

EXPLANATORY MEMORANDUM TO
THE COUNCIL TAX (ADMINISTRATION AND ENFORCEMENT)
(AMENDMENT) (ENGLAND) REGULATIONS 2012

2012 No. 672

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 The Council Tax (Administration and Enforcement) (Amendment) (England) Regulations 2012 (“the Regulations”) amend the Council Tax (Administration and Enforcement) Regulations 1992 (“the Administration Regulations”). The amendments are consequential on the introduction, under the Localism Act 2011, of council tax referendums in England.

2.2 Where a local authority sets an excessive relevant basic amount of council tax for a financial year it must be subject to a referendum process. If the excessive amount is not approved by the referendums process, if no referendum is held, or the referendum is held to be void by a court, it must revert to substitute calculations which set a non-excessive amount of council tax. The Regulations make provision to deal with these circumstances, in relation to demand notices.

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

3.1 None.

4. Legislative Context

The 1992 Act

4.1 Part 1 of the Local Government Finance Act 1992 (“the 1992 Act”) concerns council tax in England and Wales. Under the 1992 Act billing authorities are required to levy and collect council tax in respect of dwellings situated in their areas (see section 1(1) of that Act).

4.2 There is power in the 1992 Act to require billing authorities to serve a demand notice on a person before that person becomes liable to pay council tax in respect of a dwelling and a financial year (see paragraph 2(4)(a) and (b) of Schedule 2 to the 1992 Act). The requirement to serve a demand notice is included in regulation 18 of the Administration Regulations.

4.3 Paragraph 10 of Schedule 1 to the Administration Regulations also makes provision for the issuing of a further notice in circumstances where an adjustment to the amount payable under a demand notice is necessary.

The Localism Act 2011

4.4 The Localism Act 2010 inserts a new Chapter 4ZA into Part 1 of the 1992 Act¹. The new Chapter introduces council tax referendums in relation to England.

4.5 Under section 52ZB of the 1992 Act each billing authority and precepting authority must determine whether its relevant basic amount of council tax² for a financial year is excessive. This question must be decided in accordance with a set of principles determined by the Secretary of State (section 52ZC of the 1992 Act).

4.6 If a billing authority sets an excessive relevant basic amount of council tax (“excessive amount”) for a financial year it must hold a referendum in relation to that excessive amount (section 52ZG of the 1992 Act). If the excessive amount is approved by the referendum process that amount continues to have effect for the year (section 52ZH(3) of the 1992 Act). If it is not so approved or if a referendum is not held, a substitute amount calculated by the billing authority takes effect (sections 52H(5) and 52ZI of the 1992 Act).

4.7 If a major precepting authority sets an excessive amount for a financial year it must notify its billing authorities and referendums must be held by each of those authorities in relation to that amount (see sections 52ZK and 52ZN of the 1992 Act). If the excessive amount is approved by the referendums process that amount continues to have effect for the year (section 52ZO(3) of the 1992 Act). If it is not so approved or if one or more referendums are not held, a substitute amount calculated by the major precepting authority takes effect (sections 52ZO(5) and 52ZP of the 1992 Act).

4.8 Similarly, if a local precepting authority sets an excessive amount for a financial year it must notify its billing authority and the billing authority must hold a referendum in relation to that amount (see sections 52ZM and 52ZN of the 1992 Act). Again if the excessive relevant basic amount is approved by the referendum that amount continues to have effect for the year (section 52ZO(3) of the 1992 Act). If it is not so approved or if a referendum is not held a substitute amount calculated by the major precepting authority takes effect (sections 52ZO(5) and 52ZP of the 1992 Act).

4.9 The Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) Regulations 2012 (S.I. 2012/444) (the 2012 Regulations) make provision for a referendum to be challenged by petition to an election court. Regulation 22(5) and (13) of the 2012 Regulations provide for a situation in which a billing or precepting authority’s relevant basic amount of council tax for the financial year is approved in a referendum and a court allows a referendum petition. In such circumstances the substitute amount calculated by the authority has effect (see regulation 22(5) and 22(13) of the 2012 Regulations).

¹ Chapter 4ZA was inserted into Part 1 of the 1992 Act by Schedule 5 to the Localism Act 2011.

² The term “relevant basic amount of council tax” is defined in section 52ZX of the 1992 Act. Section 52ZX was inserted into the 1992 Act by Schedule 5 to the Localism Act 2011.

4.10 Where a billing authority's relevant basic amount of council tax is not approved in a referendum and an election court subsequently allows a referendum petition on the ground that the result of the referendum was not in accordance with the votes cast, the amount calculated as the billing authority's excessive relevant basic amount of council tax for the financial year will have effect for the purposes of the 1992 Act (regulation 22(9) of the 2012 Regulations). Similarly, where a precepting authority's relevant basic amount of council tax is not approved in a referendum and the court decides that the result was not in accordance with the votes cast, the amount calculated by the precepting authority as its excessive relevant basic amount of council tax for the year will have effect for the purposes of the 1992 Act (regulation 22(17) of the 2012 Regulations).

5. Territorial Extent and Application

5.1 This instrument applies in relation to England only.

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

- What is being done and why

- 7.1. The Coalition Programme for Government included a commitment to give residents the power to veto excessive council tax increases. This was to ensure that excessive council tax increases occur only where there is a clear mandate from local people. The Localism Act 2011 subsequently abolished central government powers to cap council tax and made provision for binding referendums to be held on excessive council tax increases. The aim is to shift decision making on excessive council tax increases from central government to the local electorate.
- 7.2. The repeal of the Secretary of State's capping powers and introduction of a new system of council tax referendums means that it is necessary to specify the steps that a billing authority must take if an excessive council tax increase set by itself or a precepting authority is not approved by the referendums process, if no referendum is held or a referendum is held to be void, and a substitute non-excessive amount takes effect. This will affect the amount of council tax for which a bill-payer is liable in that financial year.
- 7.3. In order to allow the billing authority some flexibility and avoid the costs of mandatory rebilling, it will have the option of issuing new bills immediately, offering refunds at the end of the year, or allowing credits against liability in the following year. However, billing authorities will be required to refund and re-bill any local council taxpayer who requests this.
- 7.4. The Regulations do not allow an authority to take enforcement action to recover the difference between the amount originally set out in the bill and the amount

that would be charged if the authority sent out a new bill based upon its substitute calculations. The Government considers that it would be inappropriate for bill payers to face enforcement action in relation to any amount in excess of this substitute amount, given that they will ultimately be relieved of liability for it through rebilling, refunds or credits against future liabilities.

7.5. The Regulations also make provision for a scenario where an excessive amount of council tax is not approved in the referendum, the result is subsequently overturned by a court and the authority reverts to its original council tax calculations based on the excessive amount. This could cause confusion for the taxpayer who may be unclear about their liability. In this situation, any demand notices originally issued for the excessive amount will continue to have effect, and will have effect as if they include the difference between the excessive amount and the substituted amount.

7.6. Where revised demand notices based upon the authority's substitute calculations have already been issued before the election court decides that the relevant basic amount was in fact approved, the billing authority must issue a revised bill as soon as practicable after the day on which the election court allows the referendum petition.

- Consolidation

7.7 As the amendments made by the Regulations are discrete, the Department does not consider it necessary to consolidate the regulations being amended.

8. Consultation outcome

8.1 A public consultation was undertaken on the Government's policy to introduce council tax referendums. "*Local referendums to veto excessive council tax increases*" was published on 30 July 2010. It sought views on a wide range of issues relating to the operation of referendums, including whether it was right to give local authorities the discretion to issue new bills immediately, offer refunds at the end of the year or allow credits against liability in the following year.

8.2 Over 1200 responses were received and Government took account of these when formulating its policies on council tax.

9. Guidance

9.1 The Department is not planning to publish any guidance in relation to the Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is that:

The Regulations will apply to authorities when a council tax referendum does not approve an excessive amount or when a council tax referendum is not held in respect of such an amount.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There are no plans for a formal review of the Regulations.

13. Contact

Peter Reilly at the Department for Communities and Local Government Tel: 0303 444 2092 or email: peter.reilly@communities.gsi.gov.uk can answer any queries regarding the instrument.