

POLICY NOTE

THE COUNCIL TAX (ADMINISTRATION AND ENFORCEMENT) (SCOTLAND) AMENDMENT REGULATIONS 2012

SSI 2012/338

The above instrument was made in exercise of the powers conferred by sections 113(1) and 116(1) of, and paragraphs 1(1), 2(2), 2(4)(a) and (e), 2(5) and 4(2) to (5B) of Schedule 2 to, the Local Government Finance Act 1992. The instrument is subject to negative procedure.

Policy Objectives

These Regulations are part of a package of three SSIs which will enable local authorities to charge a council tax increase for certain long-term unoccupied homes in order to help encourage owners to bring their empty homes back into use.

These Regulations will make a number of changes to the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992¹ to reflect the new powers for local authorities to increase council tax charges for long-term unoccupied homes, which have been enabled by the Local Government Finance (Unoccupied Properties etc.) (Scotland) Act 2012 ('the 2012 Act'). Therefore most of the provisions in these Regulations simply update the existing Regulations to reflect the fact that, if the Scottish Parliament agrees the draft Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013, local authorities will be able to vary council tax charges for certain unoccupied homes (i.e. increase or decrease them) rather than just vary the level of discount provided.

However, regulation 3 provides a new power which will place an obligation on owners, residents or managing agents to provide to a local authority on request within 21 days any information they have which the local authority requires to help the authority ascertain whether a discount or an increase in council tax liability should apply as a result of whether or not a home is unoccupied. This will give local authorities explicit powers to require a person to provide information, for example, about how long a home has been occupied or unoccupied or how often it is lived in. This should assist the authority in determining whether a home should be classed as unoccupied or a second home and, if it is unoccupied, whether or not it should be liable for any council tax variation.

Alongside this, regulation 9 amends the existing Regulations to ensure that taxpayers are required to let their local authority know about a change in circumstances, rather than waiting until they are specifically asked about it. This amendment is needed as local authorities may only write to taxpayers occasionally to request information (for example, when they are made aware by someone else that a home may be unoccupied). This provision amends the existing requirement for taxpayers to notify their local authority of changes in circumstances by requiring them to let the local authority know within 21 days if they are being undercharged due to the local authority having made incorrect assumptions (e.g. about a home's occupation status). The current Regulations only cover circumstances where someone is incorrectly receiving a discount they are no longer entitled to, so this requires updating to also cover circumstances where the taxpayer is liable for a council tax increase.

¹ <http://www.legislation.gov.uk/ukxi/1992/1332/contents/made>

In addition, regulations 4 and 8 update the existing Regulations to allow for an increased level of penalty of up to £500, introduced by the 2012 Act. This increased penalty can be charged in cases where the taxpayer has failed to provide information requested by a local authority within 21 days in relation to whether or not a home is occupied (or is found to have provided false information). It can also be charged where the taxpayer fails to inform the local authority that there has been a change in circumstances and they are being undercharged council tax due to the local authority making the wrong assumptions.

These increased potential penalties, along with the strengthened provisions to require owners and others to provide information, aim to help local authorities to enforce any council tax increase by strengthening their powers to require information to be provided and to penalise owners, where appropriate, who either do not respond to local authority queries, provide false information or fail to let the local authority know about a change in circumstances which leads to them being undercharged for council tax purposes.

These Regulations come into force on 9 February 2013, ahead of the ability to impose increases in council tax charges from 1 April 2013. This is to enable local authorities that propose to implement an increase or other changes from 1 April 2013 to make use of the powers to require information to be provided when sending out their bills for the 2013-14 council tax year.

Consultation

The Scottish Government carried out an initial public consultation² from October 2011 to January 2012 on plans for legislation on a council tax increase, which included a question about the proposal that owners should have a duty to inform their local authority if their home has been empty and unoccupied. A further consultation³ on the draft package of council tax Regulations was held from July to October 2012, which included seeking views on a draft of these Regulations. The consultations were sent to local authorities, NHS Boards, key housing and council tax stakeholders, equalities groups and other bodies whose members were likely to own empty homes. The Scottish Government also promoted the consultations through News Releases and announcements to raise wider awareness. Two open consultation events were held as part of the first consultation, along with ongoing discussions with local authorities through an officer working group on the Regulations.

The Scottish Government has published consultation analysis reports⁴ for both consultations. In both cases, the majority of respondents who expressed a view favoured the Scottish Government's proposals for these Regulations in order to increase and update local authorities' powers to require owners and others to provide information. Copies of individual responses to both consultations (except where respondents asked for their response not to be published) are also available on the Scottish Government's website⁵.

² See <http://www.scotland.gov.uk/Publications/2011/10/17105007/0> - particularly Section 1, compliance and enforcement, and question 6

³ See <http://www.scotland.gov.uk/Publications/2012/07/9137> - particularly pages 9 to 10

⁴ See <http://www.scotland.gov.uk/Publications/2012/03/3821> - legislation consultation analysis and <http://www.scotland.gov.uk/Publications/2012/11/5103>

⁵ See <http://www.scotland.gov.uk/Publications/2012/02/7761/downloads> and <http://www.scotland.gov.uk/Publications/2012/11/4993/0>

Impact Assessments

An Equality Impact Assessment has been completed on the proposals for the council tax legislation⁶. A draft of this Assessment was consulted on and copies were sent to bodies representing equalities groups. The Assessment did not specifically consider the proposals for these Regulations as the proposals simply aim to assist Councils in enforcing any council tax increase on unoccupied homes by helping them to secure accurate information about whether or not homes are occupied and therefore the proposals should not have any impacts on particular equality groups.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed following the consultation on the legislation⁷. It does not consider in detail the changes in these Regulations, but notes that home owners (whether they are businesses or individuals) already have a duty to inform the relevant local authority of any change in circumstances, such as if it becomes unoccupied, so the Regulations are not expected to have any effect on businesses.

Scottish Government

Housing and Regeneration, the Commonwealth Games and Sport Directorate

⁶ See Assessment at <http://www.scotland.gov.uk/Publications/2012/04/7872/2>

⁷ See <http://www.scotland.gov.uk/Publications/2012/04/7872/1>