EXPLANATORY MEMORANDUM TO

THE COUNCIL TAX (ALTERATION OF LISTS AND APPEALS) (ENGLAND) (AMENDMENT) REGULATIONS 2013

2013 No. 467

AND

THE NON-DOMESTIC RATING AND COUNCIL TAX (DEFINITION OF DOMESTIC PROPERTY AND DWELLING) (ENGLAND) ORDER 2013

2013 No. 468

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 To prevent non-domestic rates being chargeable in relation to domestic microgeneration schemes (for example, solar panels leased to commercial operators under 'rent- a-roof' schemes).

2.2 To prevent council tax being payable on domestic microgeneration schemes except in so far as they are part of a larger property for which council tax is payable.

2.3 To prevent leases of domestic microgeneration schemes (for example, as part of rent-a-roof schemes) from triggering council tax revaluations of properties.

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

None

4. Legislative Context

4.1 Part 3 of the The Local Government Finance Act 1988 ("the 1988 Act") introduced a new rating system for non-domestic properties. Every five years local non-domestic rating lists are compiled by local authority valuation officers under section 41 of the 1988 Act. These lists must include details of all non-domestic hereditaments (units of property originally defined in section 115(1) of the General Rate Act 1967 and further defined in section 64 of the 1988 Act) situated in the local authority area which are (at least in part) neither domestic property nor exempt from local non-domestic rating nor listed on a central list instead. If any of these hereditaments are occupied those occupying

them are liable to pay non-domestic rates in relation to the property (section 43 of the 1988 Act).

4.2 Domestic property is defined in section 66 of the Local Government Finance Act 1988 (the 1988 Act) and includes property which is used wholly for the purpose of living accommodation or a yard, garden, outhouse or appurtenance belonging to or enjoyed with living accommodation. Homeowner installed solar panels, for example, are considered to be part of the domestic property in the same way as the domestic boiler or combined heat and power units. However, solar panels installed by a company in exchange for a lease and a share of the electricity generated where the primary purpose of the panels is the generation of electricity for sale (rent-a-roof schemes) may not be considered domestic property.

4.3 Hereditaments are defined in section 64 of the1988 Act. It will vary from case to case whether the space on the roof used to house the solar panels in a rent-a-roof scheme forms a separate hereditament depending on who controls the use of the solar panels and to what extent, who maintains them and who receives what proportion of the electricity and on what terms *(Westminster City Council v Southern Railway Co (1936) HL 24 RIT 278)*. However, separate hereditaments which are not domestic or otherwise exempt are relevant non-domestic hereditaments meriting separate assessment in the rating list for non-domestic rates (see sections 43 and 45 of the 1988 Act for liability for non-domestic rates). The solar panels themselves may also be rateable. **The Non-Domestic Rating and Council Tax (Definition of Domestic Property and Dwelling) (England) Order 2013** makes an order under section 66(9) of the 1988 Act to include microgeneration schemes as domestic property thus taking them out of non-domestic rates.

4.4 Part 1 of the Local Government Finance Act 1992 ("the 1992 Act") introduced a new tax in England and Wales, council tax, to be levied and collected by certain local authorities. Section 1 establishes that council tax is payable in respect of dwellings in a local authority area. A dwelling is defined in section 3 of the 1992 Act. It is a hereditament which is neither rateable (i.e. in respect of which non-domestic rates are payable) nor exempt from rating. However, some property which is defined in section 66(1) of the 1988 Act as domestic (such as garages, outhouses and appurtenances) are also excluded from the definition of dwelling in section 3(4) of the 1992 Act except in so far as they form part of a larger property which is itself a dwelling. Council tax is only chargeable in relation to dwellings. Therefore, council tax is not payable in relation to garages etc. **The Non-Domestic Rating and Council Tax (Definition of Domestic Property and Dwelling) (England) Order 2013** makes an order under section 3(6) of the 1992 Act to exclude microgeneration schemes from the definition of dwelling (except in so far as they form part of a larger property) thus ensuring no council tax is separately payable in relation to them.

4.5 Regulation 3 of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 (S.I. 2009/2270) sets out some restrictions on the alteration of council tax valuation bands. One of the triggers for a review of a

property's valuation band is a material increase in the value of a dwelling and a relevant transaction, which has been subsequently carried out in relation to the whole or any part of it (regulation 3(1)(a)(ii)). A 'relevant transaction' is defined in section 24 of the 1992 Act as meaning a transfer on sale of the fee simple (freehold), a grant of a lease for a term of seven years or more, or a transfer on sale of such a lease. Rent-a-roof schemes for the installation of solar panels typically have leases of 25 years. This means the schemes would fall within the definition of a relevant transaction and could trigger a council tax revaluation for a property signed up to such a scheme. The **Council Tax (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2013** prevent the alteration of valuation bands in these circumstances.

5. Territorial Extent and Application

These instruments apply to England.

6. European Convention on Human Rights

6.1 Baroness Hanham has made the following statement regarding Human Rights:

In my view the provisions of the Non-Domestic Rating and Council Tax (Definition of Domestic Property and Dwelling) (England) Order 2013 are compatible with the Convention rights.

6.2 As the Council Tax (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2013 are subject to the negative resolution procedure and do not amend primary legislation, no statement is required for this instrument.

7. Policy background

7.1 The Government's consultation on technical reforms to council tax was published on 31 October 2011 and presented an opportunity to explore modernising the system in certain minor respects and to address technical issues which had arisen in recent years. Technical reforms regarding domestic scale solar photovoltaic (PV) installation and the need to provide consistency across different installation methods were included in the consultation. The consultation document is available at:
https://www.gov.uk/government/consultations/technical-reforms-of-council-tax

7.2 The practice whereby a third party provider takes part possession of the roof of homes and installs solar PV panels at their own cost has been widely adopted by many households in England. These arrangements are known as "rent a roof" schemes and depending upon the circumstances in each case, rent a roof installations may warrant their own business rates assessment separate from the council tax payable on the home. The Government is keen not to disincentivise the uptake of green energy and technologies, which it believes the current legislation would do. It has decided to make these amendments so that domestic scale microgeneration schemes installed on domestic dwellings are

treated as part of those dwellings, and are not therefore subject to non-domestic rates or council tax. Further amendments ensure that domestic rent-a-roof installations do not trigger a valuation review of the dwellings they are installed on, thereby removing the current disincentives.

7.3 Commercial scale renewable technologies are, and will continue to be, generally liable for business rates either as part of a property used for other purposes (such as an industrial site) or as a stand alone renewable power station. A definition of domestic scale microgeneration installations has also been introduced to distinguish them from such larger scale operations.

7.4 The Government has decided that domestic scale microgeneration should be defined by reference to the installed electricity generating capacity of the installation. The amendments will ensure that installations of 10 kW or less attached to a dwelling would therefore be treated as part of the dwelling.

Consolidation

7.5 Some of these amendments are to primary legislation. The amendments to secondary legislation are minor and we do not consider that consolidation is necessary.

8. Consultation outcome

8.1 This policy was subject to an 8 week consultation, *Technical Reforms to Council Tax*, which was launched on 31 October 2011 and ended on 29 December 2011. The consultation period was shortened in order to meet the legislative timetable of the Local Government Finance Act 2012.

8.2 The Government published its response on 28 May 2012. 399 responses were received in total. Of the 211 responses on whether domestic scale solar PV should be treated as part of the main dwelling, 210 agreed stating their support, only one local authority disagreed. Given the overwhelming agreement received for the proposal the Government decided to press ahead and ensure that PV installations are treated as part of the main dwelling. Of the 192 responses on whether a maximum generating capacity should be set at 10 kW, 176 agreed stating their support. 16 disagreed, of which 15 responses were from local councils. Given the majority support, the Government decided to proceed with a limit of 10kW capacity for domestic energy installations. The consultation document is available at: www.gov.uk/government/consultations/technical-reforms-of-council-tax

9. Guidance

9.1 Local authorities will be informed of changes in a Council Tax Information Letter from DCLG but other than that no guidance will be published.

10. Impact

10.1 These Regulations have no impact on business, charities or voluntary bodies.

10.2 The impact on the Valuation Office and Agency will be to allow them to treat domestic scale microgeneration as part of the main dwelling, removing the need for revaluation.

11. Regulating small business

11.1 The legislation will impact small business in a deregulatory way by removing disincentives for households to install domestic microgeneration systems.

12. Monitoring & review

12.1 The Government will monitor the impact of these Regulations as part of the ongoing maintenance of the system.

13. Contact

Samantha Healy at the Department for Communities and Local Government Tel: 0303 44 42565 or email: samantha.healy@communities.gsi.gov.uk can answer any queries regarding the instrument.