

**EXPLANATORY MEMORANDUM TO  
THE HEALTH AND SOCIAL CARE ACT 2008 (CONSEQUENTIAL  
AMENDMENTS) (COUNCIL TAX) ORDER 2012**

**2012 No. 1915**

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

**2. Purpose of the instrument**

2.1 To amend two previous instruments - Council Tax (Chargeable Dwellings) Order 1992 (the “1992 Order”) and Council Tax (Liability for Owners) Regulations 1992 (the “1992 Regulations”) - to reflect the fact that the registration of care homes in England now occurs under Part 1 of the Health and Social Care Act 2008 (the “2008 Act”).

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

3.1 None.

**4. Legislative Context**

4.1 Section 3 of the Local Government Finance Act 1992 defines a dwelling for the purposes of council tax provisions for England and Wales.

4.2 Article 3 of the 1992 Order states that where a property is made up of more than one self-contained unit these are to be treated as individual dwellings for the purposes of council tax liability. S.I. 2003/3121 inserted section 3A into the 1992 Order exempting care homes from this treatment. Care homes are defined under section 3 of the Care Standards Act 2000 (the “2000 Act”).

4.3 Regulation 2 of the 1992 Regulations prescribes the classes of dwellings for which the owner rather than the occupier is liable for council tax. S.I. 2003/3125 amended the 1992 Regulations to insert the definition of care homes from the 2000 Act into this class of dwellings.

4.4 Both the 1992 Order and the 1992 Regulations require the care home to be registered under Part 2 of the 2000 Act. While the definition of care homes remains in the 2000 Act, the 2008 Act repealed the requirement to register under the 2000 Act with regard to England. Instead providers of care are required to be registered under Part 1 of the 2008 Act.

4.5 Section 167 of the 2008 Act provides the Secretary of State with a power to make consequential provisions by Order.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 Since 1 January 2004, care homes registered under the 2000 Act are treated as a single dwelling instead of several separate dwellings for council tax purposes. This means that care home residents are not individually liable for their own council tax bill.

7.2 The current amendments are intended to ensure that legislation maintains this policy intention in light of the requirement to register as a care provider under the 2008 Act. As things stand, to be exempted from individual liability, a care home must be registered under the 2000 Act – however, this requirement was superseded by the duty to register under Part 1 of the 2008 Act. This means the interpretation of the existing legislation could result in residents being liable for council tax in respect of their individual units of accommodation.

7.3 To reflect the differing registration requirements in England and Wales, this draft Order makes amendments so that the 2000 Act continues to apply for Wales while the 2008 Act applies for England.

7.4 The amendments contained in the Order are minor changes, mainly to definitions and conditions, intended to continue the existing taxation policy with regard to care homes. As a result, the Department does not consider consolidation to be necessary.

## **8. Consultation outcome**

8.1 No consultation was undertaken as these are consequential amendments to update and maintain existing provisions.

## **9. Guidance**

9.1 The Department does not intend to issue guidance alongside this Order.

## **10. Impact**

10.1 Given that this Order restates the current position with regard to care homes, no additional impact on business, voluntary bodies or charities is foreseen.

10.2 No impact on the public sector is anticipated.

10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small business**

11.1 The legislation does not impose new requirements on small business.

**12. Monitoring & review**

12.1 The Department for Communities and Local Government will monitor the impact of these changes through informal consultation with key business partners such as the Local Government Association (LGA), the Institute of Revenues Rating and Valuation (IRRV) and the Chartered Institute of Public Finance and Accountancy (CIPFA).

**13. Contact**

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