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DEPUTY PRIME MINISTER**

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## **COUNCIL TAX INFORMATION LETTER 8/2003**

This is Council Tax Information Letter 8/2003. The topics covered in this letter are:

- **Combined fire authorities as major preceptors**
- **Council tax liability for care homes**
- **E-billing**
- **Local Government Act 2003: Implementation – New Regulations**
- **Council Tax Base**

Please note that this information letter should not be considered as a definitive interpretation of the legislation. Authorities should seek their own legal advice, as appropriate.

### **Combined fire authorities as major preceptors (section 83 LGA 2003)**

We have amended the Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003 SI 2003/2613 to require the 2004/05 bills to have a footnote to explain that some year on year % figures are not comparable. The wording of the footnote is in section 4 of the regulations. The Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations – SI 2003/3081 - come into force on 25 December 2003.

### **Council tax liability for care homes**

We consulted in the summer on ensuring that care homes could not be disaggregated and that the owner would be liable for council tax, as well as updating the definition of care homes. The Council Tax (Chargeable Dwellings, Exempt dwellings and Discount Disregards) (Amendment) (England) Order SI 2003/3121 will ensure that registered care homes are treated as a single dwelling for council tax purposes but if the care home contains a self contained unit provided as accommodation for the owner of the care home, the unit will be treated as a separate dwelling. The Council Tax (Liability For Owners) (Amendment) (England) Regulations SI 2003/3125 update the definition of care home in the Council Tax (Liability for Owners) Regulations 1992 to ensure that owners and not occupants of registered care homes are liable for the council tax. Both the order and regulations come into force on 1 January 2004.

## **E-billing**

The Council Tax and Non-Domestic Rating (Electronic Communications)(England) (No 2) Order 2003/3052 corrects two oversights in the Council Tax and Non-Domestic Rating (Electronic Communications) (England) Order 2003, SI 2003/2604. It amends the definition of billing authority so that a county council exercising the functions of a district council such as the Isle of Wight has the power to send bills electronically. It also amends the definition of "demand notice regulations" to refer to the new Council Tax and Non-Domestic Rating (Demand Notices)(England) Regulations 2003, SI 2003/2613 so that information to be supplied with rate demand notices for the next billing year can be sent electronically. The Order comes into force on 24 December 2003.

## **Local Government Act 2003: Implementation – new regulations**

A number of other Statutory Instruments have been made to bring into force further provisions relating to Part 6 of the Local Government Act 2003. Details of these new SIs are in Annex A to this letter.

## **Council Tax Base**

Following issue of CTIL 7/2003 local authorities have raised a number of questions about the tax base and tax setting. Annex B covers the issues of greatest concern to local authorities.

## **Contact**

If you have any enquiries about anything in this letter, please contact Rai Tind on 020 7944 4187 or Brian Entwistle on 020 7944 4186 or fax to 020 7944 4179. Email: [council.tax@odpm.gsi.gov.uk](mailto:council.tax@odpm.gsi.gov.uk)



**STEPHEN BENTON**

**REGULATIONS AND DIRECTIONS MADE RECENTLY UNDER NEW POWERS IN PART 6 OF THE LOCAL GOVERNMENT ACT 2003**

**1. SI 2003/3011 - THE COUNCIL TAX (PRESCRIBED CLASSES OF DWELLINGS) (ENGLAND) REGULATIONS 2003**

Section 11A of Local Government Finance Act 1992, as inserted by section 75 of the Local Government Act 2003, gives the Secretary of State the power to prescribe classes of dwellings for which the billing authority may either reduce the current 50% discount to 10% or for which they may reduce or completely remove it, in all or part of their area.

These regulations set out the classes of dwellings where authorities can change the discounts in all or part of their area. The regulations set out two classes of second homes as Class A and Class B and one class Class C of long term empty dwelling.

The regulations provide that a billing authority may determine to reduce the council tax discount from the nationally set 50% to a minimum 10% in some or all of its area except where the liable person is required to live in job related accommodation as part of his job. The Schedule to the regulations and the explanatory notes give further information.

For Class C, the regulations provide that a billing authority may determine to reduce the council tax discount from the nationally set 50% to zero in some or all of its area. Class C applies once any exempt period ends because the regulations only apply to chargeable dwellings.

These regulations came into force on 18 December 2003.

**2. SI 2003/3012 - THE LOCAL AUTHORITIES (CALCULATION OF COUNCIL TAX BASE) (AMENDMENT) (ENGLAND) REGULATIONS 2003**

Section 84 of the Local Government Act 2003 amended section 67 of the Local Government Finance Act 1992 which means that a full council meeting is no longer required to adopt the council tax base that is used when setting council taxes. Instead, the authority can delegate that responsibility in accordance with section 101 of the Local Government Act 1972. Adopting the council tax base has not become an executive responsibility as a result of the amendment to section 67 of the Local Government Finance Act 1992.

The regulations in relation to setting of the council tax base have been amended to reflect the changes introduced by Part 6 of the Local Government Act 2003. The Local Authorities (Calculation of Council Tax Base)(Amendment)(England) Regulations 2003 now reflect the ability of billing authorities to increase the tax base by determining to reduce or remove the discount under new section 11A of the Local Government Finance Act 1992. The period in which the tax base must be set is changed to run from 21 December 2003 to 31 January 2004 for 2004/05 because the power to make determination under section 11A was not available earlier. The normal 1 December to 31 January period will apply in subsequent years.

These changes relate to the tax base for tax setting purposes and ensure that preceptors can take account of any change which the billing authority makes to the tax base by

changing second homes and long term empty discounts. The calculation of the council tax base for RSG purposes in the Local Government Finance report will deliver the policy that local authorities will keep any additional revenue arising from reducing the second homes discount but not any extra revenue arising from the reducing or removing the long term empty discount. However local authorities which reduce or remove the long term empty discount in 2004/05 will also keep the extra revenue arising in that year. These regulations came into force on 19 December 2003.

### **3. SI 2003/3181 - THE LOCAL AUTHORITIES (CALCULATION OF COUNCIL TAX BASE) (AMENDMENT) (ENGLAND) (No. 2) REGULATIONS 2003**

Due to an oversight, the Local Authorities (Calculation of Council Tax Base) (Amendment) (England) Regulations 2003 (S.I. 2003/3012) failed to amend regulation 6 of the Local Authorities (Calculation of Council Tax Base) Regulations 1992 (S.I. 1992/612) to ensure that where an authority calculates its council tax base for part of its area for the financial year beginning on 1<sup>st</sup> April 2004, within the period 21<sup>st</sup> December to 31<sup>st</sup> January, the "relevant day" should also be 20<sup>th</sup> December. The Local Authorities (Calculation of Council Tax Base) (Amendment) (England) (No. 2) Regulations 2003 (S.I. 2003/3181) put right that omission.

These regulations came into force on 20<sup>th</sup> December 2003

### **4. THE COLLECTION FUND (COUNCIL TAX REDUCTIONS)(ENGLAND) DIRECTIONS 2003**

Under section 13A of Local Government Finance Act 1992, inserted by section 76 of the Local Government Act 2003, local authorities now have the power to create locally defined discounts. The policy is that billing authorities should meet the cost of such discounts and these directions, made under section 98 of the Local Government Finance Act 1988 in relation to the collection fund, ensure that any local discount is funded by the billing authority. These directions are in force now.

### **5. SI 2003/3081 - THE COUNCIL TAX AND NON-DOMESTIC RATING (DEMAND NOTICES) ( ENGLAND) (AMENDMENT) REGULATIONS 2003**

These regulations amend the demand notices regulations SI 2003/2613 in five areas:

- 1) demand notices to refer to any changed discount under section 11A or 13A;
- 2) demand notices to include a note on the comparability of figures as a result of combined fire authorities becoming preceptors (section 83);
- 3) the explanatory notes to rate demand notices to refer to the new provision in relation to rate relief in respect of registered community amateur sports clubs (which was introduced by section 64 of the 2003 Act);
- 4) correct a reference in paragraph 4 of schedule 3 in relation to "relevant precepting authority";
- 5) amend the reference to the relevant valuation band in regulation 1 of the main demand notice regulations in the light of revaluation which will lead to new valuation lists under section 22B of the Local Government Finance Act 1992.

These regulations come into force on 25 December 2003.

**Section 11A of the Local Government Finance Act 1992 “the 1992 Act” (second and empty homes discounts)**

Who can make the determination?

In Council Tax Information Letter 7/2003, we said that a full council meeting was needed to make the determination to reduce or remove the discount under section 11A of the 1992 Act. It is the Office’s view that where the authority is operating executive arrangements, making the determination is the responsibility of the executive rather than an authority responsibility to be discharged by a full council meeting. Where the authority has alternative arrangements, it is the Office’s view that the whole authority must make the determination. Authorities should take their own advice, as appropriate. The power to make these determinations commenced on 18<sup>th</sup> December.

Timing of determinations

The determination must be made before the beginning of the financial year to which it applies. This applies both to the original determination and to a determination varying or revoking the original determination. It is envisaged by the Local Authorities (Calculation of Council Tax Base) (Amendment) (England) Regulations 2003 that the determination should be made before the calculation of the tax base for 2004/05. If done in that order, it means that the higher tax base can be taken into account when authorities set their budget requirement. The determination can be made after the tax base has been set under the Local Authorities (Calculation of Council Tax Base) Regulations 1992, as amended. However if it is done in this order, then authorities will not be able to take account of the higher tax base in their budget setting for 2004/05.

Appeals

The decision of a billing authority not to grant a reduced discount under section 11A of the 1992 Act can be challenged by a taxpayer under section 16(2)(b) of the 1992 Act. Section 16(2)(b) provides a right of appeal for a person who disagrees with the calculation of an amount of council tax which he is liable to pay.

The determination made by a billing authority in accordance with section 11A of the 1992 Act (ie to reduce the discount in relation to second homes or reduce or remove it in relation to long term empty homes) can only be challenged by judicial review - see paragraph 49 of Schedule 7 to the Local Government Act 2003 which amends section 66 (judicial review) of the 1992 Act.

Local preceptors, reductions in discounts and tax base calculations

Local precepting authorities will continue to calculate their precept as normal. In accordance with section 50 of the 1992 Act, local precepting authorities calculate their budget requirement which then feeds into the billing authorities budget requirement. Local preceptors do not set an amount of council tax themselves. It is correct that second and empty home discounts will feed into items T and TP in the calculations in section 34 (special items relating to part only of an area) so a parish council could set a higher

budget requirement than it would do otherwise, whilst keeping the band D parish charge at a similar level.

### **Section 13A of the Local Government Act 1992 (billing authority's power to reduce the amount of tax payable)**

#### Who has responsibility?

This power is the responsibility of the executive where the authority is operating executive arrangements. Where the authority does not have an executive, it is an authority responsibility that can be discharged by a committee, sub-committee etc in accordance with section 101 of the Local Government Act 1972.

#### Appeals

The decision of a billing authority not to make a reduction under section 13A of the 1992 Act can be challenged by a taxpayer under section 16(2)(b) of the 1992 Act. Section 16(2)(b) provides a right of appeal for a person who disagrees with the calculation of an amount of council tax which he is liable to pay.

#### Section 13A reductions and council tax benefit

A reduction in the amount of council tax which a person is liable to pay should, like other discounts, be applied before council tax benefit is taken into account.

### **Council tax base for tax setting purposes (section 84 of the Local Government Act 2003)**

As explained in Council Tax Information Letter 7/2003, a full council meeting is no longer required to adopt the council tax base that is used when setting council taxes. The determination can now be delegated by the authority to a committee, sub-committee etc in accordance with section 101 of the Local Government Act 1972. The determination function is still a function of the authority, it has not become the responsibility of the executive.