

**EXPLANATORY MEMORANDUM TO  
THE LOCAL GOVERNMENT (STRUCTURAL CHANGES) (FINANCE)  
(AMENDMENT) REGULATIONS 2012**

**2012 No. 20**

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 Local Government (Structural Changes) (Finance) (Amendment) Regulations 2012 (“the Regulations”) amend the Local Government (Structural Changes) (Finance) Regulations 2008 (S.I. 2008/3022) (“the 2008 Regulations”).

The 2008 Regulations

2.2. A detailed explanation of the 2008 Regulations can be found in the explanatory memorandum to those Regulations. However, stated more shortly the 2008 Regulations make general provision in relation to areas in England for which an order has been made under section 7 (implementation of proposals by order) of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”). The 2008 Regulations make provision in relation to the exercise of functions under the Local Government Finance Act 1988 (“the 1988 Act”) and the Local Government Finance Act 1992 (“the 1992 Act”) by authorities. In particular, they make provision for-

- the exercise of functions under Part 3 of the 1988 Act (non-domestic rating) and Part 1 of the 1992 Act (council tax: England and Wales), including a procedure in Schedule 1 to the 2008 Regulations for the exercise of certain functions relating to council tax; and
- where structural change occurs under the 2007 Act, for a transitional period an authority is able to calculate its council tax under Part 4 (equalisation of council tax) of the 2008 Regulations in order to equalise more equitably the council tax which is paid in its area.

2.3. Where an authority decides to equalise its council under Part 4 of the 2008 Regulations, Schedule 2 to those Regulations makes modifications to the 1992 Act and certain secondary legislation.

The Regulations

2.4. The Localism Act 2011 (“the 2011 Act”) makes a number of amendments to the 1992 Act. In particular-

- council tax referendums are introduced in relation to England (see section 72 of, and Schedule 5 to, the 2011 Act), and
  - the way in which council tax is calculated by authorities in England is changed (see sections 73 to 79 of the 2011 Act),
  - various amendments consequential to those changes are made (see Schedules 6 and 7 to the 2011 Act).
- 2.5. The Regulations make amendments to the 2008 Regulations which are consequential to these changes. Regulations 3 to 6 and 8 to 10 of, and Schedule 1 to, the Regulations make amendments which are consequential to the matters mentioned in the second and third bullet points above.
- 2.6. In relation to council tax referendums, the 2011 Act inserts a new Chapter 4ZA (referendums relating to council tax increases) into Part 1 of the 1992 Act. Regulations 7 and 11 of, and Schedule 2 to, the Regulations modify Chapters 4ZA and 6 of Part 1 of the 1992 Act in relation to financial years where an authority has power to calculate its council tax under the 2008 Regulations. These modifications are required to ensure that Chapter 4ZA of Part 1 of the 1992 Act operates appropriately whether an authority sets its council tax under the 2008 Regulations or the 1992 Act.

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

- 3.1. This section explains why the Regulations come into force less than 21 days from the date of laying.
- 3.2. Under new Chapter 4ZA of Part 1 of the 1992 Act the question of whether an authority's relevant basic amount of council tax for a financial year is excessive is decided in accordance with a set of principles determined by the Secretary of State for the year (section 52ZC(1) of the 1992 Act). Those principles must be set out in a report ("the council tax principles report") made by the Secretary of State which must be laid before and approved by the House of Commons on or before the date on which the local government finance report for the year under section 78A of the 1988 Act is approved (section 52ZD of the 1992 Act). Usually the local government finance report for a financial year is laid in the House of Commons in mid to late January in the preceding financial year and the report is then debated in late January or early February.
- 3.3. For the financial year beginning on 1st April 2012 ("2012-13") there are two authorities which have the power to set their council tax under the 2008 Regulations; namely, Shropshire Council and Central Bedfordshire Council. The Regulations modify the way in which the Secretary of State will set principles for these authorities under section 52ZC and consequently the Regulations must be in force before the Secretary of State signs the council tax principles report for 2012-13.
- 3.4. Because the council tax principles report for 2012-13 must be approved no later than the date when the local government finance report for 2012-13 is itself approved, it follows that the council tax principles report must be made and laid in the House of Commons no later than the local government finance report; namely, mid to late January 2012.

However, due to their technical nature it has not been possible to make and lay the Regulations by a date which enables this to occur and also enables the Department to comply with the 21 day rule.

- 3.5. Ministers consider the alternative (of complying with the 21 day rule but leaving certain council tax payers without any protection against excessive council tax increases in 2012-13) to be unacceptable. Reluctantly a decision has, therefore, been made to breach the 21 day rule in relation to the Regulations.

#### **4. Legislative Context**

- 4.1. Part 1 of the 2007 Act provides for the making of local government structural and boundary changes in England. So far as is relevant to the Regulations, it enables provision to be made by an order for the restructuring of an area in which there are two tiers of local government (namely, a county council and district councils) into a single tier of local government (namely, a county council or a district council).
- 4.2. The 2008 Regulations make general provision in relation to areas in England for which an order has been made under section 7 of the 2007 Act. In particular, provision is made for the discharge of functions concerning council tax under the 1992 Act and for the equalisation of council tax for a transitional period following a structural change.
- 4.3. The 2011 Act amends the way in which authorities in England calculate their council tax under the 1992 Act. The 2011 Act also introduces council tax referendums in relation to England by the insertion of a new Chapter 4ZA into Part 1 of the 1992 Act.
- 4.4. The Regulations make amendments to the 2008 Regulations which are consequential to these changes to the 1992 Act. In particular, modifications are made to the new Chapter 4ZA of Part 1 of the 1992 Act to ensure that that Chapter operates appropriately whether an authority sets its council tax under the 2008 Regulations or the 1992 Act

#### **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

##### Introduction

- 7.1. The 2011 Act makes two significant changes to the council tax legislation applicable in relation to England.

- 7.2. Firstly, the Government has a policy that local electors in England should via local referendums be able to approve or reject excessive council tax increases. A new Chapter 4ZA of Part 1 of the 1992 Act (which was inserted by Schedule 5 to the 2011 Act) implements this policy. The 2011 Act has also repealed the former system of council tax capping in relation to England. This is achieved by amending Chapter 4A of Part 1 of the 1992 Act so that it only applies in relation to Wales (see paragraphs 4 to 28 of Schedule 6 to the 2011 Act).
- 7.3. Secondly, this change has enabled the way in which authorities in England calculate their council tax (“the requisite calculations”) to be changed and simplified. Sections 74 to 78 of the 2011 Act make amendments to the requisite calculations which billing and precepting authorities must make each financial year. In particular, authorities are no longer required to calculate a budget requirement for a financial year and instead must calculate a council tax requirement. An authority’s council tax requirement for a financial year is (in essence) the amount of council tax which the authority must raise in order to finance its proposed budget for that year.
- 7.4. The Regulations are intended to amend the 2008 Regulations so that those Regulations operate appropriately following the changes to council tax made by the 2011 Act. Consequently, regulations 3 to 6 and 8 to 10 of, and Schedule 1 to, the Regulations amend the 2008 Regulations to update various existing references in the 2008 Regulations to provisions in the 1992 Act.
- 7.5. The introduction of council tax referendums via a new Chapter 4ZA of Part 1 of the 1992 Act does, however, require new provisions to be inserted into the 2008 Regulations so that that Schedule operates appropriately in circumstances where an authority has power to equalise its council tax under the 2008 Regulations. These changes are made by regulations 7 and 11 of, and Schedule 2 to, the Regulations. Taken together these provisions insert a new regulation 15A and a new Schedule 3 into the 2008 Regulations. The remainder of this section explains the operation of these provisions.
- 7.6. Similar provisions were unnecessary in relation to council tax capping, since that system operated by reference to an authority’s budget requirement and the council tax equalisation provisions in the 2008 Regulations did not materially alter the way in which an authority calculated its budget requirement under the 1992 Act.

#### Equalisation of council tax: modifications to Chapter 4ZA of Part 1 of the 1992 Act

- 7.7. There are two key issues to be addressed in modifying Chapter 4ZA of Part 1 of the 1992 Act for the purposes of council tax equalisation-
- excessiveness principles must be set before the Secretary of State knows whether the authority will set its council tax under the 2008 Regulations or the 1992 Act, and
  - the comparisons which need to be made for the purposes of those principles change depending on the financial year in which the comparison is made.
- 7.8. For these reasons it isn’t possible simply to add to the modifications to the 1992 Act which are made by Schedule 2 to the 2008 Regulations. Instead, a new regulation 15A

introduces a series of modifications which are set out in a new Schedule 3 to the 2008 Regulations (see regulation 7 of the Regulations)-

- the modifications in Part 1 of the new Schedule 3 will apply in the first year (that is, the financial year in which the structural change takes place),
- the modifications in Part 2 of that Schedule will apply in each of the second to fifth years (that is, each of the four financial years immediately following the year in which the structural change takes place) but only if council tax was set under the 2008 Regulations for the preceding financial year, and
- the modifications in Part 3 will apply in relation to the sixth year (that is, the year by which equalisation must occur if the authority makes maximum use of its discretion under Part 4 of the 2008 Regulations) but again only if council tax was set under the 2008 Regulations for the preceding financial year.

7.9. Below the modifications made by each of those Parts are considered in turn. The basic approach in relation to Parts 1 and 2 of new Schedule 3 is as follows-

7.9.1 Because excessiveness principles must be set at a time when the Secretary of State does not know whether the authority will set its council tax under the 2008 Regulations or the 1992 Act, the Secretary of State is required to state two sets of principles which each cover one of those eventualities.

7.9.2 If the authority sets its council tax under the 1992 Act-

- A comparison is made between – (i) the authority’s relevant basic amount of council tax for the year under consideration, and (ii) a suitable comparator for the financial year immediately preceding that year.
- If the principles are breached, a referendum is held into the authority’s relevant basic amount of council tax for the year under consideration.

7.9.3 If the authority sets its council tax under the 2008 Regulations-

- A comparison is made between – (i) the authority’s relevant basic amount of council tax for the year under consideration, and (ii) a suitable comparator for the financial year immediately preceding that year.
- If the principles are breached, a referendum is held into the authority’s uniform amount of council tax calculated ignoring any levies or local precepts. “Uniform amount of council tax” for those purposes has the same meaning as in Part 4 of the 2008 Regulations.

#### *Part 1 of new Schedule 3*

7.10. Paragraph 1 modifies section 52ZC (determination of whether increase is excessive) so that provision is made for two separate comparisons-

- one of which applies if the authority sets its council tax under the 1992 Act (see new section 52ZC(3A)), and
  - one of which applies if the authority sets its council tax under the 2008 Regulations (see new section 52ZC(3C)).
- 7.11. Where a single-tier authority is established under the 2007 Act there are a variety of possible permutations (see, in particular, section 2 of the 2007 Act). However, the authorities which are abolished when the single-tier authority is established will all be district or county councils. For that reason the relevant comparators in subsections (3A) and (3C) refer to amounts of council tax set by those authorities for the preceding year.
- 7.12. Paragraph 2 makes consequential modifications to section 52ZE (alternative notional amounts) which reflect the changes to section 52ZC. The changes enable notional amounts to be specified for the comparison in new section 52ZC(3A), the comparison in new section 52ZC(3C), or both.
- 7.13. Paragraph 3 modifies section 52ZF (billing authority’s duty to make substitute calculations) to reflect the calculations which may be made under the 2008 Regulations.
- 7.14. Paragraphs 4 and 5 modify sections 52ZG (arrangements for a referendum) and 52ZH (effect of referendum). There isn’t any change where the authority calculates its council tax under the 1992 Act. However, where the authority calculates its council tax under the 2008 Regulations, the question and the outcome concern the authority’s “uniform amount of council tax” ignoring any levies or local precepts. This amount isn’t in fact any different than the relevant basic amount of council tax, it is simply that what is calculated under section 31B(1) has been renamed “the uniform amount of council tax” by the 2008 Regulations since the “basic amounts of council tax” will be set under Part 4 of those Regulations (see the modification in paragraph 2 of new Schedule 2 to the 2008 Regulations as inserted by Schedule 1 to the Regulations).
- 7.15. Paragraph 6 makes modifications to section 52ZR (direction that referendum provisions are not to apply) which are consequential to the modifications made elsewhere in Part 1 of new Schedule 3.
- 7.16. Paragraph 7 modifies section 52ZX (meaning of relevant basic amount of council tax). The definition of the “relevant basic amount of council tax” for a billing authority is changed where that authority has power to set its council tax for the year under the 2008 Regulations. Different definitions apply depending on whether the authority sets its council tax under the 2008 Regulations or the 1992 Act.
- 7.17. Taking into account the other modifications to Chapter 4ZA of Part 1 of the 1992 Act, this definition applies to the following sections in that Chapter-
- Section 52ZB(1) (requirement for billing authority to determine whether its relevant basic amount of council tax is excessive).
  - Section 52ZC(1) (how a billing authority decides whether its relevant basic amount of council tax is excessive).

- Section 52ZC(4)(b) (authority’s relevant basic amount of council tax not capable of being excessive if categories are set and the authority does not fall within any of the categories).
  - Section 52ZD(2)(b) (no authority’s relevant basic amount of council tax capable of being excessive if no report laid for a year).
  - Section 52ZF(2)(b) (requirements for substitute calculations for a financial year).
  - Section 52ZR(1) (power of Secretary of State to give a direction that the referendum provisions are not to apply for a financial year).
- 7.18. Paragraph 8 modifies section 69 of the 1992 Act to insert new definitions for “the 2008 Regulations”, “predecessor area” and “uniform amount”.

*Part 2 of new Schedule 3*

- 7.19. Subject to the following changes, the modifications made by paragraphs 9 to 16 of Part 2 of the new Schedule 3 are virtually identical to the modifications made by Part 1 of that Schedule-
- The comparisons in new section 52ZC(3A) and (3C) are different, since basic amounts of council tax will have been calculated for the predecessor areas under the 2008 Regulations for the preceding financial year.
  - New section 52ZC(3B) modifies the operation of new section 52C(3A)(b) for 2012-13 to take account of the change in the requisite calculations from 2011-12 to 2012-13. This is the only modification of this type which needs to be made in relation to new Schedule 3, since only Shropshire Council and Central Bedfordshire Council have the power to set their council tax under the 2008 Regulations in relation to 2012-13 and Part 2 of new Schedule 3 will apply to those authorities in relation to that year.
  - The 2008 Regulations allow equalisation to occur in the predecessor areas at different times. In practice, this allows the size of the principal area to increase from one year to the next and so new section 52ZC(3D) and (3E) has been included to cater for this. These provisions modify section 52ZX(3C)(b) so that a like-for-like comparison is made from one year to the next.
  - The wording of the modifications to section 52ZE is changed to take account of the changes mentioned in the previous bullet point.
  - The additional definition “principal area” is included in the modifications to section 69 of the 1992 since this term is mentioned in new section 52ZC(3D) and (3E).

*Part 3 of new Schedule 3*

7.20. The modifications in this Part are relatively simple, since by definition the authority must set its council tax for the sixth year under the 1992 Act. The only modifications required are, therefore, to section 52ZC-

- to change the comparator for the year immediately preceding the year under consideration (the comparator which is used is the uniform amount of council tax for the preceding year ignoring levies and local precepts), and
- to define the term “uniform amount of council tax”.

## **8. Consultation outcome**

8.1. Consultation took place in relation to the 2008 Regulations. No consultation has been undertaken in relation to the Regulations, since the amendments which have been made are consequential to the amendments to council tax made by the 2011 Act.

## **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:

Authorities to which the Regulations apply will need to comply with the requirements in the Regulations when undertaking their functions in relation the 1988 and 1992 Acts. The Secretary of State will also need to comply with any applicable modifications to Chapter 4ZA of Part 1 of the 1992 Act.

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**

Mark Rickard at the Department for Communities and Local Government Tel: 0303 444 2090 or email: mark.rickard@communities.gsi.gov.uk can answer any queries regarding the instrument.