EXPLANATORY MEMORANDUM TO

THE COUNCIL TAX AND NON-DOMESTIC RATING (DEMAND NOTICES) (ENGLAND) (AMENDMENT) (NO. 2) REGULATIONS 2008

2008 No. 3264

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 Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) (No. 2) Regulations 2008 ("the Regulations") modify the Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003 (S.I. 2003/2613) ("the 2003 Regulations"). The 2003 Regulations govern the matters to be contained in, and information to be supplied with, council tax and non-domestic rates demand notices ("bills"). The modifications made by the Regulations concern council tax only. The modifications require certain efficiency information about local authorities to be included in, and supplied with, council tax bills in relation to the financial year beginning on 1st April 2009 ("2009-10") only.

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

3.1 Paragraphs 4.9 and 4.12 consider an external publication which is referred to in the Regulations.

4. Legislative Context

4.1 Part 1 of the Local Government Finance Act 1992 ("the 1992 Act") concerns council tax in England and Wales. Under the 1992 Act billing authorities are required to levy and collect council tax in respect of dwellings situated in their areas (see section 1(1) of that Act).

4.2 There is power in the 1992 Act to require billing authorities to serve a council tax bill on a person before that person becomes liable to pay council tax in respect of a dwelling and a financial year (see paragraph 2(4)(a) and (b) of Schedule 2 to the 1992 Act). The relevant requirement (i.e. to serve a council tax bill) is included in regulation 18 of the Council Tax (Administration and Enforcement) Regulations 1992 (S.I. 1992/613).

4.3 The 2003 Regulations require a council tax bill to contain certain matters (see regulation 3(1) of, and Schedule 1 to, the 2003 Regulations). They also require certain information to be supplied to a person on whom a council tax bill is served at the same time the bill is served (see regulation 3(4) of, and Part 1 of Schedule 3 to, the 2003 Regulations).

4.4 The Regulations make modifications to these requirements in the 2003 Regulations, so that billing authorities are required to include certain additional matters in a council tax bill and to supply additional information with such a bill.

4.5 For most billing authorities the additional information which must be provided for these purposes is information concerning the efficiency of the billing authority and any county council and fire and rescue authority any part of whose area is within the billing authority's area. These authorities are defined as "efficiency authorities" in the Regulations (see new regulation 1A(1), which is inserted in the 2003 Regulations by regulation 4 of the Regulations).

4.6 Where local government reorganisation is occurring in relation to a billing authority's area in 2009-10, the additional information which must be provided is information concerning the efficiency of-

- any fire and rescue authority any part of whose area is in the billing authority's area ('the relevant area');

- any authority which as at 1st April in the preceding financial year was a billing authority in respect of any part of the relevant area; and

- any county council authority any part of whose area was in the relevant area as at 1st April in the preceding financial year.

4.7 Where the authority in the first bullet point of paragraph 4.6 exists, it is an "efficiency authority". The authorities in the second and third bullet points are "restructuring efficiency authorities" (see new regulation 1A(2) and (3)). This distinction is made since the requirements for efficiency authorities and restructuring efficiency authorities are different in the Regulations.

4.8 The Regulations also require information about fire and rescue functions to be given separately to information about functions other than fire and rescue functions. The term "multi-function authority" is defined for these purposes (see new regulation 1A(4)).

4.9 The additional information which authorities must include in council tax bills for 2009-10 is published in the document "Efficiency information to be contained in and supplied with 2009-10 council tax demand notices" dated 18th December 2008 and it is the information in this document which billing authorities will need to include in their council tax bills (see, in particular, new paragraph 23C of Schedule 1 to the 2003 Regulations, and new paragraph 7C of Part 1 of Schedule 3 to the 2003 Regulations, which new paragraphs have been inserted respectively by regulations 6(b) and 7(a) of the Regulations).

4.10 This document is referred to as the "relevant document" in the modifications which are made by the Regulations (see, in particular, the definition of that term in the modifications made by regulation 3 of those Regulations). The relevant document is available at
www.communities.gov.uk/localgovernment/efficiencybetter/deliveringefficiency/counciltaxnotic

es/ on the website of the Department for Communities and Local Government published on 18th December 2008.

4.11 A copy of the relevant document has also been deposited at the Department's principal office; Department for Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DU. That copy is available for inspection at that address.

4.12 The information contained in the relevant document is only relevant to the council tax demand notices for the financial year beginning on 1st April 2009. For this reason, the Regulations only apply in relation to that financial year, and the changes made to the 2003 Regulations have been drafted as modifications rather than as amendments (see, in particular, regulations 1(3) and 2 of the Regulations).

4.13 Subject to the outcome of any the matters discussed in section 12 below (monitoring and review) the Department anticipates that it will in due course amend the 2003 Regulations in relation to financial years beginning on and after 1st April 2010.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Introduction

7.1 Efficiency is about spending money better, making money go further and offering better value to council tax payers. The resources released through efficiency are retained by councils for them to reallocate according to local priorities, whether for investment in service improvements or to limit council tax levels. This is important at any time, but is especially so currently given the pressures on public finances.

7.2 The Government believes that efficiency is an issue of fundamental importance for local services, and that giving people information on the efficiency of the local authorities which provide services in their area will significantly enhance their ability to understand what is being done to improve value for money and to challenge their council to do better if necessary.

7.3 The aim of the Regulations and relevant document is, therefore, to ensure that council tax payers are given details about the efficiency achievements of their local authorities and that that data are put properly into context. In particular, the Regulations require succinct, standardised efficiency information to be included in and supplied with council tax bills. Including efficiency information in council tax

bills will give that information much greater prominence and accessibility for people than would be possible were it only to be supplied with those bills.

The requirements in the Regulations

Areas not subject to local government reorganisation in 2009-10

7.4 In relation to a billing authority's area which is not subject to local government reorganisation in 2009-10, the key requirements in the Regulations are as follows.

7.5 Billing authorities must include the following items of efficiency information in council tax bills (see, in particular, new paragraph 23A(2), which is inserted by regulation 6(b))-

- The National Indicator 179 forecast figures[1] or Fire Annual Efficiency Statement forward look total figures[2] ("the forecast figures") for the financial year 2008-9 for each efficiency authority;
- Those forecast figures expressed as a percentage of each authority's baseline expenditure in 2007-08; and
- The aggregate of those forecast figures for each efficiency authority divided by the council tax base for each of those authorities[3]. This calculation expresses the aggregate of efficiency forecasts by reference to a band D dwelling in the billing authority's area.

7.6 In areas where there are no fire and rescue authorities, forecast figures for each efficiency authority which is a multi-function authority must be provided separately for the authority's fire and rescue functions and its other functions (see new paragraph 23A(2)(b)).

7.7 Billing authorities must also supply the following items of efficiency information with council tax bills (see new paragraph 7A(2) and (3) of Part 1 of Schedule 1 to the 2003 Regulations, which is inserted by regulation 7(a))-

- The two items in the first two bullet points in paragraph 7.5.
- The forecast figure for each efficiency authority divided by the council tax base for that authority's area. This calculation expresses the efficiency forecast for each efficiency authority by reference to a band D dwelling in the billing authority's area.
- The relevant benchmark for each efficiency authority.

1 National Indicator 179 (NI179) is reported by all councils and records the total net value of ongoing cash-releasing value for money gains that have impacted since April 2008 (plus any cashable gains permitted to be carried forward from the 2004 Spending Review period in recognition of significant over-achievement against targets). The latest available data are those returned by local authorities in October 2008, which specify the forecast efficiencies for the period up to the end of March 2009. Guidance on measuring and reporting NI179 is available at www.communities.gov.uk/publications/localgovernment/reportingvfmguide

2 The Fire Annual Efficiency Statement is reported by all Fire & Rescue authorities, and through the 'Forward-look' it records a similar figure as that reported for NI179.

3 Council tax base is defined for the purposes of the 2003 Regulations by new regulation 1(5) which is inserted by regulation 3(b) of the Regulations.

7.8 Again, in areas where there are no fire and rescue authorities, forecast figures for each efficiency authority which is a multi-function authority must be provided separately for the authority's fire and rescue functions and its other functions. The item in the second bullet point of paragraph 7.7 must also be provided separately in this way (see new paragraph 7A(2)(b)).

7.9 The relevant benchmark for each efficiency authority is the amount calculated in accordance with new paragraph 3A of Part 3 of Schedule 3 to the 2003 Regulations (which is inserted by regulation 7(b) of the Regulations). A relevant benchmark for an efficiency authority is an average of the item in the second bullet point of paragraph 7.7 calculated by reference to the category of authority which includes the efficiency authority.

7.10 New paragraphs 3C and 3D define a number of categories of authority for this purpose-

- fire and rescue authorities belong to the fire and rescue category defined in new paragraph 3C,
- efficiency authorities which are neither fire and rescue authorities nor multi-function authorities belong to one of the categories of authority in new paragraph 3D, and
- efficiency authorities which are multi-function authorities belong to both the fire and rescue category and to one of the categories of authority in new paragraph 3D.

7.11 It follows that two relevant benchmarks are required in relation to efficiency authorities which are multi-function authorities; one in respect of the authority's fire and rescue functions and one in respect of its other functions (see, in particular, new paragraph 3A(1)(b) and (3)).

Areas subject to local government reorganisation in 2009-10

7.12 In relation to a billing authority's area which is subject to local government reorganisation in 2009-10, the key requirements in the Regulations are as follows.

7.13 Billing authorities must include the following items of efficiency information in council tax bills (see, in particular, new paragraph 23B(2) and (3), which is inserted by regulation 6(b))-

- The forecast figure for each fire and rescue authority, or if there is no such authority the forecast figure for the fire and rescue functions of each restructuring efficiency authority which is a multi-function authority.
- The item in the preceding bullet point expressed as a percentage of the authority's relevant baseline expenditure in 2007-08.
- The aggregate of the forecast figures for each restructuring efficiency authority.

- The item in the preceding bullet point divided by the aggregate of each restructuring efficiency authority's baseline expenditure in 2007-08.
- The aggregate of those forecast figures relating to the first and third bullet points of this paragraph divided by the relevant council tax base[4]. This calculation expresses the aggregate of efficiency forecasts by reference to a band D dwelling in the billing authority's area.

7.14 Billing authorities must also supply the following items of efficiency information with council tax bills (see new paragraph 7B(2) and (3) of Part 1 of Schedule 1 to the 2003 Regulations, which is inserted by regulation 7(a))-

- The items in the first four bullet points in paragraph 7.13.
- The item in the first bullet point of paragraph 7.13 divided by the council tax base for the authority's area. This calculation expresses the efficiency forecast for fire and rescue functions by reference to a band D dwelling in the billing authority's area.
- The item in the third bullet point of paragraph 7.13 divided by the aggregate council tax base for all restructuring authorities other than county councils[5]
- The relevant benchmark for each fire and rescue authority, or if there is no such authority for each restructuring efficiency authority which is a multi-function authority.
- The benchmark for restructuring efficiency authorities.

7.15 The relevant benchmarks are calculated in accordance with new paragraphs 3A and 3B of Part 3 of Schedule 3 to the 2003 Regulations. It should be noted that, in relation to a billing authority's area that is undergoing reorganisation in 2009-10, any efficiency authority for that area will be a fire and rescue authority. Consequently, in relation to that area, paragraph 3A concerns the benchmark in respect of fire and rescue functions whether there is an efficiency authority for the area, or a restructuring efficiency authority which is a multi-function authority.

7.16 Paragraph 3B concerns the benchmark for restructuring efficiency authorities. This is the sum of forecast figures in respect of functions other than fire and rescue functions for each restructuring efficiency authority, divided by the aggregate of council tax base for restructuring authorities other than county councils.

Other matters

7.17 The Government has listened to consultation responses that cite a very limited level of available space on the face of the Bill. It has, therefore, initiated three key changes from those originally proposed to reduce the size of requirements:

- by requiring only aggregate figures where efficiency forecasts are expressed by reference to a band D dwelling in council tax bills;

4 The areas of county councils are not included in the calculation of the council tax base in order to avoid 'double-counting'.

5 The areas of county councils are not included in the calculation of the council tax base in order to avoid 'double-counting'.

- by requiring only the aggregate figure for non-fire and rescue efficiency forecast within areas undergoing restructuring, rather than separate figures for each predecessor council; and
- by not requiring that standardised explanatory material is included in council tax bills.

7.18 In addition, the Regulations do not include any requirements for explanatory material, footnotes, or specific layouts to be used in presenting the efficiency information either as part of or alongside the council tax bill. Instead, we have asked councils on a voluntary basis to highlight the different nature of the efficiency information from the other material contained in council tax bills.

7.19 Finally, to assist with the process of including efficiency information in council tax bills for 2009-10, the Department has calculated and published the efficiency information in the relevant document in order that authorities are not required to collate the information themselves. The efficiency information is based on information that authorities themselves have provided and the Department has undertaken a short consultation to check the accuracy of this data.

Consolidation

7.20 Because the Regulations have been drafted as modifications to the 2003 Regulations which only apply in relation to the financial year 2009-10, the Department is not proposing to consolidate the 2003 Regulations at this time.

8. Consultation outcome

8.1 The Government and the Local Government Association have adopted the Framework for Partnership which provides guidance on effective local government consultation. The framework outlines that the time allowed for local government consultation is normally six weeks. As the requirements relate to technical changes requiring local government rather than public consultation, the consultation on *Inclusion of Efficiency Information with Council Tax Demand Notices*[6] was open for a period of six weeks commencing on 3 September 2008. In addition to all local authorities across England, we identified and notified organisations which we believed would be interested in reading and responding to this consultation, including the LGA, Audit Commission and CIPFA.

8.2 In total, 218 unique responses to the consultation were received, many of these jointly on behalf of a number of people or organisations. Individual responses were submitted by 175 English councils (four of which submitted two different responses); some 45 per cent of the total number of councils in England. Individual responses were also received from two Fire and Rescue Authorities and six Police authorities or their representatives. The 14 joint local responses covered: 65 councils, one Fire and Rescue Authority, and two Police authorities, some of which also submitted an individual response. Twelve of these 201 responses related to councils or groups of councils subject to reorganisation in April 2009.

6 Available at http://www.communities.gov.uk/documents/localgovernment/doc/976376.doc

8.3 Of the remaining responses: ten were from regional or national organisations, or representative bodies; two came from private sector companies that produce bills for councils; one from a Welsh council; and four were the individual personal views of council finance/ revenue practitioners.

8.4 The principal results from the consultation were that (in each case the percentages refer only to the proportion of responses that expressed a clear preference on that particular subject):

- more than ninety per cent accepted the principle of providing greater transparency for the public on efficiency achievements, though only just over one-third accepted the case for the standardisation of information;
- over sixty per cent accepted the case for the usefulness of leaflets in providing efficiency performance information, citing such factors as greater accessibility and a lever for increased performance;
- more than half accepted the case for including data on efficiencies made by police authorities and fire and rescue authorities;
- almost all respondents did not accept the case for requiring information on the face of the bill, citing in particular a lack of room to include such information and the potential for public confusion about what it meant for their bill;
- more than eighty per cent believed that the proposed footnote for the accompanying leaflet would also be confusing to the public; and
- the majority of responses received from councils involved in restructuring in April 2009 did not accept the requirement for the new unitary authorities to report efficiencies forecast or achieved by their predecessor councils, citing in particular the additional complexity that would entail and that the figures would not be meaningful given that those councils would have been abolished.

8.5 After considering the responses received in the consultation, the Rt Hon. John Healey MP, Minister of State for Local Government, announced to Parliament on 26th November, as part of a statement in relation to the Local Government Finance Settlement for 2009-10 that "I have decided, following consultation, that councils will be required to set out standard efficiency figures on council tax bills from next year."

8.6 The Department subsequently published *Government response to the consultation on the inclusion of efficiency information with council tax demand notices*[7] on 5th December, and notified Chief Executives, Finance Directors, key efficiency contacts and respondents to the consultation that the Response had been published. As set out in the Response, the Government believes it is important to proceed with the broad thrust of its proposals as:

- Efficiency is an issue of fundamental importance for local services, and that giving people information on the efficiency of the local authorities which provide services in their area will significantly enhance their ability to understand what is being done to improve value for money and to challenge their council to do better if necessary. This issue applies just as much to areas undergoing local government restructuring as to those that are not;

7 Available at http://www.communities.gov.uk/documents/localgovernment/pdf/1088798.pdf

- By requiring succinct, standardised efficiency information to be included in and supplied with council tax bills, this information will have much greater prominence and accessibility for people than would be possible were it only to be supplied with those bills.

8.7 In view of the issues raised by respondents the Government has significantly modified its proposals to ease implementation:

- Disapplying requirements to include efficiency information in a demand notice where further council tax bills are served on a person who has received that information via an earlier council tax bill (see new regulation 3(2A) of the 2003 Regulations, which is inserted by regulation 5 of the Regulations). We have received advice from software companies that this step makes it substantially easier to implement the necessary actions;
- By requiring only aggregate figures where efficiency forecasts are expressed by reference to a band D dwelling in council tax bills;
- By requiring only an aggregate, imputed figure for the forecast efficiency gains of a restructuring efficiency authority, rather than the efficiencies of each constituent predecessor of the restructuring efficiency authority. This strikes a balance between holding all councils to account on their value for money performance while minimising the requirement on space on the face of the bill; and
- By not requiring that standardised explanatory material is included in council tax bills, but instead leaving councils to share good practice and devise solutions appropriate to their circumstances.

9. Guidance

9.1 The Department has taken a number of steps to promote effective dissemination of guidance:

- Through the Response, it has included indicative mock-ups of the efficiency information contained in a council tax bill and in an accompanying leaflet;
- Issued a Council Tax Information letter (2/2008)**8** on the inclusion of efficiency figures on council tax bills, setting out the key points from the Response;
- Requested that all billing authorities provide us with email contact details of their in-house team and/or external software suppliers to facilitate future communication; and
- Initiated an FAQ document updated as issues emerge and are answered. This is available at *www.communities.gov.uk/localgovernment/efficiencybetter/deliveringefficiency/counciltaxnotices*

10. Impact

8 Available at http://www.local.odpm.gov.uk/finance/ctax/ctil/2ctildec08.pdf

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is as follows:

- Citizens will be more aware of the efficiency performance of their local authorities, and be better informed where progress is slow

- In order to cover the additional burdens that this new requirement will impose, in line with the new burdens principle the Department will provide £2.35m capital funding in each of financial years 2008-09 and 2009-10, plus £1.84m revenue funding in each of financial years 2008-09, 2009-10 and 2010-11.

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 The Department will review the operation of the Regulations for this financial year before making amendments in relation to 2010-11 and later financial years. That review will take into account survey data on the extent to which people feel informed on the value for money of their local authority.

13. Contact

Neil Reeder at the Department for Communities and Local Government Tel: 020 7944 6916 or email: neil.reeder@communities.gsi.gov.uk can answer any queries regarding the instrument.