
WELSH STATUTORY INSTRUMENTS

2004 No. 785 (W.82)

COUNCIL TAX, WALES

**The Council Tax (Administration and Enforcement)
(Amendment) (Wales) Regulations 2004**

Made - - - - *16th March 2004*
Coming into force - - *18th March 2004*

The National Assembly for Wales, in exercise of the powers conferred upon the Secretary of State by sections 113(1) and (2) of, paragraphs 1 and 4(2) of Schedule 2 to, and paragraphs 1, 3, 5, 11A and 12A of Schedule 4 to, the Local Government Finance Act 1992⁽¹⁾ and now vested in the National Assembly for Wales so far as exercisable in Wales⁽²⁾, and in reliance on the powers directly conferred on the National Assembly for Wales by section 113(4) of, and paragraph 20(b) of Schedule 4 to, that Act, hereby makes the following Regulations:

Citation, commencement and application

- 1.—(1) These Regulations are called the Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2004.
- (2) These Regulations apply to Wales only.
- (3) These Regulations come into force on the 18th of March 2004.

Amendment of Regulations

- 2.—(1) The Council Tax (Administration and Enforcement) Regulations 1992⁽³⁾ shall be amended in accordance with the following provisions of these Regulations.

(1) 1992 c. 14.
(2) The powers of the Secretary of State under sections 113(1) and (2) of, paragraphs 1 and 4(2) of Schedule 2 to, and paragraphs 1, 3, 5, 11A and 12A of Schedule 4 to the Local Government Finance Act 1992 were transferred to the National Assembly for Wales pursuant to article 2(2) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Section 113(4) was inserted into the 1992 Act by section 127(1) of, and paragraphs 40, 52(1) and (5) of Schedule 7 to, the Local Government Act 2003 (2003 c. 26). Paragraph 20(b) of Schedule 4 was inserted into the 1992 Act by section 127(1) of, and paragraphs 40 and 54 of Schedule 7 to, the 2003 Act.
(3) S.I. 1992/613.

Citation, commencement and interpretation

3. In regulation 1(2), after the definition of “demand notice regulations”, there shall be inserted the following definitions(4)—

““discount” means a discount under section 11 or section 12 of the Act, or a reduction in the amount of council tax payable for a dwelling under section 13A of the Act where the dwelling falls into a class for which the billing authority has determined under section 13A(3) that liability shall be reduced otherwise than to nil;

“exempt dwelling” means a dwelling which is exempt from council tax under the Exempt Dwellings Order or a dwelling which falls into a class for which the billing authority has determined under section 13A(3) of the Act that the amount of council tax payable shall be reduced to nil.”

Ascertainment of entitlement to discount and amount of discount

4. For regulation 14 substitute—

“14. Before making any calculation for the purposes of Part V of these Regulations of the chargeable amount in respect of any dwelling in its area, a billing authority shall take reasonable steps to ascertain whether that amount is subject to a discount, and if so, the amount of that discount.”

Liability orders

5.—(1) In regulation 32(1), in the definition of “liability order” after “regulation 34” insert “or regulation 36A(5)”.

(2) After regulation 36 insert the following regulation(5)—

“Quashing and substitution of liability orders

36A.—(1) Where—

- (a) a magistrates' court has made a liability order pursuant to regulation 34(6); and
- (b) the authority on whose application the liability order was made considers that the order should not have been made,

the authority may apply to a magistrates' court to have the liability order quashed.

(2) Where, on an application by an authority in accordance with paragraph (1) above, the magistrates' court is satisfied that the liability order should not have been made, it shall quash the order.

(3) Where an authority makes an application under paragraph (1) for a liability order (“the original order”) to be quashed, and a lesser amount than the amount for which the original order was made has fallen due under paragraph (3) or (4) of regulation 23 (including those paragraphs as applied as mentioned in regulation 28A(2)) and is wholly or partly unpaid or (in a case where a final notice is required under regulation 33) the amount stated in the final notice is wholly or partly unpaid at the expiry of the period of seven days beginning with the day on which the notice was issued, the billing authority may also apply to the magistrates' court for an order against the person by whom the lesser amount was payable.

(4) Paragraphs (2) to (5) of regulation 34 shall apply to applications under paragraph (3) above.

(4) Regulation 1(2) was amended by the Council Tax (Administration and Enforcement) (Amendment) Regulations 1992 (S.I. 1992/3008).

(5) Regulation 36 was amended by the Council Tax (Administration and Enforcement) (No. 2) Regulations 1993 (S.I. 1993/733).

(5) Where, having quashed a liability order in accordance with paragraph (2) above, the magistrates' court is satisfied that, had the original application for the liability order been for a liability order in respect of a lesser sum payable, such an order could properly have been made, it shall make a liability order in respect of the aggregate of—

- (a) that lesser sum payable; and
- (b) any sum included in the quashed order in respect of the costs reasonably incurred by the authority in obtaining the quashed order.”

Making of attachment of earnings order

6. In regulation 37—

- (a) in paragraph (1) for “any outstanding sum which is or forms part of the amount in respect of which the liability order was made” substitute “the appropriate amount”(6);
- (b) after paragraph (1) insert —

“(1A) For the purposes of this regulation the appropriate amount is the aggregate of—

- (a) any outstanding sum which is or forms part of the amount in respect of which the liability order was made; and
- (b) where the authority concerned has sought to levy an amount by distress and sale of the debtor’s goods under regulation 45 and the person making the distress has reported that he was unable (for whatever reason) to find any or sufficient goods of the debtor on which to levy the amount —
 - (i) a sum determined in accordance with Schedule 5 in respect of charges connected with the distress, and
 - (ii) if the authority has applied for the issue of a warrant committing the debtor to prison in accordance with regulation 47, the authority’s reasonable costs incurred up to the time of the making of the order under regulation 37, in making one or more of the applications referred to in Schedule 6, but not exceeding the amount specified for that application in Schedule 6.”.

Charging orders

7. In regulation 50—

- (a) for paragraph (1) substitute—

“(1) An application to the appropriate court may be made under this regulation where—

- (a) a magistrates' court has made one or more liability orders pursuant to either regulation 34(6) or 36A(5);
- (b) the amount mentioned in regulation 34(7)(a) or 36A(5)(a) in respect of which the liability order was made, or, where more than one liability order was made, the aggregate of the amounts mentioned in regulation 34(7)(a) or 36A(5)(a) in respect of which each such liability order was made, is an amount the debtor is liable to pay under Part V; and
- (c) at the time that the application under this regulation is made at least £1000 of the amount in respect of which the liability order was made, or, where more than one liability order was made, the aggregate of the amounts in respect of which those liability orders were made, remains outstanding.”

(6) Regulation 37(1) was amended by the Council Tax (Administration and Enforcement) (Amendment) Regulations 1998 (S.I. 1998/295).

(b) for paragraph (3) substitute—

“(3) For the purposes of paragraph (2)—

- (a) the authority concerned is the authority which applied for the one or more liability orders referred to in paragraph (1)(a);
- (b) the relevant dwelling is the dwelling in respect of which, at the time the application for the liability order was made, or, where more than one liability order was made, at the time the applications for the liability orders were made, the debtor was liable to pay council tax;
- (c) the due amount is the aggregate of—
 - (i) an amount equal to any outstanding sum which is, or forms part of, the amount in respect of which the one or more liability orders were made, and
 - (ii) a sum of an amount equal to the costs reasonably incurred by the applicant in obtaining the charging order;
- (d) the appropriate court is the county court for the area in which the relevant dwelling is situated.”

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(7).

16th March 2004

D. Elis-Thomas
The Presiding Officer of the National Assembly

EXPLANATORY NOTE

(This note is not part of the Regulations)

Schedules 2 and 4 to the Local Government Finance Act 1992 (“the 1992 Act”) confer on the Secretary of State various regulation-making powers in relation to the administration and enforcement of council tax. The principal regulations made under these powers are the Council Tax (Administration and Enforcement) Regulations 1992 (as amended) (“the principal regulations”).

Insofar as they relate to Wales, these powers were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999.

Part 6 of the Local Government Act 2003 (“the 2003 Act”) amended these powers, along with other provisions of the 1992 Act relating to the administration and enforcement of council tax.

As a consequence of the changes made by the 2003 Act, and in reliance on the powers in Schedule 2 and 4 to the 1992 Act, the National Assembly for Wales is making these Regulations to further amend the principal regulations.

Regulation 3 of these regulations inserts new definitions of “discount” and “exempt dwelling” into regulation 1(2) of the principal regulations. This change, along with the change made by regulation 4, gives effect to the intention behind paragraph 21 of Schedule 2 to the 1992 Act to ensure that dwellings which fall within a class for which an authority in Wales has determined under section 13A of the 1992 Act that the amount of council tax payable shall be reduced to nil or otherwise than to nil (as the case may be) are treated, respectively, as exempt dwellings or subject to a discount for the purposes of council tax administration. Section 13A of, and paragraph 21 of Schedule 2 to, the 1992 Act were inserted into the 1992 Act by section 76 of, and paragraph 53(3) of Schedule 7 to, the 2003 Act respectively.

Regulation 5(2) inserts a new regulation 36A into the principal regulations to allow a magistrates' court, on the application of a billing authority, to quash a council tax liability order, where the court is satisfied that the order should not have been made. Regulation 36A(3) allows an authority which makes an application to quash a liability order also to apply to the court for a further order against the same person where a lesser amount than the amount for which the original order was made has in the meantime become due. Regulation 36A(5) will allow the magistrates' court to substitute the amount in the original liability order for the lesser amount where it considers that a liability order for such a lesser amount could properly have been made. Regulation 36A(4) means that the requirements of paragraphs (2) to (5) of regulation 34 will also apply to an application for a substituted liability order. These provisions require a summons to be served on the debtor before such an order can be made. They also provide that, if the outstanding amount and the authority's reasonable costs of the application are tendered before the application is heard, the application shall not be proceeded with.

Regulation 6 amends regulation 37 of the principal regulations to allow the sum in respect of which an attachment of earnings order is made to include, subject to certain limits, any costs incurred by the authority in an unsuccessful attempt to levy distress to secure the payment of an outstanding sum in respect of which a liability order was made. Regulation 37 is further amended to allow that sum also to include, subject to certain limits, any costs incurred by the authority in an abortive application for a warrant to commit the debtor to prison. An authority may only apply to the magistrates' court for a warrant to commit the debtor to prison under regulation 47 after an unsuccessful attempt to levy distress (where the person making the distress was unable to find any or sufficient goods of the debtor on which to levy the amount). As the magistrates' court must inquire as to the debtor's means when considering whether to grant a warrant of commitment, the debtor's means may only

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become apparent to the authority at this late stage, and instead of further pursuing the application for a warrant of commitment, the authority may decide to make an attachment of earnings order instead.

Regulation 7 amends regulation 50 of the principal regulations. Regulation 50 allows a charging order to be made over the premises in respect of which council tax remains unpaid. Only where more than £1000 is outstanding may a charging order be made. Previously it had to be shown that more than £1000 was outstanding under a single liability order. Regulation 7 amends regulation 50 so that authorities can combine amounts outstanding under separate liability orders (each of which is less than £1000) to enable them to apply for a charging order, provided the aggregate amount outstanding exceeds £1000.