these Regulations amends the prescribed explanatory notes which must accompany rates bills so that they are consistent with the provisions of the new scheme.

Parish council expenditure

- 7.27 Under Schedule 3 to the 2003 Regulations currently billing authorities must provide, with council tax demand notices, budget information for their authority, for major precepting authorities and in some circumstances for parish councils. For parish councils with expenditure above £100,000 a breakdown of expenditure by service and budget requirement must be provided.
- 7.28 The consultation paper proposed to amend the 2003 Regulations so that billing authorities only have to provide information on the parish council in which the taxpayer lives. A small majority of respondents disagreed with this proposal. The Department believes that in some cases this was due to a misunderstanding as to what was being proposed. The proposal was simply to give billing authorities the option for ease of administration of just including with the bill details of the expenditure of the parish in which the tax payer lives. Authorities will still be able to include information on all parishes over the threshold if they so choose and we will make this clear when we publicise the laying of these regulations.

³ See the Non-Domestic Rating (Rural Settlements) (England) Order 1997 (SI 1997/2792) and the Non-Domestic Rating (Public Houses and Petrol Filling Station) (England) Order 2001 (SI 2001/1345), as amended.

7.29 There was also a strong feeling from respondents that the £100,000 threshold for providing a breakdown of parish expenditure should be uprated, given the administrative cost of producing this information to which taxpayers pay little attention. That would also be consistent with the general intention behind many of the amendments. Regulation 7(5) of these Regulations therefore amends Part 3 of Schedule 3 to the 2003 Regulations so as uprate the threshold, in line with inflation between April 1994 and April 2006, to £140,000. The 2003 Regulations are also amended as proposed.

Timing

7.30 The amendments will come into force on 31 January 2007 and take effect from 1 April 2007. The changes will therefore apply to 2007/08 bills.

Guidance

7.31 The Department has published a Council Tax Information Letter and a Business Rates Information Letter advising stakeholders of these amendments, published a summary of consultation responses, including the decisions taken by Ministers in the light of those responses, on the the Department's website (see 7.2 above), and written to those that responded to the consultation.

Consolidation

7.32 As the amendments contained in these Regulations are minor changes, mainly to figures and definitions, the Department considers it unnecessary to consolidate any of the Statutory Instruments being amended.

8. Impact

8.1 A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of businesses, charities or voluntary bodies; neither does it have significant financial impact on any public bodies.

9. Contact

David McDonald at the Department for Communities and Local Government Tel: 020 7944 4206 or e-mail: david.mcdonald@communities.gsi.gov.uk can answer any queries regarding the instrument.