

2004 No. 927

COUNCIL TAX, ENGLAND

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

<i>Made</i> - - - -	<i>25th March 2004</i>
<i>Laid before Parliament</i>	<i>1st April 2004</i>
<i>Coming into force</i> - -	<i>22nd April 2004</i>

The First Secretary of State in exercise of the powers conferred upon him by sections 113(1) and (2) of, paragraphs 1, 4 and 21 of Schedule 2 to, and paragraphs 1, 3, 5, 11A, 12A and 20 of Schedule 4 to the Local Government Finance Act 1992(a) hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Council Tax (Administration and Enforcement) (Amendment) (England) Regulations 2004.

(2) These Regulations apply to billing authorities in England only (b).

(3) These Regulations come into force on 22nd April 2004.

Amendment of Regulations

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

Citation, commencement and interpretation

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

““discount” means a discount under section 11 or section 11A(a) of the Act, or a reduction in the amount of council tax payable for a dwelling under section 13A(b) of

(a) 1992 c.14. Paragraph 21 of Schedule 2 was added by paragraph 53(3) of Schedule 7 to the Local Government Act 2003 c.26. Paragraphs 11A, 12A and 20 of Schedule 4 to the Act were inserted by sections 81, 82 and paragraph 54 of Schedule 7 respectively of the Local Government Act 2003.

(b) The Secretary of State can exercise the powers under sections 113(1) and (2) and paragraphs 1, 4 and 21 of Schedule 2 to, and paragraphs 1, 3, 5, 11A, 12A and 20 of Schedule 4 to the Local Government Finance Act 1992 only in relation to England: see article 2 of and the entry relating to the Local Government Finance Act 1992 in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and section 129 of the Local Government Act 2003.

(c) S.I. 1992/613.

(d) Regulation 1(2) was amended by the Council Tax (Administration and Enforcement) (Amendment) Regulations 1992 (S.I. 1992/3008) and by the Council Tax and Non-Domestic Rating (Electronic Communications) (England) Order 2003 (S.I. 2003/2604).

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

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

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

“Quashing 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)(e)) 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.

(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

(a) Section 11A was inserted by s.75(1) of the Local Government Act 2003. Section 75(2) of that Act inserted similar provision in relation to Wales in substitution of section 12 of the Local Government Finance Act 1992.

(b) Section 13A was inserted by s.76 of the Local Government Act 2003.

(c) Regulation 32(1) was amended by the Council Tax (Administration and Enforcement) (Amendment) Regulations 1992 (S.I. 1992/3008), the Council Tax (Administration and Enforcement) (No. 2) Regulations 1993 (S.I. 1993/773), the Local Authorities (Contracting out of Tax Billing, Collection and Enforcement Functions) Order 1996 (S.I. 1996/1880), the Council Tax (Administration and Enforcement) Regulations 1999 (S.I. 1999/534) and the Council Tax (Administration and Enforcement) (Amendment) (England) Regulations 2003 (S.I. 2003/768).

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

(e) Regulation 28A was substituted together with regulation 28 for regulation 28 as originally enacted by the Council Tax (Administration and Enforcement) (Amendment) Regulations 1992 (S.I. 1992/3008).

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)(a) 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”;

(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.”

(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);

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

- (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 by authority of the First Secretary of State

25th March 2004

Phil Hope
Parliamentary Under Secretary of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Council Tax (Administration and Enforcement) Regulations 1992 (“the principal regulations”).

Regulation 3 inserts new definitions of “discount” and “exempt dwelling” into regulation 1(2) of the principal regulations in consequence of amendments made to the Local Government Finance Act 1992 by the Local Government Act 2003.

Regulation 4 substitutes a new regulation 14 for regulation 14 of the principal regulations, which requires authorities to take reasonable steps to ascertain whether any discounts apply to dwellings before calculating the chargeable amount. By virtue of the inserted definition of “discount” in regulation 1(2), reference is made to sections 11A and to classes of case determined under 13A(3) of the LGFA 1992. Section 11A (inserted by the Local Government Act 2003) allows billing authorities in England to reduce to a minimum of 10% the discount which applies under section 11 of the LGFA 1992 to dwellings falling into classes prescribed in regulations, or to reduce or end the discount for dwellings falling into other classes prescribed in regulations. Section 13A(3) allows billing authorities to determine a class of case in which the amount of council tax that a person is liable to pay is to be reduced. Section 13A was also inserted by the Local Government Act 2003.

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 liability order which has been made, where the court is satisfied that the order should not have been made.

Regulation 36A(3) will allow the magistrates’ court to substitute a liability order for a lesser sum payable where it considers that a liability order for such a lesser sum could properly have been made. Regulation 36A(4) means that the requirements of paragraphs (2) to (5) of regulation 34 of the principal regulations will apply to any such application for a substituted liability order. A summons would have to be served on the debtor before such an order could be made. 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 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, and 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 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 by substituting new paragraphs (1) and (3). 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 regulation 50 only allowed a charging order to be made where more than £1000 was outstanding under a single liability order. Regulation 7 amends regulation 50 so that where the aggregate of sums outstanding under two or more liability orders exceeds £1000 a charging order can be made.

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of businesses, charities or voluntary bodies.

STATUTORY INSTRUMENTS

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