

**EXPLANATORY MEMORANDUM TO
THE COUNCIL TAX REDUCTION SCHEMES (PRESCRIBED
REQUIREMENTS) (ENGLAND) REGULATIONS 2012**

2012 No. 2885

**THE COUNCIL TAX REDUCTION SCHEMES (DEFAULT SCHEME)
(ENGLAND) REGULATIONS 2012**

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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 instruments**

2.1 These instruments make provision for the new localised council tax support schemes which come into effect, replacing council tax benefit, on 1 April 2013. All billing authorities in England are required to have their own scheme. The Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 ('Default Scheme Regulations') make provision for a default scheme that will apply to those billing authorities that have not made their own scheme by 31 January 2013. Otherwise all schemes made by authorities must include those matters that are prescribed in the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 ('Prescribed Requirements Regulations') as well as those matters which are required to be included in local schemes by paragraph 2 of Schedule 1A to the Local Government Finance Act 1992 ("the 1992 Act").

2.2 An explanation of the way the Regulations work is appended (**Annex A**).

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

3.1 There are two matters to note:

Breach of the 21 day rule – Prescribed Requirements Regulations

3.2 The Prescribed Requirements Regulations are made under paragraph 2(8) of Schedule 1A to the Local Government Finance Act 1992. Schedule 1A was inserted by section 10 of, and Schedule 4 to, the Local Government Finance Act 2012. That Act received Royal Assent on 31 October 2012 and Schedule 1A came into force immediately. The Regulations have been made and laid as soon as possible after Royal Assent. Section 13A(4) of the 1992

Act requires billing authorities to make their schemes no later than 31 January 2013 to have effect for the financial year commencing 1 April 2013.

3.3 The Prescribed Requirements Regulations will come into force on 27 November 2012. The Regulations prescribe matters that billing authorities must include in their local council tax support schemes. Those schemes must be approved by full council on or before 31 January 2013. Prior to making their schemes, billing authorities are required to consult with various other authorities and bodies as required by paragraph 3 of Schedule 1A to the 1992 Act and publish drafts of their schemes. Whilst many billing authorities have consulted and published draft schemes in anticipation of the Act itself and also the requirements prescribed in these Regulations, it is essential they now have certainty as to precisely what the requirements are as soon as possible so that they may finalise any consultation and make their schemes.

3.4 In the knowledge that the Bill would not receive Royal Assent until the Autumn and so as to give billing authorities as much advance notice as possible of its proposals, in May 2012 the Department published a statement of intent which set out what provision it intended to make in respect of prescribing requirements for local schemes. On 16 July 2012 the Department published a draft version of the Regulations and invited comments and questions. Those versions were also supplied to House of Lords Committee members. On 7 September Government published a further update of its intentions and indicated matters that had been modified following comments received from billing authorities, IT suppliers and other interested parties.

3.5 Government has maintained contact with interested parties throughout and has had a dedicated email inquiry box to deal with inquiries from authorities, benefits administrators, IT supplies and members of the public. It has met with IT suppliers regularly and addressed revenues and benefits personnel in a range of open fora events and professional body events.

3.6 The Department has considered very carefully whether it should breach the 21 day rule, and has regretfully concluded that it should. Whilst it accepts that both Parliament and those with an interest in the Regulations should be given sufficient time in which to consider their effect, for the reasons set out above the Department does not believe in this instance that, balanced against the risks to local authorities of delay in the Regulations becoming effective and taking into account their circulation in draft form since July, there is any disadvantage caused to billing authorities or other interested parties by the Regulations coming into force shortly after they are laid. Indeed the Department believes it will assist authorities as it will give them more time in which make the necessary arrangements for finalising and making their schemes on or before 31 January.

Gender neutral drafting

3.7 Neither the Prescribed Requirements Regulations nor the Default Scheme Regulations uses gender neutral drafting. Both sets of regulations are based on the Council Tax Benefit Regulations 2006 (S.I. 2006/215) and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/216) and it has always been the Department's stated intention to follow these as closely as possible and to keep to a minimum any changes in both content and structure. Billing authorities, IT suppliers and benefits advisers are familiar with the Council Tax Regulations and have been applying them for many years. For this reason, and because it would necessarily have involved more substantive changes, the decision was made to retain the existing drafting method.

4. Legislative Context

4.1 Section 13A of the 1992 Act requires billing authorities to make a scheme reducing the amount of council tax payable by those whom the authority considers to be in financial need. Schedule 1A to that Act sets out the particular matters that a scheme must include and the process by which it must be made. The Secretary of State may prescribe other matters that must be included in a scheme. He has done that in the Prescribed Requirement Regulations, and in particular schemes will be required to make provision in respect of pensioners (as defined). For those authorities that have not made a scheme by 31 January 2013, the default scheme (as set out in the Default Scheme Regulations) will apply. This makes provision for both pensioners and working age residents and broadly reflects the existing council tax benefit regime.

5. Territorial Extent and Application

5.1 These instruments apply 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

7.1 The 1992 Act provides for billing authority-designed and run council tax reduction schemes to replace the council tax benefit system from 1 April 2013. Existing council tax benefit provisions under social security legislation will be repealed from 1 April 2013, with some provisions being saved for older cases – for example, those being appealed in the courts.

7.2 The default scheme assumes billing authorities will not, at this stage, have time to re-design their IT or other systems. The default scheme therefore assumes no change in substance to the current system.

7.3 It does, however, provide for the treatment of people on new benefits being introduced under the Welfare Reform Act 2012, such as universal credit.

This is because these benefits will, from April 2013, start to replace legacy benefits referenced in the existing system as indicators of particular needs.

7.4 The period for which the default scheme applies is limited to the first year of the new system - 2013/14. Some authorities may decide to use the default scheme as the basis for their local scheme for 2013/14. Under paragraph 5 of Schedule 1A to the 1992 Act (which covers revisions to and replacement of schemes), each financial year a billing authority will decide whether to revise their local scheme, or replace it with another scheme.

7.5 The Prescribed Requirements Regulations preserve existing provision for pensioners such that council tax reductions in all authorities will be calculated in the same way as under existing council tax secondary legislation (The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006). This reflects the Government's stated policy intention, as set out in its consultation response of December 2011 and Updated Impact Assessment of June 2012, that vulnerable pensioners should not be disadvantaged in terms of the calculation of their council tax awards as a result of this reform:

Impact Assessment:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8465/2158675.pdf

7.6 In addition, there are a small number of other requirements prescribed. All schemes will be required to exclude those treated as not in Great Britain for the purposes of the Regulations from their schemes (essentially those who are not habitually resident in the United Kingdom, Republic of Ireland or Islands) as well as those who are subject to immigration control. As is currently the case, however, certain persons who may not be habitually resident at the time of their claim, such as refugees or those with humanitarian protection are treated for these purposes as if they were and will be eligible to apply for local council tax support providing they otherwise qualify under an authority's scheme.

7.7 Finally, a small number of administrative provisions are set out which will apply to all schemes, for example, a requirement for a billing authority to notify an applicant of the outcome of their application.

8. Consultation outcomes

8.1 The Government held a full consultation on the localisation of council tax reform policy from 2 August 2011 to 14 October 2011. It received four hundred responses, and published its response to this in December 2011:

<https://www.gov.uk/government/consultations/localising-support-for-council-tax>

8.2 As the response sets out, there was broad support of 61 per cent, both in the consultation responses and sixteen engagement events held throughout England, for the proposal that retention of support for pensioners should be delivered through a national ‘rules-based’ approach, with eligibility and rates defined in regulations broadly similar to those existing under Council Tax. The Government’s consultation response also undertook to put in place a default scheme, provided for in regulations, to take effect if a billing authority fails to adopt a scheme by 31 January 2013.

8.3 In terms of regulations, a Statement of Intent on regulations was first published on 17 May 2012. This was followed by draft versions of the Default Scheme Regulations (including provision for universal credit) and the Prescribed Requirements Regulations, published on 16 July 2012. The Government invited comments on these drafts from stakeholders. Many of those received were responded to in an updated draft, accompanied by a list of amendments, published on 7 September.

9. Guidance

9.1 Billing authorities are already familiar with the way in which existing council tax benefit and council tax award calculations work. In relation to administrative elements, the Government is issuing high level guidance setting out how these will now operate under the 1992 Act and the related Council Tax (Administration and Enforcement) Regulations 1992. Further support and guidance will be provided in areas where billing authorities indicate that this is needed.

10. Impact

10.1 The Default Scheme Regulations replicate what is in effect an existing regulatory system for billing authorities who do not make their own schemes. In the case of the Prescribed Requirements Regulations, those elements relating to pensioners again replicate an existing calculation regime.

10.2 In terms of the wider reform and pressures that these protections bring elsewhere in the localised council tax system, an Updated Impact Assessment for the policy, published in June 2012, and Equality Impact Assessment published in January 2012 are available here, and signed versions are attached (**Annexes B and C**):

Impact Assessment:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8465/2158675.pdf

Equality Impact Assessment:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8464/2063707.pdf

These concluded that, in England, localising council tax support for non-pension credit age people was the preferred option as this secured a £0.5bn

saving announced in the 2010 Spending Review for council tax benefit, but importantly enabled billing authorities to decide how this was achieved, balancing their assessment of likely impacts on council tax collection rates, priorities for local tax-payers and the authority's overall financial position.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Default Scheme will not have effect beyond 31 March 2014, and will not, therefore, be kept under review annually. The Government has undertaken to review the Prescribed Requirements Regulations on an annual basis, to check for any updates needed, including to premiums, disregards and the like.

12.2 Under Schedule 1A to the 1992 Act, the Secretary of State may serve a notice on a billing authority requiring it to provide information for the purpose of deciding whether to exercise his functions in respect of schemes. The Secretary of State will consider whether certain information will be required from billing authorities to support future evaluation of the policy.

12.3 In addition, under section nine of the Local Government Finance Act 2012, the Secretary of State is required to make provision for an independent review of all council tax reduction schemes within 3 years of that Act coming into force. The review must consider the effectiveness, efficiency, fairness, transparency and impact on the localism agenda of the schemes, and make recommendations as to whether they should be brought, instead, within Universal Credit.

13. Contact

Helen Richman at the Department for Communities and Local Government
Tel: 0303 444 2884 or email: helen.richman@communities.gsi.gov.uk can answer any queries regarding the instrument.

Operation of the schemes and calculation of council tax reductions

The Default and Prescribed Requirements Scheme Regulations (as these relate to people of pension credit eligible age) are based closely on the means-test delivered by the existing council tax benefit regulations (SI 2006/215 and SI 2006/ 216).

Certain groups prescribed in regulations are not eligible for reductions – for example, those with limited immigration status and those with more than £16,000 of capital. ¹

Maximum council tax liability is also the maximum amount of reduction a council tax payer can receive. Maximum council tax liability is defined as the amount set by the appropriate billing authority as council tax for the relevant financial year in respect of a dwelling, less any council tax discounts awarded under the Local Government Finance Act 1992, such as a single person's or disabled person's discount (see Default Scheme paragraph 29, Prescribed Requirements Scheme paragraph 7).

The schemes are means-tests. They compare the income of an individual to a deemed living allowance (applicable amount). Both these elements are calculated according to detailed rules in the regulations, based on individual circumstances. For example:

- the 'applicable amount' is made up of a personal allowance (based on whether the applicant is single, part of a couple and whether they have dependents), and 'premium' amounts attached to personal circumstances or benefit indicators (see Default Scheme Part 6 and Schedules 2 and 3; Prescribed Requirements, paragraph 6 and Schedule 2).
- Income is any earned income, 'unearned' income – including benefits and a 'tariff' income (calculated on capital holdings), is taken into account (see Default Scheme Part 10 and Schedules 5-10), Prescribed Requirements Part 6 and Schedules 4-6).

There are three main classes, or reduction types, per scheme that the individual could fall into based on their income and applicable amount calculation or the status of those living with them. These are set out in the table below. The applicant will get the most generous of the reductions which attaches in their case to either a, b or c (see Default Scheme main schedule Part 4 and Prescribed Requirements Scheme main schedule 1 Part 1).

¹ See Prescribed Requirements Scheme Regulations, Schedule 1, paragraphs 11 & 12; Default Scheme Regulations, main schedule, paragraphs 21-24. Note that persons recorded as refugees by the Secretary of State and other categories of person are not excluded.

	Generic Class	Corresponding Reduction
a.	Income less than applicable amount	100% of maximum council tax liability
b.	Income greater than applicable amount	20% of the value of the excess income (above the applicable amount) is deducted from maximum council tax liability to give the council tax reduction
c.	Alternative maximum council tax reduction	An 'alternative' reduction based on the income of non-dependents living with the claimant.

Finally, an adjustment down is made for other non-dependent adults in the household who would normally be expected to contribute to paying the council tax bill (a 'non-dependent deduction - please see Default Scheme main schedule paragraph 30 and Prescribed Requirements Scheme main schedule, paragraph 8).